

*THE POSSIBLE EFFECTS OF
LONGITUDINAL MENTAL
HEALTH PROGRAMS IN THE
PROPOSED MARION COUNTY
ASSESSMENT AND
INTERVENTION CENTER.*

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** This paper is intended to satisfy the advanced writing requirement*

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Introduction & Roadmap

The treatment of (pre-)arrestees suffering from a mental illness has long been an issue of concern in Indiana.¹ It is estimated that 40% of Marion County jail inmates suffer from mental illness.² Poor treatment of those with mental illness was precisely the matter addressed in a class action lawsuit brought in 2008 by the American Civil Liberties Union (“ACLU”) and the Indiana Protection and Advocacy Services (“IPAS”) against the IDOC.³ The result of this case fundamentally altered the way mentally ill inmates were treated within IDOC by requiring those individuals receive “minimum adequate treatment.”⁴

However, because prison sentences are generally long-term, more than a year, offenders generally have access to mental health and other services. Jails, by their nature, are transitory. This transitory nature generally adds difficulty when attempting to implement comprehensive mental health programs for arrestees. While reduction in recidivism is often the goal of diversion programs, the issue of recidivism is peripheral in this paper.⁵ This paper focuses specifically on jails and jail diversion programs and examines both the current and proposed use of mental

¹ ‘(Pre-)arrestees,’ as defined in this paper, mean those individuals either released by IMPD, diverted by IMPD to community services such as Midtown Community Mental Health, or arrested and processed at the jail. ‘Pre-arrestees,’ as defined in this paper, include those justice involved individuals who have not been arrested. (It is not uncommon for agencies to consider mental illness and substance abuse together. For example, the Division of Mental Health *and* Addiction or the inclusion of addiction services in Eskenazi Health’s Community Midtown Mental Health Services.

² Indianapolis Criminal Justice Reform Task Force Full Report <https://citybase-cms-prod.s3.amazonaws.com/ed1d914010e7410abd2aa78a97696031.pdf>. (last accessed Mar. 19, 2019).

³ *Indiana Protection and Advocacy Services Com’n v. Commissioner Indiana Department of Corrections, No. 1:08-cv-01317-TWP-MJD*, 2012 WL 6738517 (S.D. IND Dec. 31, 2012). The case was brought as a result of IDOC placing individuals with mental illness in segregation units, as a first resort. The court found a violation of the 8th Amendment and held prison walls do not separate prisoners from the Constitution. The case was later settled.

⁴ Indiana Protection and Advocacy Services, *ACLU OF INDIANA, INDIANA PROTECTION AND ADVOCACY SERVICES ANNOUNCE SETTLEMENT WITH INDIANA DEPARTMENT OF CORRECTION - Fundamental Changes in Treatment of Prisoners With Serious Mental Illness* (January 27, 2016), https://www.ndrn.org/images/PAIMI/IPAS-DOC_Press_Release_settlement_2016-2.pdf.

⁵ While common sense tells us that quality diversion programs as well as mental health and addiction services should result in a reduction of recidivism, analysis of that data is beyond the scope of this paper.

health programs in the proposed Marion County Assessment and Intervention Center (“AIC”) located on the new Criminal Justice Center Campus (“CJC”).⁶

In 2016, Indianapolis Mayor Joe Hogsett commissioned a report by the Marion County Criminal Justice Reform Task Force.⁷ At the time, it was estimated that between 30-40% of arrestees in the Marion County criminal justice system were in need of mental health services; the Task Force also found 85% of arrestees suffered from substance abuse.⁸ The Task Force recommended the construction of the CJC and AIC as well as the inclusion of services designed to assist the county in diverting justice involved individuals from jail.⁹ The facility will contain the Marion County jail, judicial offices, the Marion County Sheriff’s Office, the prosecutor’s office and the defender’s office, and the Arrestee Processing Center.^{10,11} The campus will also contain the AIC, which will focus on providing mental health services to pre-arrestees, among other services, to those who may be in need of such services.¹² In the AIC, Health & Hospital Corporation of Marion County (“HHC”) will conduct assessments and provide care and referrals to those who are both in need of, and eligible for, HHC and AIC services.¹³ Eskenazi Midtown

⁶ Ind. Code. Ann. §36-3 consolidated Indianapolis and Marion County governments under a scheme known as UniGov in 1970.

⁷ Indianapolis Exec. Order No. 4, 2016, May 11, 2016, <https://citybase-cms-prod.s3.amazonaws.com/4321578d39344e8ab7cdda1ea734762e.pdf>.

