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I. INTRODUCTION

Experts in the correctional justice field refer to America's jails and prisons as today's *de facto* mental health treatment facilities. In 1955, there were approximately 550,000 patients in mental hospitals throughout the country.[1] Today, there are fewer than 60,000[2] (excluding those in place for forensic status).[3] The situation faced by individuals with serious mental illnesses today is astonishingly similar to that faced by individuals with serious mental illnesses in the 1840s: a shortage of psychiatric beds and an abundance of jail and prison cells. According to the Bureau of Justice Statistics, sixty-four percent of jail inmates nationwide were clinically diagnosed with a mental disorder,[4] received treatment by a mental health professional, or experienced symptoms of a mental disorder in the previous twelve months.[5] Additionally, a significant portion of the jail population

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1. TERRY A. KUPERS, REPORT ON MENTAL HEALTH ISSUES AT LOS ANGELES COUNTY JAIL 3 (2008), *available at* http://www.aclu.org/pdfs/prison/lacountyjail_kupersreport.pdf [hereinafter REPORT].

2. *Id.*

3. The forensic mental health population in California generally consists of patients confined under five types of commitments: (1) Incompetent to Stand Trial; (2) Not Guilty by Reason of Insanity; (3) Mentally Disordered Offenders; (4) Mentally Disordered Offenders; and (5) Sexually Violent Predators. KEVIN BAYLEY ET AL., FORENSIC MENTAL HEALTH LEGAL ISSUES (2009), *available at* http://www.disabilityrightsca.org/pubs/507701.pdf.

4. Mental illness is a collective term for all diagnosable mental disorders. Mental disorders are health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress and/or impaired functioning; *see Mental Health Services Act (Proposition 63)*, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, 3, http://www.dmh.ca.gov/prop_63/MHSA/docs/MHSAafterAB100.pdf (last visited Feb. 7, 2013) (citing CAL. WELF. & INST. CODE § 5600.3 (West 2012) (defining mental illness)).

5. DORIS J. JAMES & LAUREN E. GLAZE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES (2006), *available at*

has a serious mental illness.[6] Although only 5.7% of the general population has a serious mental illness, 14.5% of male and 31.0% of female jail inmates have a serious mental illness.[7] The odds of a seriously mentally ill individual being in jail or prison compared to a mental hospital in the United States are 3.2 to 1.0.[8] California has almost four times as many people with mental illness in jails and prisons than in state and private psychiatric hospitals.[9] The Los Angeles County Jail is often cited as housing more people with mental illness than the largest psychiatric treatment facilities in the country.[10]

This note explores the increasing presence of the mentally ill in California county jails, specifically in the Los Angeles County Jail, and the effects of the recent "Realignment" legislation. With the recent U.S. Supreme Court decision in *Brown v. Plata* (2011), "Realignment" is California's new criminal justice buzzword. Underlying the Court's decision in *Brown* were two class action suits, *Coleman v. Brown* and *Plata v. Brown*. These two cases alleged Eighth Amendment violations in California's prison system based on shortcomings in mental health care and medical care, respectively. The Court attributed the violations and deficiencies in care to overcrowding in the prison population and ordered the state to reduce its population by 38,000 within two years.[11] California legislators responded with Assembly Bill 109 (AB 109), which quickly decreased California's prison population by redirecting nonviolent, nonserious, nonsexual, or "N3," inmates to county jail.[12]

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http://www.nami.org/Content/ContentGroups/Press_Room1/2006/Press_September_2006/DOJ_report_mental_illness_in_prison.pdf.

6. Serious mental illness is defined differently across programs, policies, and in research literature. Serious mental illness is usually defined by the type of diagnosis, the duration of the illness, and the level of impairment. The definition of serious mental illness as stated by the Substance Abuse and Mental Health Services Administration requires the person to have at least one twelve-month disorder, other than a substance use disorder, that meets criteria described in the Diagnostic and Statistical Manual of Mental Disorders and to have serious impairment as determined by a Global Assessment of Functioning score. JOAN EPSTEIN ET AL., SERIOUS MENTAL ILLNESS AND ITS CO-OCCURRENCE WITH SUBSTANCE ABUSE DISORDERS 2002 (2004), *available at* http://www.samhsa.gov/data/CoD/CoD.pdf. Much of the research literature defines serious mental illness to include schizophrenia and other psychotic disorders, bipolar disorder, other severe forms of depression, and sometimes anxiety disorders, such as obsessive compulsive disorder, that cause serious impairment. *Id.*

7. Henry J. Steadman et al., *Prevalence of Serious Mental Illness Among Jail Inmates*, 60 PSYCHIATRIC SERVS. 761, 761 (2009).

8. E. FULLER TORREY ET AL., TREATMENT ADVOCACY CENTER & NATIONAL SHERIFFS' ASSOCIATION, MORE MENTALLY ILL PERSONS ARE IN JAILS AND PRISONS THAN HOSPITALS: A SURVEY OF THE STATES 8 (2010) [hereinafter TAC].

9. *Id.* at table 1.

10. RENEE MONTAGNE, *Inside the Nation's Largest Mental Institution* (NPR radio broadcast Aug. 14, 2008) (transcript on file with author).

11. Brown v. Plata, 131 S. Ct. 1910, 1927–28 (2011).

12. CAL. DEP'T OF CORR. AND REHAB., FACT SHEET (2011), *available at* http://www.cdcr.ca.gov/about_cdcr/docs/realignment-fact-sheet.pdf.

The mentally ill were largely and ironically left unmentioned in the Realignment discourse, though they were the impetus for the legislation. AB 109 does not address its effect on the mentally ill; it merely transfers the burden from the state to counties. The Los Angeles County Jail houses the most inmates with mental illness[13] in California and, like most other California county jails, is not prepared to meet the challenge that the Realignment legislation presents—the diversion of thousands of inmates from state prison to county jails, many of whom have mental health issues. The alarming statistics regarding the presence of the mentally ill in county jails are significant in relation to the Realignment because inmates with mental health needs often require the most resources and can be the most challenging to serve while incarcerated.[14] It costs on average $142.42 per day to house an individual in jail,[15] but a bed in a psychiatric unit in California costs on average $1250 per day.[16] Moreover, individuals with mental illness recidivate at higher rates,[17] further making this population a substantial financial burden on the corrections system. This burden is particularly significant when taking into account that diversion programs, like community rehabilitation programs, are much less costly and more effective at treating individuals and ending the revolving door in and out of the system.

The pervasive presence of mentally ill persons in the grips of the correctional system, now much of it at the county level, is a heavy weight on county pocketbooks as well as a dark mark on modern, civilized society. The strict adherence to procedure in the justice system, historically criminalizing mental illness, and the nonexistent Realignment-implementation aid to county jails precludes alternative solutions to diverting individuals with mental health needs from jails. The alternatives offered to county jails at the conclusion of this note—which alleviate the effects of the Realignment and the criminalization of mental illness—are effective in creating a new system of treatment (either in jail or in the community) that is designed to reduce recidivism, the abuse of both staff and inmates, and the ineffective use of corrections funds.

13. TAC, *supra* note 8, at 4.

14. *Id.* at 9–10.

