

CBHC BOARD POSITION STATEMENT 9.0

Criminal Justice System Transformation

Position Statement

Colorado's criminal justice system must be reformed to primarily address serious public safety concerns, while deferring to the behavioral health system to provide needed treatment and supports to individuals living with mental health and substance use disorders

Background

On any given day, there are approximately **10,000 adult inmates in Colorado jails**, with an estimated **minimum of 35% suffering from a mental health disorder** (CHI, 2016). Nationally, **53% of inmates in state prisons and 68% of individuals in jails have a documented substance use disorder** (SAMHSA, 2016). Criminal justice (CJ) systems across the nation are facing common difficulties in managing record high numbers of individuals with mental health and substance use disorders. Further, it is well established that people of color are overrepresented in the criminal justice system and experience significant health disparities including access to behavioral health treatment.

Across the nation, and here in Colorado, communities are seeing the benefit of enhancing social responses (e.g. mobile crisis or co-responder models) as an effective means to respond to a behavioral health related concern. In many cases, this is a better strategy than a law enforcement response, which can escalate behavioral health symptoms and lead to criminal justice involvement. Nationally, behavioral health providers are increasingly recognized as crucial partners in responding to behavioral health concerns so the burden can be lifted off of law enforcement agencies.

CBHC is dedicated to working on policy, legislation, and initiatives that help to fill gaps in the system, leveraging existing resources, ensuring individuals with mental health and substance use disorders have access to treatment, and dramatically reducing community reliance on CJ systems and traditional use of law enforcement teams. CBHC uses the *GAINS Center Sequential Intercept Model* (Appendix A) as a guide for developing policy and partnerships with criminal justice system entities and thinking creatively about how to get further upstream to redirect people in need of treatment who may have traditionally been likely to interact with law enforcement. Across each intercept, CBHC pursues and prioritizes policies that enhance the safety net system's ability to participate in social response models that treat, rather than criminalize, the symptoms of behavioral health disorders.

Communities across Colorado are too often challenged to find appropriate levels of care for individuals who are experiencing behavioral health crises. An over-reliance on peace officers to manage these encounters all too often results in individuals in crisis not gaining treatment, jeopardizing personal liberties in the process, and overburdening the criminal justice system and local resources. In 2017, CBHC was a leader in passing legislation to end the practice of placing individuals in need of an M-1 hold in jails and correctional facilities as a first step towards decriminalizing mental illness in our state. Since then, Colorado has seen the creation and expansion of co-response programs and other innovative partnerships in both rural and urban communities. These initiatives, and others, coalesce towards a vision of ensuring that behavioral health concerns are managed by the healthcare system, and not law enforcement.

CBHC is committed to shifting the management of behavioral health crises back to healthcare providers. Through this, we will begin to correct course and ensure that Colorado is expanding pathways to treatment services rather than funneling individuals into the CJ system. By building on prevention and diversion efforts already ongoing across our membership, we can ensure that individuals are set on the right trajectory for recovery, have a clean legal record, and avoid the life-long burden of criminal justice involvement. Across every region of the state, and at every step of the Sequential Intercept Model, CBHC's members are treating high risk and justice-involved individuals and leveraging partnerships with local entities to address community-specific challenges.

Criminal justice system reform must focus on enacting policies and legislation that promote early intervention and the use of behavioral health professionals as the primary first responders to behavioral health crises.

Policy Priorities

10.1 Safety-Net Community Services for Resilience and Prevention of Justice Involvement

- ❖ CBHC supports policies that increase access to treatment and develop responsive community healthcare systems that support individuals as they build their own resiliency as a means to avoid reliance on down-stream interventions such as in the criminal justice system.
 - Create public education campaigns and collaborations to increase resiliency in youth and adults
 - Promote community wellness, and implement protective factors
 - Collaboration between systems to increase access to care and treatment at early stages of identification
- ❖ CBHC supports policies that incorporate and invest in behavioral health professionals in communities' social response strategies, such as:
 - Investments in primary response by behavioral health professionals for behavioral health related public concerns within organized partnerships with first responders as necessary
 - The promotion of Crisis Intervention Training (CIT), Mental Health First Aid (MHFA), and other training programs for first responders
 - Co-location of behavioral health providers in first responder and dispatch systems
 - Collaboration with Emergency Medical Services (EMS), fire departments, transportation and other systems that commonly interact with individuals who live with Serious and Persistent Mental Illness (SPMI) and otherwise high-risk populations
- ❖ Social response models must be adequately invested in to provide effective options for communities for a range of behavioral health related public disturbances without placing the burden on criminal justice systems.
 - Investments in unarmed, unmarked social response teams that leverage the skills and expertise of behavioral health professionals to de-escalate, manage, and triage public disturbances or disputes
 - Policy reform to prioritize the utilization of social response models over forensic or other armed response models whenever appropriate and safe, such as 911/dispatch re-routing and mobile team dispatch