⁸ Olivia Covington, ‘Let us begin:’ *Ground broken for Indy Criminal Justice Center*, *The Indiana Lawyer* (July 12, 2018), <https://www.theindianalawyer.com/articles/47546-let-us-begin-ground-broken-for-indy-criminal-justice-center>. See also Indianapolis Criminal Justice Reform Task Force Full Report, <https://citybase-cms-prod.s3.amazonaws.com/ed1d914010e7410abd2aa78a97696031.pdf>. (last accessed Mar. 19, 2019).

⁹ Indianapolis Criminal Justice Reform Task Force Full Report. <https://citybase-cms-prod.s3.amazonaws.com/ed1d914010e7410abd2aa78a97696031.pdf> (last accessed Mar. 19, 2019).

¹⁰ Indianapolis-Marion County, *Community Justice Campus Contractor Outreach* (Dec. 4, 2017), https://img1.wsimg.com/blobby/go/fe52fe18-3a89-4dc8-8740-3f110586d132/downloads/1c97agqdm_214728.pdf?ver=1552422254108. Consolidates Marion County Courts, - namely civil, criminal, juvenile, and probate into one building.

¹¹ In 2007, the Indianapolis Metropolitan Police Department was established. With this consolidation between Indianapolis police and the Marion County Sheriff’s office, the arrestee and processing center was transferred to the Sheriff’s office. See City of Indianapolis Office of Audit and Performance, *Improving efficiency of public services: An assessment of the Marion County Sheriff’s Office* (November 2018).

¹² *Id.* The Assessment and Intervention Center will work with four main groups of individuals: (1) Pre-arrest diversion from the IMPD; (2) the chronically homeless; (3) post-arrest diversion; and (4) the general public.

¹³ Indianapolis-Marion County, *Community Justice Campus Contractor Outreach* (Dec. 4, 2017), [https://img1.wsimg.com/blobby/go/fe52fe18-3a89-4dc8-8740-](https://img1.wsimg.com/blobby/go/fe52fe18-3a89-4dc8-8740-3f110586d132/downloads/1c97agqdm_214728.pdf?ver=1552422254108)

Community Mental Health will provide staff members at the AIC to provide care coordination while an individual is at the AIC.¹⁴ On July 12, 2018, Indianapolis Mayor Hogsett and city leaders broke ground on the new facility, which is scheduled to open in 2022.^{15,16}

Part I of this paper addresses the laws and governmental structures that influence Marion County’s jails and their populations. Part II of this paper sets forth the history of mental health and incarceration. Part III of this paper sets forth the promises and details of the Criminal Justice Center but specifically the Assessment and Intervention Center, which will be located on the CJC campus. Part IV proposes the establishment of a team of behavioral health professionals, through administrative rulemaking, who work at the AIC alongside HHC and Eskenazi Midtown Community Mental Health to provide care coordination to justice involved individuals throughout their justice system involvement.¹⁷ Part V analyzes the proposal in light of funding, policy, and sustainability. Part VI concludes this paper by suggesting that Indianapolis should partner with the State of Indiana to establish and fund a pilot program established at the new AIC.

3f110586d132/downloads/1c97agqdm_214728.pdf?ver=1552422254108. Health & Hospital Corporation of Marion County is a municipal corporation formed under Ind. Code Ann. §16-22-8

¹⁴ The Indianapolis Office of Public Health and Safety provided a copy of an exhibit, Exhibit A *Personnel Services*. After inquiry, it is unknown to which contract or purchasing agreement this exhibit is attached. However, the language in the exhibit states: “HHC will provide personnel for the AIC to . . . assist with housing and intake . . . clinical staff . . . and security personnel.” Eskenazi Health is a Division of Health and Hospital Corporation of Marion County, formed under Ind. Code Ann. §16-22-8.

¹⁵ Hayleigh Colombo, *Hogsett, officials break ground on new Criminal Justice Center*, Indianapolis Business Journal (July 12, 2018), <https://www.ijb.com/articles/69623-hogsett-officials-break-ground-on-new-criminal-justice-center>.

¹⁶ James Briggs, Indianapolis council approves new jail, giving Mayor Joe Hogsett a signature achievement, IndyStar (Nov. 20, 2018), <https://www.indystar.com/story/news/local/marion-county/2018/11/19/mayor-joe-hogsetts-jail-plan-passes-through-city-county-council/2056245002/>.