15. Aaron Smith, *California County to Charge Prisoners for Their Jail Stay*, CNN MONEY (Nov. 9, 2011, 2:49 PM), http://money.cnn.com/2011/11/09/news/economy/california_jail/index.htm.

16. Agreement Between the County of San Mateo and the County of Santa Clara for Acute Inpatient Mental Health Services for Inmates (July 2008) (on file with author) [hereinafter Agreement].

17. TAC, *supra* note 8, at 9.

II. A BRIEF HISTORY OF THE CRIMINALIZATION OF THE MENTALLY ILL

The criminalization of mental illness has been a recurring problem in the United States for the past two hundred years. "Decarceration" in the 1800s from America's jails led to the institutionalization of the mentally ill in mental hospitals until politicians and doctors hailed the benefits of deinstitutionalization in the 1970s.[18] Deinstitutionalization, the emptying of state mental hospitals, was so disorganized and myopic that jails were back to where they were in the 1800s—full of inmates with mental illness—because alternatives were not available to the court system to divert them, thereby again criminalizing mental illness.

A. THE RISE AND FALL OF THE WELFARE STATE

After World War II, the United States experienced a period of dramatic economic growth. The economies of Japan and many Western European countries were devastated by the war, which created a period of American economic power.[19] During this time, American companies experienced peace between management and labor with the higher wages and benefits being offered to their employees.[20] The United States' post-war political economy was thus characterized by relative peace between management and labor. With a period of record corporate profits and rising standards of living, the U.S. government passed a series of liberal reforms. These reforms included the passage of the Civil Rights Act, the expansion of New Deal era social welfare programs like Social Security, creation of other various social welfare programs, and the deinstitutionalization of the mentally ill.

During the late 1960s and early 1970s, the rebuilt economies of Europe and Japan began to give American companies tougher competition in the world marketplace, leading the United States to change its welfare practices. In order to reduce corporate taxes,[21] it was necessary to reduce the size of the welfare state. In the 1980s, the Reagan administration carried out this objective.[22] With the help of both political parties, the

18. BERNARD E. HARCOURT, REDUCING MASS INCARCERATION: LESSONS FROM THE DEINSTITUTIONALIZATION OF MENTAL HOSPITALS IN THE 1960S 6–8 (2011), *available at* http://www.law.uchicago.edu/files/file/542-335-bh-incarceration_0.pdf.

19. SHIGERU T. OTSUBO, POST-WAR DEVELOPMENT OF THE JAPANESE ECONOMY (Apr. 2007), *available at* http://www.gsid.nagoya-u.ac.jp/sotsubo/Postwar%20Development%20of%20the%20Japanese%20Economy%20(Prof.pdf; *The Rise of American Consumerism*, PUBLIC BROADCASTING SERV., http://www.pbs.org/wgbh/americanexperience/features/general-article/tupperware-consumer/ (last visited May 29, 2013).

20. David R. Henderson, *The U.S. Postwar Miracle* 4, 17 (Mercatus Ctr., George Mason Univ., Working Paper No. 10–67, 2010), *available at* http://mercatus.org/sites/default/files/publication/U.S.%20Postwar%20Miracle.Henderson.11.4.10.pdf.

21. D.L. BARLETT & J.B. STEELE, AMERICA: WHO STOLE THE DREAM? 3 (1996).

22. M. Abramovitz, *The Reagan Legacy: Undoing Class, Race, and Gender Accords*, 19 J. SOC. & SOC. WELFARE, 91–110 (1992).

administration dramatically cut social welfare spending and the budgets of many regulatory agencies.[23]

Deinstitutionalization was one of the most well-meaning but poorly planned social changes ever carried out in the United States. Coinciding with the need to reduce expenditures on publically funded welfare institutions, a social movement aimed at freeing patients from large, overcrowded, and often neglected state hospitals succeeded.[24] Deinstitutionalization collected much support because of mental health studies that indicated that treatment in the community was superior to that in a hospital.[25] The movement even had the support of left-wingers who hailed it as a progressive step. These studies in mental health created the expectation that resources would be allocated to community programs that would provide alternative mental health treatment.[26] Rather than leading to quality treatment in small, community settings, however, deinstitutionalization often resulted in no treatment at all because of the lack of proper funding and legislative attention.[27]

B. CRIMINALIZATION IN CALIFORNIA

California was at the frontline of deinstitutionalization and with its experience of the pernicious consequences. The emptying of California's mental hospitals began in the mid-1950s under Republican governor Goodwin Knight and continued in the 1960s under Democratic governor Edmund "Pat" Brown.[28] Republican then-governor Ronald Reagan moved to close the mental hospitals completely.[29] States across the nation followed suit, but in the early 1970s, it became apparent that emptying the state mental hospitals resulted in a notable increase in the number of mentally ill individuals in jails and prisons in California. In 1972, Marc Abramson, a psychiatrist in San Mateo County, published a study reporting a thirty-six percent increase in mentally ill prisoners in the county jail.[30] In 1973, hearings were held by the California State Senate to discuss this problem.[31] The San Joaquin County sheriff testified that "a good deal of mental illness is now being interpreted as criminality."[32] In Santa Clara

23. BARRY BLUESTONE & BENNETT HARRISON, THE DEINDUSTRIALIZATION OF AMERICA: PLANT CLOSINGS, COMMUNITY ABANDONMENT, AND THE DISMANTLING OF BASIC INDUSTRY 197 (1984).
24. HARCOURT, *supra* note 18, at 11–12.
25. *Id.* at 13.
26. *Id.*
27. *See id.* at 31.
28. TAC, *supra* note 8, at 2.
29. James M. Cameron, *A National Community Mental Health Program: Policy Initiation and Progress*, *in* HANDBOOK ON MENTAL HEALTH POLICY IN THE UNITED STATES 121, 140 (David A. Rochefort ed. 1989).
30. TAC, *supra* note 8, at 2.
31. *Id.*
32. *Id.*

County, the problem of mentally ill inmates became "probably ten times larger" compared to the previous decade.[33] Although other states should have seen the warning signs from California's destructive deinstitutionalization policy, observations and studies in many other states indicated that an increasing number of the discharged mental patients ended up in jails and prisons in the 1980s. In 1982 and 1983, Dr. Richard Lamb and his colleagues published two studies of mentally ill inmates in the Los Angeles County Jail and cited multiple other studies demonstrating that the problem was worsening.[34] By 2001, San Francisco jail officials stated that the number of prisoners requiring mental health treatment had increased seventy-seven percent in the past ten years.[35] Then, in 2005, Sheriff Lee Baca of the Los Angeles County Sheriff's Department stated, "I run the biggest mental hospital in the country."[36]

The expansion of mental illness in jails can be attributed to a number of complex factors. Some factors include the shortcomings and lack of funding of the public mental health system, the incarceration of large numbers of drug offenders caused by an inefficient sentencing scheme (many of whom have dual-diagnoses of mental illness and drug or alcohol abuse[37]), the tendency of local governments to incarcerate the homeless for minor crimes, and the absence of funding for alternatives to jail or prison. It takes very little for many mentally ill inmates to arrive in California jails. Some examples of crimes of those in the mental health treatment sectors of Los Angeles County Jail are indecent exposure, possession of open containers, urinating on the street, false identity, shoplifting, loitering, and disturbing the peace.[38] Often, the crimes these types of inmates commit are the result of their mental illness. The mentally ill offenders who display aggressive, violent behavior have long histories of institutionalization, and/or exhibit a diminished ability to function independently in jail.[39]

33. *Id.*

34. TAC, *supra* note 8, at 2.

35. *Id.*

36. Steve Lopez, *Mentally Ill in the Jail? It's a Crime*, L.A. TIMES, (Dec. 11, 2005), *available at* http://articles.latimes.com/2005/dec/11/local/me-lopez11.