10.2 Investment in Safety-Net Assisted Diversion and Social Response

Throughout our work in criminal justice system reform, we focus our efforts on policies and legislation that promote early intervention and diversion and ensure access to treatment prior to - or during - the first contact with law enforcement. Above all, we prioritize solutions that minimize law enforcement burden of healthcare response.

- ❖ CBHC supports policies that reduce avoidable criminal charges on behaviors that are directly related to an individual's behavioral health disorder. To that end, we support:

- Promotion of collaborative co-responder programs that leverage joint ownership of operations by community providers and law enforcement
- Issuance of citations, referrals, and connections to treatment in lieu of arrest
- Collaboration with the judicial system and jails to implement post-arrest diversion prior to the filing of charges
- Creating programs that focus on triage and diversion to treatment for high-risk or high-utilizer individuals, such as Law Enforcement Assisted Diversion (LEAD) models
- ❖ CBHC supports policies that increase first-responder training and understanding of de-escalation strategies and trauma informed response models to increase positive outcomes during interactions with individuals living with behavioral health disorders.
 - Utilization of CIT training, Mental Health First Aid for first responders, and other evidence-supported education models that build efficacy and specialization within first responders
 - Partnerships with local community mental health organizations to facilitate education, training, consultation, and joint decision making to achieve locally responsive alternatives to criminalization
- ❖ CBHC supports enhanced standardized education, specialization opportunities, and career pathways for the behavioral health workforce to effectively participate in social response models and forensic services.
 - Expectations on education program curricula to include forensic and crisis services
 - Enhanced opportunities for field experience in established and emerging social response, co-response, and diversion models
 - Expansion of programs that create specialization pathways for expert and emerging clinicians who pursue participation in social response models and forensic services alongside enhanced growth opportunities that reward specialization

10.2 School-to-Prison Pipeline

To ensure positive outcomes for Colorado's youth, it is important that systems are equipped to promote psychosocial protective factors and ensure equitable access to education and appropriate discipline strategies.

- ❖ CBHC supports policies that modernize disciplinary strategies at schools and other child serving entities such as:
 - Removal of expulsion as a disciplinary option for students up to the age of entry into middle school
 - Promotion of alternative disciplinary strategies that minimize stigma and leverage strengths that are responsive to a youth's unique needs
 - Training for educators and school systems on culturally responsive discipline methods
 - Eliminate the use of school-resource officers or other safety strategies that have inequitable impacts on youth of color and youth living with emotional disturbances. Instead, increase investment in school wellbeing resources such as school social workers, school-based behavioral health clinicians who can offer counseling and affective education, and other necessary social supports.

10.3 Juvenile Services

When youth in our communities fall through the cracks of our community systems and require juvenile supervision and correction services, we focus on policies that prioritize rehabilitation, treatment, and restorative justice.

- ❖ CBHC supports treatment-focused juvenile offender systems that prioritize education, rehabilitation, treatment, skills-development, and reintegration into community of choice.

10.4 No-Plea Problem Solving Courts

To ensure the best possible outcomes for individuals with behavioral health conditions, it is important to focus on Social Determinants of Health such as housing and employment. Criminal convictions and charges are a common, and often impassible, barrier to achieving recovery and community integration.