¹⁷ Agency for Healthcare Research and Quality Care Coordination, <https://www.ahrq.gov/professionals/prevention-chronic-care/improve/coordination/index.html> (Last accessed March 19, 2019). Care coordination involves deliberately organizing patient care activities and sharing information among all of the participants concerned with a patient’s care to achieve safer and more effective care. This means that the patient’s needs and preferences are known ahead of time and communicated at the right time to the right people, and that this information is used to provide safe, appropriate, and effective care to the patient.

Part I - Law and Government Structures Influencing Marion County Jails & Their Populations

This section explores the laws and structures that influence the Marion County criminal justice system. The executive branch of Indiana's state government oversees the Indiana Department of Corrections, which houses offenders who have been arrested and convicted of a crime.¹⁸ Prison sentences, served at IDOC institutions, are generally long-term, and offenders typically have opportunities to participate in educational programming or workforce development.¹⁹ Further, services provided are generally longitudinal, or provided long-term while the participant is tracked and monitored for the duration of the programming. After someone is arrested, but before they are convicted or released, s/he is generally transported to a county jail, operated by the county sheriff, where the arrestee awaits an initial hearing or sentencing. The individual may also be eligible for a jail diversion program either before or after arrest. If eligible and accepted, s/he must successfully complete the diversion program to receive either (1) dismissal of charges; or (2) a complete diversion from jail or prison.²⁰ This paper will primarily address those in the pre-arrestee stage, although this paper may address (pre-)arrestees periodically.²¹

¹⁸ Ind. Code Ann. §11-8-2-1.

¹⁹ Long-term is defined in this paper as 1 year of incarceration or more, to include a life sentence.

²⁰ Marion Superior Court Room 8, *Mental Health Alternative Courts*, PowerPoint Presentation.

²¹ '(Pre-)arrestees' refer both individuals who are considered pre-arrestees as well as those who are considered arrestees or even post-arrestees. 'Pre-arrestees' refer only to those individuals who are in the pre-arrest stage.

<i>Stages</i>	<i>Characteristics</i>	<i>Services Available</i>	<i>Terms used in this paper</i>
Pre-arrest	Involvement, somehow, with the criminal justice system. May result in diversion, arrest, release, or immediate detention.	The services available here may include the Mental Health Alternative Court, the Rueben Engagement Center, or local participating mental healthcare providers.	Pre-arrestee
Arrest	Formally charged with a crime and placed under arrest.	Offenders will have access to the jail's mental health provider.	Arrestee
Post-arrest	The individual has already been arrested and formally charged.	Arrestees continue to benefit from services such as the Mental Health Alternative Courts, which can work to expunge records or divert from prison altogether.	Post-arrestee
Incarceration	An individual either serves out their time in the jail or is transferred to IDOC custody.	Offenders will have access to the jail or prison's mental health provider.	Incarcerated individual or offender
Post-Incarceration	An individual who was released from incarceration but requires assistance.	Ex-offenders generally have access to reentry programs, such as housing, food, and employment services.	Ex-offender
Re-incarceration	An individual was once incarcerated and released but returned to incarceration upon some violation.	Offenders will have access to the jail or prison's mental health provider.	Recidivist
All	Whether the person is considered a pre-arrestee or an arrestee. The individual could also be detaining or incarcerated.	N/A	(pre-)arrestee

Indiana Department of Corrections Review and Operations Summary

The Indiana Department of Corrections is currently Indiana's largest agency and employs more than 6,400 Hoosiers.²² IDOC operates 18 adult facilities, four juvenile facilities, and ten parole districts with a total adult population of 26,024.²³ In 2017, 90.5% of the adult IDOC population were male with an average age of 38 years old.²⁴ Approximately 40% of male prisoners have not completed high school and 20% have completed a GED as their highest level of education.²⁵ Of the IDOC adult population, the agency reports 12% as having been diagnosed with some degree of mental illness.²⁶

After an arrestee has been convicted, s/he is eventually transported to the proper IDOC institution where s/he will be processed and screened by a medical team.²⁷ Once processed into the prison or juvenile facility, the offender will then meet with a case manager to build a Case Plan.²⁸ In the facility, offenders will generally have access to education programming; substance abuse treatment; mental health services; workforce development programming; jobs provided by the facility; and more.²⁹ Upon release, the offender is generally placed on probation or parole and serves out their sentence in the community. The probation service will not only monitor the offender but will also assist the offender with any problems they are experiencing, such as

²² IDOC Commissioner's Welcome, <https://www.in.gov/idoc/2709.htm> (last accessed March 16, 2019). See Ind. Code Ann. §11-8-2-1.

²³ IDOC Facilities, <https://www.in.gov/idoc/2861.htm> (last accessed March 16, 2019). See also Indiana Department of Corrections, *Annual Report* (2017).