37. Agnes B. Hatfield, *Dual Diagnosis and Mental Illness*, *National Alliance for the Mentally Ill*, SCHIZOPHRENIA.COM (1993), http://www.schizophrenia.com/family /dualdiag.html (last visited Feb. 7, 2013).

38. Interview with Gerald Cooper, L.A. County Sheriff's Department Commander, former head officer of Inmate Reception Center at L.A. County Jail (Nov. 9, 2011) (on file with author) [hereinafter Interview].

39. THE GAINS CENTER, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, TREATMENT OF PEOPLE WITH CO-OCCURRING DISORDERS IN THE CRIMINAL JUSTICE SYSTEM, *available at* http://gainscenter.samhsa.gov/pdfs/disorders/Treatment.pdf.

III. THE CURRENT STATE OF THE MENTALLY ILL IN LOS ANGELES COUNTY JAIL

In 1995, Los Angeles County Jail built the Twin Towers Correctional Facility, adjacent to the Central Men's Jail, to specially house its many inmates with serious mental health problems.[40] Of the nearly 20,000 inmates housed daily within the Los Angeles County Jail, approximately 2000 are diagnosed with a mental illness.[41] Ninety percent of mentally ill inmates report co-occurring substance abuse.[42] Not every inmate diagnosed with a mental illness resides in the Twin Tower mental health ward, mainly due to the jail's limited resources for this sector.[43] Thousands of inmates daily go through the intake procedures and pass through two levels of evaluation by mental health staff members before they can be sent to the mental health ward.[44] The crowding problems increase the risk of inmates being underdiagnosed, misdiagnosed, or missed altogether.

The limited resources available also restrict the number of inmates that can receive mental health treatment. The Realignment legislation exacerbates this problem because the burden of many low-level offenders will shift to the counties. If the counties do not create diversion techniques or community rehabilitation alternatives to jail, then most of those inmates, as shown in this section, will recidivate and return back to jail. Recidivism carries significant costs to the county and can be decreased through real rehabilitation.

A. INTAKE PROCEDURES AND MENTAL HEALTH CASELOAD

Medical and mental health jail guidelines developed by the Board of Corrections and the California Medical Association, as required by California Penal Code Section 6030, do not specify standards for jail-based mental health screening.[45] However, every inmate who enters Los Angeles County Jail is screened when he or she arrives.[46] Inmates begin at the Inmate Reception Center (IRC). Most of these inmates are detained defendants or not out in the community for a number of other reasons—

40. Interview, *supra* note 38.

41. *Jail Mental Health Services*, L.A. CNTY. SHERIFF'S DEP'T, CORR. SERVS. DIV., http://la-sheriff.org/divisions/correctional/mh/ (last visited Feb. 7, 2013) [hereinafter Jail Mental Health].

42. *Id.*

43. Los Angeles County requires more resources, especially for those with mental health issues, but the county spends the most on mental health of the entire state. For example, the Los Angeles County Jail spends ten million dollars per year on psychiatric medications. TREATMENT ADVOCACY CTR., CRIMINALIZATION OF INDIVIDUALS WITH SEVERE PSYCHIATRIC DISORDERS 2 (2007), *available at* http://www.treatmentadvocacycenter.org/storage /documents/criminalization_of_individuals_with_severe_psychiatric_disorders.pdf [hereinafter CRIMINALIZATION].

44. Interview, *supra* note 38.

45. CAL. PENAL CODE § 6030 (West 2012).

46. Interview, *supra* note 38.

they are not out on bail or recognizance, they are a flight risk, they are a risk to the community, or they are waiting to go to court to have their legal competence reevaluated.[47] Essentially, most of the inmates at the jail are not convicted and are awaiting trial.[48] Every inmate who goes through IRC is evaluated by medical personnel and a mental health staff member.[49] As a result of that evaluation, a determination is made whether that person needs further evaluation or treatment while in the jail.[50] If an inmate manifests some type of mental illness, he is taken directly to a mental health care dormitory for further evaluation by the psychiatric staff.[51] An inmate, therefore, must pass through these two levels to be housed in the Twin Tower mental health ward. Falling through the cracks, then, is very possible when there are thousands of inmates going through IRC every day.

Relative to the large population of jail inmates in the United States with a significant mental illness, there is a small proportion of inmates in the Los Angeles County Jail receiving mental health treatment. In 2008, there were just fewer than twelve percent of male inmates on the mental health caseload.[52] One study done by a visiting psychiatrist in Los Angeles County Jail determined that at least twice as many inmates require some degree of mental care, based on national studies of the pervasiveness of mental illness in jails and the complaints of inadequate mental care in the general population of the jails.[53] Under the best of circumstances, the screening, diagnosis, and assessment of individuals with co-occurring mental illness and substance abuse disorders is very difficult. These disorders are often under-diagnosed in the criminal justice setting, leading to misdiagnosis, over-treatment with medications, neglect of appropriate interventions, inappropriate treatment planning and referral, and poor treatment outcomes.[54] The sheer number of inmates being moved through IRC and into the Los Angeles County Jail exacerbates the likelihood of these problems, and these risks will not change in the near future with the new Realignment legislation.

47. Interview, *supra* note 38.

48. As of October 2012, 10,000 of 18,900 inmates were awaiting trial. *Early Release Possible for Those Awaiting Trial*, PRETRIAL JUSTICE INSTITUTE (Jan. 13, 2013), http://www.pretrial.org/NewsAndArticles/PretrialPressDocuments/Early%20release%20possible%20for%20those%20awaiting%20trial%20in%20Los%20Angeles%20County%20(melodika.net;%201-13-2013).pdf (last visited Mar. 31, 2013).

49. Interview, *supra* note 38

50. *Id.*

51. *Id.*

52. REPORT, *supra* note 1, at 5.

53. *Id.*

54. ROGER H. PETERS & MARLA GREEN BARTOI, SCREENING AND ASSESSMENT OF CO-OCCURRING DISORDERS IN THE JUSTICE SYSTEM 4 (1997), *available at* http://www.ce-credit.com/articles/100958/Screening_Assessment_Mono.pdf.