- ❖ CBHC opposes the requirement for a guilty plea to participate in problem-solving, mental health, drug treatment, and other specialty courts.
 - Criminal records are a massive barrier to recovery for many individuals with behavioral health disorders and should be avoided as appropriate.
 - Data suggests that most individuals in these systems are facing charges for minor crimes, and a criminal record may not be necessary for public safety.
- ❖ CBHC supports collaborative programming between judicial systems and community providers that leverages relationships between providers, district attorneys, public defenders, judges, and law enforcement.
 - Best practices indicate that co-location, co-ownership, and other strategies that promote every level of the organizations working collaboratively are effective in creating long lasting change and positive programs.

10.5 Outpatient Community-Based Restoration Services

Competency restoration services are most effective when provided in tandem with behavioral health treatment as necessary. A whole person approach to restoration should be prioritized.

- ❖ CBHC supports the promotion of outpatient community-based restoration services.
 - Judicial authority and education to prioritize outpatient restoration as appropriate
 - Collaboration between criminal justice partners and community providers to ensure that outpatient services are, when possible, part of a whole-person treatment plan
- ❖ CBHC opposes policies that increase the criminal justice system's reliance on competency to proceed.
 - Programs or initiatives that divert individuals with mental illnesses into treatment too late or past the point where competency has been raised and are not effective
- ❖ CBHC supports the standardization of the competency restoration process in Colorado, both for outpatient and inpatient services.
 - Development of a state certification for competency restoration service providers.
 - Manualizing the intervention as appropriate, with room for clinical flexibility.

10.6 Behavioral Health Treatment in Correctional Facilities

For those individuals who live with a mental health or substance use disorder and have been found guilty of a crime warranting a correctional level of supervision, a rehabilitative approach should be prioritized.

- ❖ CBHC supports policies and funding mechanisms, such as the Jail Based Behavioral Services (JBBS) program, to leverage partnerships between community providers and criminal justice systems.
 - Reliance on partnerships for treatment to facilitate smooth connections to community providers, treatment, and supervision
 - Leveraging of partnerships to maximize connection to coverage as appropriate (e.g., Suspended Medicaid Status)

- ❖ CBHC supports prioritization of rehabilitative practices within correctional facilities such as:
 - Access to treatment, skill building groups, and release planning
 - Medication supervised by external psychiatrists, especially if administrated involuntarily
 - Minimal reliance on solitary confinement for individuals experiencing mental health crises
- ❖ CBHC supports policies that leverage partnerships between criminal justice systems and community providers to increase efficacy and education.
 - Mental Health First Aid or similar training should be made available to the correctional workforce.

10.7 Re-Entry Supports and Services

In preparation for and during the process of release from correctional supervision it is critical that an individual's multifaceted needs are met with a collaborative approach.

- ❖ CBHC supports policies that promote partnerships between community behavioral health providers and criminal justice systems to prepare for re-integration into community living.
 - Partnership with release planning teams within facilities to facilitate proactive appointments, care coordination, medication management, and other critical preparations
 - Partner with community supervision to navigate Social Determinants of Health (e.g., housing initiatives) that promote individual wellness and reduce risk of recidivism
 - Credentialing requirements for parole officers should be amended to allow social workers or other behavioral health professionals to serve in the role, rather than limiting it to law enforcement professionals.

10.8 Community Corrections

Community Corrections provides a setting for low-risk populations to receive supervision while engaging in community activities (e.g., employment and family duties) and preparing for full re-integration. This level of care is most effective when collaboration with community behavioral health systems is in place.

- ❖ CBHC supports appropriate partnerships between community behavioral health and Community Corrections to facilitate care coordination and promote successful re-entry.
 - Collaboration between case management and care coordination teams across systems
 - Formalized partnerships that leverage joint resources

10.9 A Public Health Approach to Substance Use Disorders

Individuals who are living with substance use disorders are at a greater risk of becoming involved in the justice system due to the criminalization of illicit substances. To promote an understanding of substance use disorders within the realm of healthcare, a public health approach and understanding is necessary.

- ❖ CBHC supports policies and legislation that decriminalize substance use disorders.
 - Appropriate examination of scheduling and sentencing regarding illicit substances
 - Clear avenues for discretion or diversion for individuals when substance use disorder is a primary factor in their criminal activity

- Development of social response strategies for drug-related social disturbances that minimize the risk of avoidable arrest, enhance pathways to care and treatment, and avoid violent escalation of drug use intervention

- ❖ CBHC supports policies that increase access to Medication Assisted Treatment for individuals with substance use disorders throughout each of the intercepts on the Sequential Intercept Model.