²⁴ Indiana Department of Corrections, *Annual Report* (2017).

²⁵ Stephanie Ewert & Tara Wildhagen, *Educational Characteristics of Prisoners: Data from the ACS*, U.S. Census Bureau (SEHSD working paper #2011-08) Accessed on March 16, 2019. (As men make up nearly 91% of the IDOC population, a lack of education can exacerbate the likelihood of negative encounters with law enforcement).

²⁶ Indiana Department of Corrections, *IDOC Addressing the Next Great Challenge to Corrections: Offenders with Special Needs* (March 11, 2014).

²⁷ *Id.* If the prisoner is determined to have special needs, s/he is given the appropriate medications and will have access to continued treatment by prison medical staff. (The press release refers to the 2016 *Indiana Protection and Advocacy Services Com'n v. Commissioner Indiana Department of Corrections* settlement as a basis for the change in policy).

²⁸ Indiana Department of Corrections Programs, <https://www.in.gov/idoc/2799.htm> (accessed on March 16, 2019). Using the risk assessment tool, the case manager places the offender in one of three categories: activity; course; or program.

²⁹ *Id.*

housing; mental health; drugs; or alcohol.³⁰

Marion County Jail Operations Summary

When an individual is arrested, s/he is generally transported to the county jail where s/he will be processed, screened, and placed in a holding cell.³¹ Upon arrival, s/he will be screened by a medical team to identify any mental health, substance abuse, or other issues.³² If the arrestee is determined to have a mental illness, s/he is placed under the care of the jail's mental health provider where s/he will be assessed again.³³ If the provider identifies a concern, it will work to keep the arrestee on his or her medications and will provide short-term therapy and follow-up.³⁴ Periods of incarceration in a county jail are generally short-term, therefore, any offered programming or treatment must reflect this transitional nature of jails. If the arrestee is convicted and transferred to prison, prison officials will get a brief summary of the offender's medical history but must specifically request a full report.³⁵

The Marion County jail houses the largest population of individuals suffering from a mental illness in Indianapolis.³⁶ There are approximately 1,000 individuals incarcerated at the Marion County jail at any given time and nearly 50,000 offenders flow through the Marion

³⁰ Ind. Code Ann. §11-13-1-3; see also 210 IAC 3-1-1 Maintenance of County Jails.

³¹ Level 6 felonies and below. Level 5 and above go to IDOC. There are other options, the individual can be placed under immediate detention or released altogether.

³² Law enforcement may also transport the arrestee to a local hospital for initial treatment before transporting him or her to the jail. In Marion County, the medical screening is a self-report process. Unless the individual self-reports or displays characteristics of someone in need of medical attention, the arrestee's underlying medical concerns will go untreated. (see also Interview with Deputy Chief Crear and Megan Andrews, Deputy Chief Marion County Sheriff, in Indianapolis, Ind. (March 12, 2019).

³³ Currently, in Marion County, WellPath Care is the Marion County jail's mental health contractor.

³⁴ Interview with Deputy Chief Crear and Megan Andrews, Deputy Chief Marion County Sheriff, in Indianapolis, Ind. (March 12, 2019).

³⁵ *Id.*

³⁶ Russ McQuaid, *Marion Co. Sheriff runs the largest mental illness facility in Indianapolis: the jail*, FOX 59 (August 27, 2015), <https://fox59.com/2015/08/27/marion-co-sheriff-runs-the-largest-mental-illness-facility-in-indianapolis-the-jail/>. See also Office of Justice Programs, *Indianapolis Justice & Mental Health Engagement Center* (accessed on March 16, 2019), https://ojp.gov/about/foia/pdfs_foia_releases/2015/2015-MO-BX-0027-Program-Narrative-IN.pdf.

County jail system a year.³⁷ Of the incarcerated jail population, it is accepted in Indiana that 40% suffer from a mental illness.³⁸ It is estimated to cost \$92 a day, or \$8 million a year, to house and care for arrestees suffering from mental illness in Marion County jails.³⁹ According to research from 2016, programs aimed toward addressing mental health or toward diverting the individual from jail altogether had saved the Sheriff's Office nearly \$500,000.⁴⁰ This is especially crucial after HEA 1006-2013 provided that individuals sentenced for low-level offenses would be incarcerated at a local jail.⁴¹ This legislation was expected to divert nearly 7,000 offenders to local jails throughout the state.⁴² Facing overcrowding, there is pressure on counties to divert people from jail altogether, especially those inadequately housed in jail, such as those suffering from mental illness.⁴³ With the influx of arrestees and low level offenders, and the increased cost to house the mentally ill, Marion County seems to be placing an emphasis on jail diversion programs and other services directed at those with substance abuse or suffering from mental illness.