B. CROWDING

The U.S. prison populations have experienced extraordinary growth in the last thirty years, and California is one of the direst examples. California prisons are currently operating at 155% capacity,[55] down from 200% pre-Realignment, and the new Realignment legislation has now shifted much of the burden to California jails.[56] With a state sentencing policy singularly focused on punishment, the amendments over the last thirty years created a byzantine system without consideration of the sentences' effects on public safety or the state's correctional resources.[57] The Legislature and the publicly endorsed sentencing changes that served short-term desires for action but the long-term effects of the amendments were not examined.[58] California's crime rate, like the rest of the nation's, dropped substantially since the 1990s,[59] but the state's prisons became overcrowded to the point of unconstitutionality.[60]

To address the prison-overcrowding problem, the Legislature passed Assembly Bills 109 and 117 (AB 109/117), which shift the supervision for nonviolent and nonserious offenders to the counties.[61] The Realignment will likely have extraordinary effects on mental health care in jails and is already proving to be overwhelming for many counties.[62] Costs for mental health care are substantial,[63] especially taking into account the costs of specialized personnel, and the counties will now bear the burden. Theoretically, inmates will get the same level of care as in prisons under the assumption that counties are better equipped to deal with all inmate issues, but this depends on each county's jail.[64] Currently, Los Angeles is

55. CAL. DEP'T OF CORR. & REHAB., THE FUTURE OF CALIFORNIA CORRECTIONS: A BLUEPRINT TO SAVE BILLIONS OF DOLLARS, END FEDERAL COURT OVERSIGHT, AND IMPROVE THE PRISON SYSTEM 4 (2012).

56. *See infra* Part IV.

57. *See* THE LITTLE HOOVER COMM'N, SOLVING CALIFORNIA'S CORRECTIONS CRISIS: TIME IS RUNNING OUT 26–27 (2007), *available at* http://www.lhc.ca.gov/lhc/185/Report185.pdf.

58. *Id.*

59. *See* KAMALA D. HARRIS, CAL. DEP'T OF JUSTICE, CRIME IN CALIFORNIA 2010 1 (2011) (noting decreases in crime rates across all types of offense), *available at* http://oag.ca.gov/sites/all/files/pdfs/cjsc/publications/candd/cd10/preface.pdf? (last visited Feb. 7, 2013).

60. *See* Brown v. Plata, 131 S. Ct. 1910, 1923 (2011).

61. PowerPoint: Cal. Dep't of Corr. & Rehab., *Overview of AB 109 & AB 117: Public Justice Realignment of 2011* (2011), *available at* http://www.cdcr.ca.gov/realignment/docs /AB_109-PowerPoint-Overview.pdf [hereinafter *Overview of AB 109*].

62. Meeting Transcript of the Los Angeles County Board of Supervisors, 39–40, 58 (Nov. 15, 2011), *available at* http://file.lacounty.gov/bos/transcripts/11-15-11%20Board%20 Meeting%20Transcript%20(C).pdf [hereinafter Board Transcript].

63. Los Angeles County Jail spends ten million dollars annually on psychiatric medication for inmates. CRIMINALIZATION, *supra* note 43.

64. ANGELA MCCRAY ET AL., REALIGNING THE REVOLVING DOOR? AN ANALYSIS OF CALIFORNIA COUNTIES' AB 109 IMPLEMENTATION PLANS 8 (2012).

also under court order to prevent overcrowding,[65] which will have an impact on the county's release of the same types of low level, nonviolent offenders. These circuitous methods of reducing prison and jail populations do nothing but create a revolving door for offenders who never have the chance to get diverted to a more effective program to prevent recidivism. While AB 109/117 encourages counties to use alternative sanctions in post-release supervision for those whose parole supervision is being transferred to the counties, the new legislation provides little guidance to the counties about how the sanctions should be applied.

The crowding in Los Angeles County Jail makes it difficult to properly assess the needs of incoming inmates. For example, IRC receives 13,000 new inmates every month.[66] Los Angeles County provides strong programming for those special needs inmates it can accommodate. There have been many improvements in the jail in the last thirty years to address the increasing numbers of inmates with mental health issues. These have included the construction of the Twin Towers (which includes the medical services building and the Los Angeles County Medical Center Jail Ward), increased mental health staffing, and increased mental health units.[67] But under the current criminal justice scheme of increased incarceration and a lack of rehabilitation alternatives, the county must spend most of its resources in costs related to housing as many inmates as it can bear. Although as early as the 1970s, research showed that overcrowding in jail and prison populations leads to psychiatric breakdowns and increased rates of violence,[68] insufficient efforts have been made to alleviate the overcrowding problems. Ideally, Los Angeles County Jail would provide treatment to every inmate that requires it. Unfortunately, there are space limitations in the jail, and the same applies to Patton and Metropolitan Mental Hospital (two of the eight state mental health hospitals), both of which have long waitlists for the seriously mentally ill to be admitted.[69]

Reports made by psychiatrists from organizations like the American Civil Liberties Union (ACLU) are satisfied with most of the treatment and programs provided for the inmates on the mental health caseload in Los Angeles County's Twin Tower I and have seen improvements in the area.[70] The mental health programs in the jail have very positive features. The most violent inmates in the mental health ward start in isolation with fifteen-minute checks from staff members and slowly move into

65. Richard Winton & Andrew Blankstein, *California's County Jails Struggle to House Influx of State Prisoners*, L.A. TIMES, (Dec. 10, 2011), *available at* http://articles.latimes.com/2011/dec/10/local/la-me-jails-20111210 (last visited Feb. 7, 2013).

66. Interview, *supra* note 38.

67. REPORT, *supra* note 1, at 18.

68. *Id.* at 6.

69. Interview, *supra* note 38.

70. REPORT, *supra* note 1, at 18.

environments with others.[71] This could include a cell with two people—the maximum cell occupancy in the mental health ward—and progress to being able to go outdoors, though chained to a table, and then to possibly removing the chain.[72] A psychiatrist for the ACLU was pleased with the crisis intervention and observation capabilities, a sub-acute mental health unit, and mental health housing program that assists the jail in attempting to do pre-release planning and creates a link between community mental health providers and the inmates.[73] The custody staff in Twin Towers I also receives special training and has strong communication with the medical staff.[74] There is a consensus that the mental health staff, including the custody staff in the mental health ward, is conscientious and interested in improving the availability and treatment options for those with mental health needs.[75] Staff members see the benefit it provides the inmates and acknowledge that the more therapeutic methods need to be more widely applied throughout the jail.[76]

The majority of problems related to inmates with mental health needs arise out of incidents in the Men's Central Jail (MCJ), or the "general population." The Jail Mental Evaluation Teams (JMET) consists of a custody officer and Department of Mental Health psychiatrist and counselor.[77] JMET is excellent in concept because it involves an admirable collaboration between the mental health and custody staff. However, there are inadequacies in the program. First, JMET only visits inmates in administrative segregation and disciplinary housing units.[78] There is only one JMET team in MCJ for 1500 inmates; this is simply too many people for JMET to adequately assess and treat. This creates uneven coverage and not every inmate receives necessary counseling or attention. Second, there is a lack of organization or a paper trail left for each inmate.[79] It is very difficult for another clinician, beyond the initial evaluation in IRC, to look at an inmate's chart and determine his needs based on any previous encounters he has had with a clinician. Without consistent charting and care, it is challenging to track the progress of each inmate. Third, there is a problem with inmate abuse because, for lack of space, there are many inmates in the general population who should be in mental health care units.[80] There are not enough custody officers who are specially trained in dealing with special needs inmates and most are not trained to interact with

71. Interview, *supra* note 38.
72. *Id.*
73. REPORT, *supra* note 1, at 18.
74. REPORT, *supra* note 1, at 18; Interview, *supra* note 38.
75. Interview, *supra* note 38.
76. *Id.*
77. Jail Mental Health, *supra* note 41.
78. REPORT, *supra* note 1, at 22.
79. *Id.* at 19.
80. *Id.*

these inmates in the general population or recognize if there is a special mental health need by an inmate.[81] This opens the door to abuse of some inmates who are considered troublesome or disruptive.