Effective Period

The Colorado Behavioral Healthcare Council (CBHC) Board of Directors approved this policy on 01/18/2018. It is reviewed as required by the Public Policy Advisory Committee.

Policy Updated

Updates to this policy position were approved by the CBHC Board of Directors on 10/6/2020.

Expiration: 10/6/2022

Citations:

Colorado Health Institute. Criminal Justice Population Presents Complex Challenges. Denver, Colorado, 2016.

Substance Abuse and Mental Health Services Administration. Guidelines for Successful Transition of People with Mental or Substance Use Disorders from Jail and Prison: Implementation Guide. (SMA)-16-4998. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017.

APPENDIX A: GAINS Center Sequential Intercept Model.

The Sequential Intercept Model

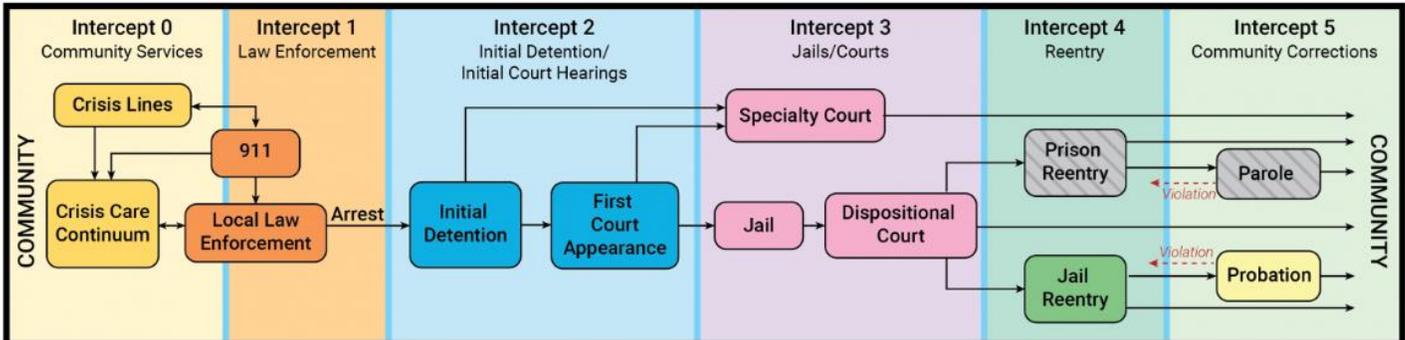
Developed by Mark R. Munetz, MD, and Patricia A. Griffin, PhD, in conjunction with the GAINS Center, the Sequential Intercept Model provides a conceptual framework for communities to organize targeted strategies for justice-involved individuals with behavioral health disorders. Within the criminal justice system there are numerous intercept points — opportunities for linkage to services and for prevention of further penetration into the criminal justice system.

The Sequential Intercept Model has been used as a focal point for states and communities to assess available resources, determine gaps in services, and plan for community change. These activities are best accomplished by a team of stakeholders that cross over multiple systems, including mental health, substance abuse, law enforcement, pre-trial services, courts, jails, community corrections, housing, health, social services, peers, family members, and many others.

The GAINS Center

SAMHSA's GAINS Center for Behavioral Health and Justice Transformation serves as a resource and technical assistance center for policy, planning, and coordination among the mental health, substance abuse, and criminal justice systems. The GAINS Center's initiatives focus on the transformation of local and state systems, jail diversion policy, and the documentation and promotion of evidence-based and promising practices in program development. The GAINS Center is funded by the Substance Abuse and Mental Health Services Administration. It is operated by Policy Research Associates, Inc., of Delmar, NY

Model Excerpt:



Abreu, D., Parker, T. W., Noether, C. D., Steadman, H. J., & Case, B. (2017). Revising the paradigm for jail diversion for people with mental and substance use disorders: Intercept 0. *Behavioral Sciences & the Law*, 35(5-6), 380-395. <https://doi.org/10.1002/bsl.2300>
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Source

(2018) Using the Sequential Intercept Model to Guide Local Reform, http://www.safetyandjusticechallenge.org/wp-content/uploads/2018/10/2018.10.11_Using-the-SIM_finalized.pdf