In Marion County, law enforcement works hard to divert individuals from jail when appropriate.⁴⁴ Law enforcement will try to establish if the individual has a mental illness and report this mental illness to the appropriate officials, such as the treatment courts or the Rueben

³⁷ Interview with Deputy Chief Crear and Megan Andrews, Deputy Chief Marion County Sheriff, in Indianapolis, Ind. (March 12, 2019).

³⁸ BKD CPAs & Advisors, *Jail Capacity Data Analytics Strategic Plan for the City of Indianapolis – Marion County*, Report to the Mayor (2016).

³⁹ Brad Ray, et al., *Behavioral Health Court Impacts on Mental Health in the Marion County Criminal Justice System*, IU Public Policy Institute (March 2017), http://ppidb.iu.edu/Uploads/ProjectFiles/MentalHealthBrief_Final_040617.pdf. (There are additional costs in healthcare, security, medications, etc.). See also City of Indianapolis, Indiana, 2019 Budget Book (Oct. 15, 2018) Of the \$115 million Sheriff's Office budget, \$11 million is needed for medical care for inmates.

⁴⁰ *Id.* \$330,832 in savings from BHC; \$273,700 in savings from MHP; and \$40,020 in savings from PAIR.

⁴¹ Office of Justice Programs, *Indianapolis Justice & Mental Health Engagement Center* (accessed on March 16, 2019), https://ojp.gov/about/foia/pdfs_foia_releases/2015/2015-MO-BX-0027-Program-Narrative-IN.pdf. See Indiana Code §35-38.

⁴² *Id.*

⁴³ *Id.* (Individuals may be diverted from jail due in large part to their mental illness, however, individuals who committed crimes but who may also suffer from a mental illness may not necessarily be diverted from jail due to their mental illness).

⁴⁴ Ind. Code Ann. authorizes the IDOC to set standards for county jails. See Ind. Code Ann. §11-12-4-1 and the authorizing statute Ind. Code Ann. §4-22.

Engagement Center. Law enforcement may attempt to divert the pre-arrestee to Eskenazi Health or other community service providers, if appropriate, and if the individual agrees to the diversion. If an individual is arrested, his or her attorney can report to the judge if the attorney fears there may be mental health concerns with his or her client. If the judge agrees, the individual may be diverted from jail altogether and placed in the Mental Health Alternative Court (“MHAC”) system⁴⁵ The MHAC provides a comprehensive continuum of care, to include assistance while in jail; a release plan; a recovery coach upon release; transport to community corrections or housing; and assistance in enrolling in insurance and identifying a healthcare provider.⁴⁶ Successful completion of the MHAC program can result in the dismissal of all charges or the diversion from incarceration altogether.⁴⁷

Part II –Mental Health Concerns and Influence on Incarcerated Population

This section explores global mental health concerns and the influence mental illness has on the incarcerated population. I will begin by discussing global studies and reports regarding mental health and incarcerated individuals. I will next discuss mental health and its influence on the incarcerated population in the USA. Finally, I will discuss the issue as it relates to Marion County, Indiana, and briefly discuss some actions the county has taken to address the issue whether in its jails or through diversion programs.

⁴⁵ Interview with Judge Amy Jones, Judge, Marion Superior Court, in Indianapolis, Ind. (Feb. 15, 2019). See also LR 49-CR2.3 Rule 101(d) and LR49-CR2.2-100(d).

⁴⁶ Marion Superior Court Room 8, *Mental Health Alternative Courts*, PowerPoint Presentation. See also LR49-CR2.3 Rule 101(d) Case Consolidation and LR49-CR2.2 Rule 100(d) Random Assignment of Criminal Cases. Individuals who work within the criminal justice system may be more familiar with the *sequential intercept model* than with the idea of continuum of care, however, the two terms address the same desired processes and outcomes.