Another issue is that there appears to be a pervasive failure to diagnose inmates with mental illness and a possible inappropriate down-grade of diagnoses for inmates who cannot be accommodated in the mental health care units.[82] One outside psychiatrist claimed to diagnose an inmate with bipolar disorder in the general population.[83] The psychiatrist also found another inmate who had been deemed incompetent to stand trial, sent to Patton Mental Hospital, de-classed, and then sent back to Los Angeles County Jail because his diagnosis had been downgraded.[84] During the psychiatrist's examination, the declassified inmate displayed signs of active psychosis.[85] Prisoners who are inappropriately declassified because they do not have visible psychotic or suicidal symptoms at the brief time of observation are at a very high risk of decompensation (the deterioration of one's mental health)[86] when subjected to the harsh general population jail conditions.[87] The MCJ cells are still mostly windowless, the inmates receive very little out-of-cell time, and there is little programming for those in the jail.[88] Again, these problems arise out of the overcrowding issues in Los Angeles County Jail which prevent accurate evaluations for treatment and care and an ignorance of the more effective ways to deal with this overcrowding.

IV. THE REALIGNMENT'S EFFECTS ON INMATES WITH MENTAL HEALTH NEEDS

In 2011, the Legislature passed AB 109/117 to address the prison overcrowding problem in response to a U.S. Supreme Court decision requiring California to lower its prison population by 30,000.[89] AB 109/117 shifts the supervision and incarceration of low-level offenders to the counties.[90] Serious and violent offenders and sex offenders continue to be sent to prison, but nonserious and nonviolent offenders are sent to county jails.[91] Counties must compensate the state if they need or want to send offenders

81. Interview, *supra* note 38.
82. REPORT, *supra* note 1, at 24.
83. *Id.*
84. *Id.* at 27.
85. *Id.* at 24.
86. HUMAN RIGHTS WATCH, ILL EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS 3 (2003), *available at* http://www.hrw.org/reports/2003/usa1003/usa1003.pdf [hereinafter HUMAN RIGHTS].
87. *Id.*
88. REPORT, *supra* note 1, at 36–37.
89. *Overview of AB 109*, *supra* note 61.
90. *Id.*
91. *Id.*

to state prisons instead.[92] AB 109/117 does not change the length of time offenders serve; it only redirects low-level offenders to jail instead of prison.[93] The legislation also places nonviolent and nonserious parolees, previously under control of California Department of Corrections and Rehabilitation (CDCR), into a post-release community supervision program (PRCS) and prohibits their revocation back to state prisons.[94] Serious and violent offenders remain on state parole, but the Board of Parole Hearing's supervision of revocation hearings is set to phase out in 2013 and will be replaced by court oversight of the revocation process.[95] Supervision and revocations are now handled at the county level.[96] The legislation recommends that counties use alternative sanctions and authorizes "flash incarceration."[97] Flash incarceration is a period of brief incarceration of up to fourteen days in county jail that a county agency supervising the offender can recommend for violations of the conditions of release.[98] The legislation does not specify other types of graduated sanctions, but it limits revocation incarceration to 180 days and prohibits revocations to state prison.[99] PRCS offenders must remain under county supervision for violations of the conditions of their release.[100] AB 109/117 also authorizes county agencies to discharge offenders who have not committed any violations for six consecutive months.[101]

AB 109/117 represents an important shift away from relying on prison, the state's most expensive correctional resource, to solving public safety issues. The legislation categorizes low- and high-level offenders and shifts the burden of supervising low-level offenders to the counties.[102] It encourages the use of evidence-based alternative sanctions and local incarceration to deal with parole violations.[103] However, the counties' preparedness for supervising low-level parolees and incarcerating both low-level and high-level parolees is unclear.[104] Many counties will need significant support to establish and maintain evidence-based practices that ensure public safety, effective supervision of parolees, and incarceration of

92. *Overview of AB 109*, *supra* note 61.
93. *Id.*
94. *Id.*
95. *Overview of AB 109*, *supra* note 61.
96. CAL. PENAL CODE § 3457 (West 2012).
97. CAL. PENAL CODE § 3455 (West 2012).
98. *Id.*
99. *Overview of AB 109*, *supra* note 61.
100. CAL. PENAL CODE § 3458 (West 2012).
101. *Id.* § 3456.
102. *Id.* § 3451.
103. *Id.* § 3455 .
104. *See* Sara Mayeux, *Realignment in California: The Basics, Plus How Counties Are Preparing*, PRISON LAW BLOG (Aug. 17, 2011, 8:17 AM), http://prisonlaw.wordpress.com /2011/08/17/realignment-in-california-the-basics-plus-how-counties-are-preparing/.

some inmates, especially considering many of these redirected inmates likely have mental health concerns.

Los Angeles County's Probation Department is responsible for the parolees, some of whom will serve out their time at Los Angeles County Jails. As of November 2011, one month after the Realignment went into effect, about ninety percent of the 1019 prisoners released to Los Angeles County reported to officials within five days, as required by the law.[105] Arrest warrants were issued for those unaccounted for. The Los Angeles County Sheriff's Department had the funding to open only an additional 1800 beds, but according to an internal report by the district attorney's office, the county was expected to receive 8000 state prisoners in the next year.[106] One year later, the county houses 5806 AB 109 inmates.[107] Pre-AB 109, the Los Angeles County Jail population was 15,463.[108] Post-AB 109, the population is 18,952, [109] an increase of 3489 inmates.

Officials from the Los Angeles County Board of Supervisors stated that the county is handling state prisoners with more serious mental illnesses than anticipated, while about half of those prisoners are refusing treatment.[110] According to county officials, at least one of the parolees released to the county had serious mental issues and should have been sent to a state mental hospital.[111] This prisoner was admitted to Los Angeles County Jail in November 2011 and had a history that included violent felonies, assault on a peace officer, robbery, possession of a weapon, arson, arrests for rape in concert with force and violence, assault to commit rape, indecent exposure, and sexual battery.[112] This prisoner was admitted because the N3 classification only applies to the most recent conviction. Although the majority of the released prisoners have been convicted of theft, burglary or a drug-related crime, the N3 loophole opens the doors of county jails to inmates who have prior violent crime convictions and serious mental health issues. A Los Angeles County board official added that this example prisoner was "not the only one . . . with this type of profile."[113] These are not the type of profiles that the governor told the counties they would receive and be responsible for handling.[114] The jail facilities and a majority of the personnel are not equipped to handle these

105. Board Transcript, *supra* note 62, at 37, 43.
106. Richard Winton & Andrew Blankstein, *California Jails Receiving More State Prisoners than Expected*, L.A. TIMES (Nov. 16, 2011), *available at* http://articles.latimes.com/2011/nov/16/local/la-me-11-15-jails-20111116.
107. Gerald Cooper, *Los Angeles Sheriff's Department Internal Report* (2012) (on file with author).
108. *Id.*
109. *Id.*
110. Board Transcript, *supra* note 62, at 44.
111. *Id.* at 51–52.
112. *Id.*
113. *Id* at 55.
114. *Id.* at 52.

types of cases, and this dumping of prisoners to the county is not safe or proper for the inmates or corrections staff.