⁴⁷ *Id.*

In 2018, there were 10.74 million people incarcerated around the world, or a prison population rate of 145 per 100,000 people.⁴⁸ According to the World Health Organization and the International Committee of the Red Cross, many people who commit a minor offense, due in part to a mental disorder, are often jailed instead of treated for their disorder.⁴⁹ While many countries may provide services to treat the individual once s/he is incarcerated, not all countries provide this service. Once incarcerated, whether in jail or prison, many factors often have negative effects on the inmate's mental health, such as overcrowding; violence; enforced solitude; lack of privacy; or lack of meaningful activity.⁵⁰

There are approximately 6.5 million people under the supervision of correctional systems in the United States.⁵¹ Of that population, approximately 2.2 million - the lowest population in nearly two decades - are currently incarcerated.⁵² Approximately 40% of those incarcerated had a history of mental illness and just 43% had no indication of mental illness.⁵³ Of *prisoners* surveyed, 14% met the threshold for *serious* psychological distress as defined by the Kessler 6 nonspecific psychological distress scale; of *jail* inmates, 26% met the threshold for *serious* psychological distress.⁵⁴

In Indiana, the rate of incarceration and arrest of those diagnosed with some degree of mental illness is similar to national statistics.⁵⁵ In 2014, IDOC released a statement addressing

⁴⁸ Rom Walmsley, *World Prison Population List*, Institute for Criminal Policy Research (Nov. 6, 2018), http://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_12.pdf. The List consists of those being held pre-trial as well as those convicted and sentenced.

⁴⁹ World Health Organization and Red Cross, *Information Sheet: Mental Health and Prisons* (2005).

⁵⁰ *Id.*

⁵¹ Danielle Kaeble & Mary Cowhig, *Correctional Populations in the United States, 2016*, United States Bureau of Justice Statistics (April 2018).

⁵² *Id.* see also John Gramlich, *America's Incarceration Rate is at a Two-decade Low*, Pew Research Center (May 2, 2018), <http://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/>.

⁵³ Bronson, Jennifer and Berzofsky, Marcus, *Indicators of Mental Health Problems reported by Prisoners and Jail Inmates, 2011-2012*, Bureau of Justice Statistics (June 2017).

⁵⁴ *Id.* at page 1, 2, 10.

⁵⁵ IDOC reports 12% of population diagnoses with some degree of mental illness; the jail reports 40% having a mental health concern.

the challenges those with mental illness may pose.⁵⁶ In that report, the IDOC noted that 12% of the prison population had been diagnosed with *some* degree of mental illness.⁵⁷ To address mental illness, IDOC partnered with several mental healthcare providers across the State to develop a training program for IDOC staff.⁵⁸ Specialized units were then established at IDOC facilities around the state.⁵⁹ While the Marion County jail reports 40% of its inmates as suffering from mental illness, jails are transitory by nature and often contain far more individuals suffering from mental illness or substance abuse than do prisons.⁶⁰ Because of the transitory nature of jails, establishing longitudinal programs to address mental illness often encounter significant obstacles.

Marion County Mental Health Services Review

The Marion County jail is the largest provider for the those with mental illnesses in Indianapolis.⁶¹ In 2015, Colonel Dezelan of the Sheriff’s Office echoed Mayor Hogsett and reported that nearly 40% of the jail’s population was classified as having a mental illness.⁶² He also said the jail spends nearly \$8 million a year for the overall care of those arrestees suffering from mental illness.⁶³ By implementing mental illness and substance abuse programs as well as

⁵⁶ Indiana Department of Corrections, *IDOC Addressing the Next Great Challenge to Corrections: Offenders with Special Needs* (March 11, 2014).

⁵⁷ *Id.* See also National Institute of Mental Health, *Mental Illness*, (November 2017), <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>. (Jails interact with those suffering from a mental illness at rates higher than prisons as the crimes committed by those with a mental illness are often minor, such as loitering, drunk in public, nuisance, etc.).

⁵⁸ Indiana Department of Corrections, *IDOC Addressing the Next Great Challenge to Corrections: Offenders with Special Needs* (March 11, 2014).

⁵⁹ *Id.* See also Indiana Department of Corrections specific mental health programs for adults, <https://www.in.gov/idoc/2955.htm>. (last accessed March 20, 2019).

⁶⁰ Generally, prison is reserved for individuals serving long sentences for crimes, often sentenced to a year or more. IDOC. Those with mental illness generally commit low-level offenses and are therefore either diverting from jail or serve their sentence while in jail awaiting sentencing.

⁶¹ Russ McQuaid, *Marion Co. Sheriff runs the largest mental illness facility in Indianapolis: the jail*, FOX59 (August 27, 2015), <https://fox59.com/2015/08/27/marion-co-sheriff-runs-the-largest-mental-illness-facility-in-indianapolis-the-jail/>.

⁶² *Id.* The jail mental health contractor uses a proprietary screening and assessment tool to identify those suffering from a mental illness. The current mental health provider for the Marion County Jail is Wellpath.

⁶³ *Id.*

diversion programs, such as treatment courts, Indianapolis has demonstrated an interest in addressing this issue.