Los Angeles County is only one of the many counties currently experiencing the complications that many predicted they would suffer by inheriting prisoners without a structured plan and allotment of resources. According to Los Angeles County board officials, pre-screening data on a large number of prisoners scheduled for release showed that nearly seventy percent need mental health services or addiction treatment,[115] and about half of those refuse treatment.[116] Los Angeles County officials expressed concern that, although they are working with CDCR, they are not receiving complete treatment histories of all the inmates being released to the county, and in some cases they have not received any treatment histories because of delays in clerical data entries from the prisons.[117] Representatives of the Sheriff's Department stated that they were negotiating a contract with Walden House, a residential treatment program,[118] but twenty-five percent of the prisoners do not have permanent home addresses.[119] Those prisoners who are in the community on supervised release (a newer term for what is commonly known as parole) have conditions to their release and may return to the county jail if they do not comply with any conditions. It is currently unclear what types of conditions are set forward, but one can imagine the difficulty, especially of the twenty-five percent of the now homeless who have been released, to comply with any conditions. The new "post-release community supervision" scheme is merely another revolving door for formerly released inmates from the prisons to reenter the system through flash incarceration.

V. THE ECONOMIC PROBLEMS ASSOCIATED WITH HAVING SERIOUSLY MENTALLY ILL PERSONS IN JAILS

Much of the public believes that criminals should be punished to the full extent of the law and have little problem with frequently criminalizing new behavior.[120] Although there has been movement toward rehabilitation as an alternative to incarceration, there are not enough resources being allocated to these types of efforts.[121] Further, probation officers are focused

115. Elizabeth Marcellino, *Transfer of State Prisoners Poses Problems for County*, L.A. WAVE, Nov. 17, 2011, at A1, *available at* http://images.bimedia.net/documents/NWA-111711.pdf.
116. Board Transcript, *supra* note 62, at 44.
117. *Id.* at 43.
118. *Id.* at 45.
119. *Id.* at 47.
120. *See* HUMAN RIGHTS, *supra* note 86, at 5.
121. *Id.* at 12.

on violations rather than rehabilitation or re-integration.[122] Changing the system to involve more therapeutic or rehabilitation programs, both pre-incarceration, in lieu of, or after incarceration, would involve a concerted and collaborative effort from the public, counties, and legislators. The shortage of therapeutic or rehabilitation programs are caused by the lack of political will by legislators and local public officials who fear to look "soft on crime" or the dread that the programs will not be effective enough to keep the community safe.[123] Victims are the fulcrum of the political action that leads us to a safer community through legislative action and harsher penalties.[124] Any attempt by politicians to focus on the rights of suspects, defendants, or convicted offenders is portrayed as inevitably diminishing victim's rights.[125] Thus, the public and government groups are resistant to the types of change that have been proven to be more successful in reducing recidivism than incarceration.[126] As resilient as the public might be toward merciful and rehabilitative alternatives for convicted persons, many of whom have mental health issues, they might be more receptive to change if they had knowledge of significant decreases in recidivism and a decrease in corrections costs, both which have an impact on the public's pocketbooks.[127]

The costs associated with mentally ill inmates are extraordinary, even when compared to the already expensive inmates without mental health care needs. The annual associated costs to police and sheriff's departments in California to handle mentally ill offenders (transfer and escort costs, arrest and booking, and detention) are estimated at $605 million in total.[128] An annual California jail bed cost in 2008–2009 ranged from $25,000 to $55,000,[129] but the annual costs for inmates with mental illness cost

122. Roger K. Warren, *Probation Reform in California: Senate Bill 678*, 22 FED. SENT'G REP. 186, 188 (2010), *available at* http://www.courts.ca.gov/documents/probate-sb678.pdf (last visited Feb. 7, 2013).

123. JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR 76 (2007).

124. *Id.* at 76.

125. *Id.* at 77.

126. Warren, *supra* note 122, at 188.

127. In 2008, the Oregon Criminal Justice Commission helped ECONorthwest to estimate the number of felony convictions avoided through investment in evidence based programs (1261 felonies avoided from drug treatment in the community, compared to 74 avoided from treatment in prison); ECONORTHWEST, ANALYSIS OF COSTS AND PARTICIPATION FOR SELECTED EVIDENCE-BASED PROGRAMS IN THE CRIMINAL JUSTICE SYSTEM, 25 (2008), *available at* http://www.njjn.org/uploads/fiscal-policy-center-resources/cost-benefit-analyses/OREvidence-Based-Programs-in-the-Criminal-Justice-System Costs_Econorthwest 2008.pdf (last visited Feb. 7, 2013).

128. *See* LANCE T. IZUMI ET AL., CORRECTIONS, CRIMINAL JUSTICE, AND THE MENTALLY ILL: SOME OBSERVATIONS ABOUT COSTS IN CALIFORNIA (1996), *available at* http://www.mhac.org/pdf/PacificResearchStudy.pdf.

129. CTR. FOR FAMILIES, CHILDREN & THE COURTS, TASK FORCE FOR CRIMINAL JUSTICE COLLABORATION ON MENTAL HEALTH ISSUES: FINAL REPORT 3 (April 2011), *available at*

approximately $18,000 more per person.[130] Moreover, costs can be exceptionally high for inmates who require intensive psychiatric treatment. For example, in 2008 the cost of a bed for acute mental health services in a psychiatric unit of a county jail in California was $1,350 per day.[131] The costs for inmates with mental illness are typically higher due to additional costs related to mental health staff, psychiatric medications, and other services that are associated with these inmates.

Most importantly, along with being extraordinarily expensive to care for while in jail, the mentally ill have a high recidivism rate and quickly return back to jails where they are not receiving proper mental health treatment. There are an estimated 744,000 people who are homeless every night in the United States; and forty percent to forty-five percent of them have a serious mental illness.[132] Mentally ill offenders are incarcerated ten times more frequently for minor crimes and misdemeanors.[133] These crimes are often termed "crimes of survival" because many homeless persons turn to property crimes to survive.[134] Recidivism rates for probationers with mental illness are nearly double that of those without mental illness (fifty-four percent compared to thirty percent).[135] Mentally ill repeat offenders are a significant percentage of California's jail population. While there are no exact figures, a 1991 study conducted by the Los Angeles County Board of Supervisor's Task Force on the Incarcerated Mentally Ill estimated that ninety percent of the mentally ill offenders receiving mental health services in the county jail were repeat offenders.[136]

Ultimately, the annual cost for a county to incarcerate people without adequate treatment, regardless of whether they require mental health attention, is tens of thousands of dollars more expensive per person than in effective community rehabilitation. Inmates in the general population who

http://www.mentalcompetency.org/resources/guidesstandards/files/California%20Mental%20Health%20Task%20Force%20Report.pdf [hereinafter FINAL REPORT].

130. EDWARD COHEN & JANE PFEIFER, COSTS OF INCARCERATING YOUTH WITH MENTAL ILLNESS: FINAL REPORT vi (2010), *available at* www.cdcr.ca.gov/COMIO/docs/Costs_of_Incarcerating_Youth_with_Mental_Illness.pdf (last visited Feb. 7, 2013).

131. Agreement, *supra* note 16.

132. Mike Nichols, *A National Shame: The Mentally Ill Homeless*, ANXIETY, PANIC & HEALTH (Oct. 15, 2008) http://anxietypanichealth.com/2008/10/15/a-national-shame-the-mentally-ill-homeless/ (last visited Mar. 31, 2013).

133. *See* LOS ANGELES COUNTY BOARD OF SUPERVISOR'S TASK FORCE ON THE INCARCERATED MENTALLY ILL (1991) (on file with Los Angeles County Board of Supervisors) [hereinafter TASK FORCE].

134. *See* H.R. Lamb & D. Lamb, *Factors Contributing to Homelessness Among the Chronically and Severely Mentally Ill*, 41 HOSP. AND CMTY. PSYCHIATRY 301, 301–305 (1990).

135. Lorena Dauphinot, The Efficacy of Community Correctional Supervision for Offenders with Severe Mental Illness (March 1997) (unpublished doctoral dissertation, University of Texas at Austin) (on file with *Hastings Women's Law Journal*).

136. TASK FORCE, *supra* note 133, at 4.

do not require treatment can still cost up to twice as much annually for their jail stay.[137] This population similarly has high recidivism compared to those in community rehabilitation, leading to bloated costs through their recurrent jail time. A 2009 study found that in Los Angeles, the annual cost for an individual with mental illness in a community-housing program was $20,508.[138] Housing this population and providing them with necessary services greatly reduces incarceration costs. A study of Assembly Bill 2034 (an initiative servicing individuals with mental illness who were formerly homeless or incarcerated) found that these mental health programs were linked to an eighty-one percent decrease in the number of incarceration days.[139] Mentally ill inmates cost the state more when they are detained in jails because of their associated costs in combination with their long term and repeated stays in county jails. If a person with mental health problems never receives proper and complete treatment, he remains in the correctional system because he commits the same "crimes of survival" or crimes associated with his illness. Certain community programs for those with mental health needs, particularly those that treat substance abuse, and community rehabilitation for nonmental health needs persons cost significantly less than treatment programs or standard housing in jails and are more effective in reducing recidivism.

VI. THE POSSIBLE SOLUTIONS

This section presents possible solutions to jail time for those with mental illness after accounting for the effects of the Realignment and the costs associated with incarcerating this population. AB 109 added California Penal Code section 17.5, which states that "California must reinvest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system."[140]

Incarceration is a symbolic gesture of punishment to ease the public's mind but ineffective in truly reducing crime through rehabilitation. It is obvious that crime rates go down when a county or state incarcerates tens or hundreds of thousands of people, but when the United States Supreme Court holds that this method reaches the point of unconstitutionality because of overcrowding conditions, it is important that there is a way to

137. A California jail bed can cost $25,000 to $55,000, annually, while a community-housing program bed costs $20,142. FINAL REPORT, *supra* note 129; DANIEL FLAMING ET AL., ECONOMIC ROUNDTABLE, WHERE WE SLEEP: THE COST OF HOUSING AND HOMELESSNESS IN LOS ANGELES 30 (2009).

138. FLAMING ET AL., *supra* note 137, at 29.

139. SHANNON MONG ET AL., LESSONS LEARNED FROM CALIFORNIA'S AB 2034 PROGRAMS 150 (2009), *available at* http://www.cimh.org/Portals/0/Documents/MHSA/mhsa-networks/fsp-advise/misc/ab2034-report/01-Descriptive-Research-(AB2034-Report).pdf.

140. CAL. PENAL CODE § 17.5(a)(4) (West 2011).

properly deal with and rehabilitate those in the system to keep them in the community. The goals here are to shunt the population with mental illness from the standard corrections system, starting with the police and court system, into lower cost community rehabilitation programs that effectively treat mental health issues and significantly reduce the time spent in the corrections system.

A. SIGNIFICANTLY DECREASE THE JAIL POPULATION THROUGH DIVERSION

The priorities for county jails in dealing with mentally ill arrestees and inmates should include: divert those who do not require custody; make competent and complete assessments; ensure appropriate housing, treatment, and programming; have the ability to transfer care upon an inmate's release; and have an adequate number of custody staff trained in mental health issues. As stated above, the massive crowding in county jails makes it extremely challenging for the mental health staff and to meet, diagnose, and treat all of the inmates in need of their services. The conditions as noted in the Los Angeles County MCJ are particularly harmful to rehabilitative progress of inmates with mental health needs, and the crowding increases the possibilities of violence in the jail and abuse from untrained custody officers and other inmates. For inmates with significant mental illness, diversion to an alternative to jail is a good option so that the inmates can be sent to a community program with a mental health treatment setting. The first step in treating mental illness, and removing mentally ill individuals from the local criminal justice system, is to identify persons who are ill at the point of entry.

B. MET/ SMART TEAMS

Police officers have substantial power to stop the entry of a mentally ill person into the corrections system. In California, if a police officer stops or detains an individual and determines that the individual is in need of mental health care, the officer must take that person to a psychiatric emergency room for evaluation.[141] Under the California Welfare and Institutions Code section 5150 and Penal Code section 4011, an officer has a responsibility to remain with that individual until he is treated, released, or discharged into custody.[142] This process could take two-to-four hours of an officer's time.[143] In Los Angeles County, the Mental Health Department, the Sheriff's Department, and the Los Angeles Police Department created "MET/SMART" (Department Mental Evaluation Team/System-Wide

141. E. FULLER TORREY ET AL., NAT'L ALLIANCE OF THE MENTALLY ILL & PUBLIC CITIZEN'S HEALTH RESEARCH GRP., CRIMINALIZING THE SERIOUSLY MENTALLY ILL: THE ABUSE OF JAILS AS MENTAL HOSPITALS 85 (1992) [hereinafter TORREY].

142. CAL. WELF. & INST. CODE § 5150 (West 2012); CAL. PENAL CODE § 4011 (West 2012).

143. TORREY ET AL., *supra* note 141, at 85.

Mental Assessment Response Team) teams that respond to police calls to help detainees in need of mental health care.[144] This removes the very burdensome task of a police officer's duty to remain with a potentially mentally ill individual. These teams do have the authority to commit a detainee to a psychiatric inpatient facility, but the main objectives of MET/SMART are to help persons in crisis take medication, make doctor's appointments and assist in their arrival, and link them to outside community services such as housing.[145] A primary goal of the team is ultimately to ensure a person remains outside of a hospital or a jail. The model is a strong one because the teams work to increase the number of police officers that can instead respond to normal duty calls or more pressing emergencies.