Diversion programs aim to divert individuals from jail before arrest and instead into treatment programs or other services. Diversion programs generally target populations experiencing mental illness, substance abuse, or homelessness. In Marion County, the Mental Health Alternative Court provides assistance in diverting individuals both pre-trial and post-conviction from jail.⁶⁴

In 2016, Indianapolis Mayor Joe Hogsett signed Executive Order 4, 2016.⁶⁵ This executive order established the Indianapolis Criminal Justice Reform Task Force (“Task Force”). This task force was to investigate the criminal justice system in Indianapolis and make recommendations to the Criminal Justice Planning Council by the end of 2016.⁶⁶ In response to the recommendations of the Task Force, Mayor Hogsett launched programs aimed at reducing recidivism by addressing target populations who would benefit from diversion.⁶⁷

In 2017, the Mobile Crisis Assistance Team (“MCAT”) was formed and aimed at assisting local authorities when responding to an individual who may be suffering from mental illness.⁶⁸ An MCAT team is a collaboration between IMPD and Eskenazi Health which seeks to divert individuals from jail who may be suffering from mental illness. MCAT works alongside

⁶⁴ The jail has a mental health contractor to assess and treat inmates; there are services outside of the jail for individuals seeking assistance; and MHAC provides opportunities for diversion.

⁶⁵ Indianapolis Exec. Order No. 4, 2016, May 11, 2016, <https://citybase-cms-prod.s3.amazonaws.com/4321578d39344e8ab7cdda1ea734762e.pdf>.

⁶⁶ Indianapolis Criminal Reform Task Force, <https://www.indy.gov/activity/criminal-justice-reform-task-force> (last accessed Mar. 14, 2019).

⁶⁷ Indianapolis Criminal Justice Reform Task Force, *Criminal Justice Reform Taskforce: Recommendations* (December 2016), <https://citybase-cms-prod.s3.amazonaws.com/ed1d914010e7410abd2aa78a97696031.pdf>.

⁶⁸ Russ McQuaid, *Mayor Hogsett evaluating success of mental health diversion pilot program*, CBS4 Indy (March 19, 2018), <https://cbs4indy.com/2018/03/19/mayor-hogsett-evaluating-success-of-mental-health-diversion-pilot-program/>; see also Indianapolis Office of Public Health and Safety, *Evaluation of the Indianapolis Mobile Crisis Assistance Team* (March 2009), <http://ppidb.iu.edu/Uploads/PublicationFiles/MCAT%20Pilot%20Evaluation%20Final%20Report.pdf>. (MCAT is a “police-mental health co-response team with the addition of a medical professional).

IMPD's Behavioral Health Unit ("BHU") to respond to mental health calls around the city.⁶⁹

Both teams receive extensive training in recognizing and working with people showing signs of mental distress as well as other behavioral issues.⁷⁰ An MCAT team consists of a clinician and a police officer who is trained to work with individuals suffering from mental illness or substance abuse.⁷¹

Once MCAT receives notice of a developing situation, it will respond to the scene and immediately begin assisting the individual(s) identified by any first responders.⁷² This allows first responders, paramedics or fire department, to disengage with the scene and enter back into 'service.'⁷³ If the individual satisfies the three-prong test for seventy-two-hour detention, s/he will be placed in immediate detention and taken to the nearest participating facility offering behavior health services.⁷⁴ In order to satisfy the three-prong test, "the [authority applying for the individual's immediate detention] must provide a statement of his or her belief that "the individual is: (A) mentally ill; (B) either dangerous or gravely disabled; and (C) in need of immediate restraint."⁷⁵ If the test is satisfied, the facility will collect contact information from the detainee and BHU will follow-up with the individual⁷⁶ As of February 2019, there are eleven clinicians and nine officers in the BHU and MCAT program, including supervisors.⁷⁷

⁶⁹ Jack Rinehart, IMPD Unveils New Behavioral Health Units, RTV6 Indianapolis (June 23, 2016).

⁷⁰ Interview with Lance Dardeen, Sergeant, Indianapolis Metro. Police Department - East Division, in Indianapolis, Ind. (Feb. 27, 2019).

⁷¹ *Id.* MCAT may provide services to other populations. As team matures, it may increase its scope of populations targeted for MCAT services.

⁷² *Id.*

⁷³ "Back into service" means the first responders would be available to respond to any future, or current, calls for assistance.

⁷⁴ *Id.*

⁷⁵ Indiana Code §12-26-5-1. (IMPD had about 3,300 immediate detentions in 2018) (MCAT and BHU interacted with approximately 5,000 individuals in 2017 – few with repeat law reactions).