The Los Angeles County collaborative MET/SMART model should be funded as a statewide program to effectually free up police to patrol more serious criminal activities in their communities. A remaining challenge is that police need to recognize when an individual could be an appropriate person to refer to the MET/ SMART team for the program to be beneficial. This could be dealt with through special police training sessions. It is in the best interest of the police departments, the sheriff's departments, the mentally ill, and the community at large to engage in this type of training so that the police can continue with the prevention of other serious criminal activity.

C. MENTAL HEALTH COURT

Persons with mental illness are overrepresented in courtrooms, which are in a unique position to respond to the disproportionate number of people with mental illness in the criminal justice system and divert that population from jails and prisons.[146] Connecting a defendant to mental health treatment and support or rehabilitation services often leads to successes in behavioral treatment and reduced recidivism.[147] In order to improve the outcomes for offenders with mental illness, courts must adopt collaborative approaches by working more closely with criminal justice partners and other community agencies to divert offenders at the outset. Releasing this population back to the community from either jail or prison is detrimental to both the system and the individual because many of those

144. *Mental/Behavioral Health: Emergency Services*, L.A. CNTY. NETWORK OF CARE FOR BEHAVIORAL HEALTH, http://losangeles.networkofcare.org/mh/emergency.cfm (last visited Feb. 7, 2013).

145. *Id.*

146. Nahama Broner et al., *Arrested Adults Awaiting Arraignment: Mental Health, Substance Abuse, and Criminal Justice Characteristics and Needs*, 30 FORDHAM URB. L.J. 663, 663–721 (2003).

147. Henry J. Steadman et al., *Effect of Mental Health Courts on Arrests and Jail Days: A Multisite Study*, ARCHIVES OF GEN. PSYCHIATRY 167, 167–72 (2010), *available at* http://gainscenter.samhsa.gov/cms-assets/documents/62075 221384.effectsofmhconarrests andjaildays.pdf (last visited Feb. 7, 2013).

with mental illness who are released back to the community on probation or parole recidivate and return to the criminal justice system.[148] Often, this is in part because they lack access to services that support a transition back into the community.[149] It is difficult to secure housing, treatment, and other necessary support services because many community agencies are hesitant to serve those with a criminal history, and fiscal restraints serve as barriers to accessing needed services like health coverage, housing, and employment.[150]

More than a quarter of California counties currently operate Mental Health Courts and/or Mental Health Calendars because they are more cost efficient and collaborative.[151] Mental Health Courts involve multiple agencies in providing integrated services.[152] Evaluations find that these targeted problem solving courts support the continuum of services both by helping to keep inappropriate people out of jails and by providing treatment teams that help with offenders' programming when in jail. A 2010 multi-state Mental Health Court study determined that compared to members of a treatment-as-usual group, Mental Health Court participants experienced a lower number of subsequent arrests, lower subsequent arrest rates, and a lower number of subsequent days spent in jail.[153] A 2007 study of Mental Health Courts in San Francisco found the mental health court system effective in reducing the involvement of persons with mental disorders in the criminal justice system.[154] Mental health court participants displayed a longer time without any new charges or new charges for violent crimes compared with similar individuals who did not participate in the program.[155] Persons who graduated from the mental health court program maintained reduced recidivism after they were no longer under supervision of the court, in contrast to comparable persons who received treatment as usual.[156] By eighteen months, the risk of mental health court graduates being charged with any new offense was about 34 out of 100, compared with about 56 out of 100 for comparable persons who received treatment as usual, and the risk of mental health court graduates being charged with a new violent crime was about half that of the treatment as usual group.[157] A

148. FINAL REPORT, *supra* note 129, at 3.
149. *Id*.
150. *Id.*
151. *Id*. at 22.
152. *Id*. at 8, 44, 70.
153. *Id*. at 4.
154. Dale E. McNiel & Renée L. Binder, *Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence*, 164 AM. J. PSYCHIATRY 1395, 1395–1403 (2007).
155. *Id.*
156. *Id.*
157. *Id.*

RAND[158] evaluation of a mental health court also found that the court program was related to a decrease in jail expenditures ($5,948 per person over two years).[159] These findings provide evidence of the potential for mental health courts to achieve their goal of reducing recidivism among people with mental health issues in the criminal justice system. Moreover, it appears possible to expand the mental health court model beyond its original clientele of persons charged with nonviolent misdemeanors in a way that public safety is enhanced rather than compromised. Currently, a judge must recognize when an individual is suitable for Mental Health Court.[160] There should be a more efficient mechanism for redirecting individuals with mental health issues to these specialized courts where their needs can be more properly addressed.

D. A FACILITY THAT PROVIDES THE BEST OF BOTH WORLDS

Los Angeles County's Twin Towers provide a safer environment than mental state hospitals where patients are in mental wards because of its ability to handle violence. There are higher incidents of attacks against staff in mental hospitals as opposed to jails.[161] Mental wards, though, are more conducive to mental health process and treatment, and can provide a more therapeutic experience.

There is a tradeoff in sending inmates to one or the other, but this note recommends a secure facility designed specifically for inmates with mental health needs. The facility would be similar to the current high-security housing setting but in a more therapeutic setting like a mental health hospital with significantly more trained staff members. Rather than build a traditional jail specifically for accommodating high-security housing, the county can utilize existing high-security housing which is now used to house specialized mental health and general medical needs inmates. The replacement jail would provide multiple-use housing areas with an emphasis on providing secured mental health housing and the housing of inmates presently segregated for purposes of their medical condition.

VII. CONCLUSION

Many in the criminal justice community hailed Realignment as a step toward true rehabilitation and supportive re-entry after years of increasing dependence on incarceration. However, the Realignment legislation

158. Research and Development (RAND) is a nonprofit institution that helps improve public policy and decision making through research and analysis.

159. M. SUSAN RIDGELY ET AL., RAND CORPORATION, JUSTICE, TREATMENT, AND COST: AN EVALUATION OF THE FISCAL IMPACT OF ALLEGHENY COUNTY MENTAL HEALTH COURT 19 (2007), *available at* http://www.rand.org/content/dam/rand/pubs/technical_reports/2007/RAND_TR439.pdf.

160. Interview, *supra* note 38.

161. *Id*.

contains no requirement that counties offer community supervision, treatment, reentry services, or any other alternative. The alternatives and possible solutions this note raises can be effective if action is taken at a county level to create dissent over the destructive and ineffective correctional justice system as it applies to the vast number of inmates with mental health needs. Change is uncertain and unsettling, and it is possible that even an informed public prefers to remain with the current dysfunctional arrangements, particularly in light of the substantial falls in recorded crime. Change, though, is required of us because the criminalization of mental illness is not a feasible method of "treatment." Persons with mental illness should be diverted from the corrections system with the help of the police and court system and placed accordingly into community rehabilitation. Community treatment is less costly than incarceration and more effective in removing the boundaries for individuals to stay out of the system, while keeping public safety a priority, as well as the well-being of everyone in the community. The ongoing criminalization of mental illness, especially in light of the Realignment, is not financially feasible or smart, ineffective in reducing recidivism, and is morally corrupt.

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