⁷⁶ *Id.* Follow-ups depend heavily on officer safety.

⁷⁷ *Id.* These figures include a supervisor; homeless outreach; and juvenile behavioral health.

The Rueben Engagement Center (“REC”), a partner of the Indianapolis Continuum of Care, provides the City with an additional option for diversion.⁷⁸ REC provides shelter, case management, and housing referrals to individuals experiencing homelessness who have substance abuse disorder and/or mental health diagnoses.⁷⁹ REC was imagined as providing a third option for homeless individuals, the other two being jail or a hospital.⁸⁰ There are thirty beds available for use at the REC, with ten dedicated for law enforcement referrals.⁸¹ However, there are three requirements for admittance in the Rueben Engagement Center. The admittee must (1) be over 18 years old; (2) be homeless or are at an imminent risk of becoming homeless; and (3) have used drugs in the past 72 hours.⁸² Once an individual is admitted, either by law enforcement referral or otherwise, medics will assess and take vitals.⁸³ Those who are stable will stay at the REC while those who are assessed as unstable will be transported to Eskenazi Health.⁸⁴ While the Center works to place an individual in an appropriate program, stays can last 3-10 days.⁸⁵ In 2017, nearly 1,000 people went through the Center with 1,500 planned for 2018.⁸⁶

The Mental Health Alternative Court provides alternative methods for diversion. Once an individual is eligible for participation in MHAC, s/he is on one of two tracks: (1) pre-trial diversion; or (2) post-conviction. Currently, MHAC has a goal of “identif[ying] moderate to high

⁷⁸ REC was established in 2017 as part of the Indianapolis – Office of Public Health and Safety. Indianapolis Continuum of Care, <https://www.indycoc.org> (last accessed March 20, 2019). The Indianapolis Continuum of Care is “a collaborative and engaged group of community members dedicated to preventing and ending homelessness in Indianapolis.”

⁷⁹ Reuben Engagement Center, <https://www.indycoc.org/partnerships/reuben-engagement-center/> (last accessed March 14, 2018). The Rueben Engagement Center is part of the Indianapolis – Office of Public Health and Safety. And conceptualized to be a third option for police to bring homeless with a mental illness or substance abuse.

⁸⁰ Jordan Fischer, *The Rueben Center is open, but the homeless still mostly go to jail. There’s a plan to fix that* (Jun. 13, 2018)

⁸¹ Interview with Judge Amy Jones, Judge, Marion Superior Court, in Indianapolis, Ind. (Feb. 15, 2019).

⁸² *Id.*

⁸³ *Id.* The REC will also address concerns regarding future housing for those being housed at the Center.

⁸⁴ *Id.*

⁸⁵ *Id.* While the REC works exclusively with the chronically homeless, in the AIC some individuals will be chronically homeless, and others will not be chronically homeless.

⁸⁶ *Id.*

risk individuals in the criminal justice system who have been convicted of certain offenses and have a mental health issue[.]”⁸⁷ The individual must be assessed to determine whether s/he is eligible for MHAC or other community services. MHAC, however, does not assess the participant him or herself. The prosecuting attorney or the defense can report to the court any concerns regarding mental health; the participant can also be identified as someone potentially eligible for services during jail processing.⁸⁸

MHAC - Pre-Trial Diversion Review

In Indiana, the pre-trial diversion program within the MHAC is called Psychiatric Assertive Identification and Referral (“PAIR”). Upon arrest, the arrestee is assessed using the Indiana Risk Assessment System (“IRAS”) to determine if the s/he has a low, moderate, or high risk of re-offending.⁸⁹ If the individual is classified as low risk, s/he will be referred to PAIR.⁹⁰ Entry into the program is controlled by the Marion County Prosecutor’s Office.⁹¹ If the participant successfully completes the program, his or her charges are dismissed and s/he can seek an expungement of the arrest.⁹²

⁸⁷ Marion Superior Court Room 8, *Mental Health Alternative Courts*, PowerPoint Presentation. MHAC is a “problem solving court” under Indiana law. (see also Brad Ray, *et al.*, *Behavioral Health Court Impacts on Mental Health in the Marion County Criminal Justice System*, IU Public Policy Institute (March 2017), http://ppidb.iu.edu/Uploads/ProjectFiles/MentalHealthBrief_Final_040617.pdf. Mental health alternative courts are one of the most popular interventions used in the USA and are aimed at reducing recidivism by diverting offenders from the criminal justice system and linking offenders with “treatment, services, or other community alternatives designed to alter the causes of their criminal behavior” while providing judicial supervision to monitor compliance.)

⁸⁸ Interview with Judge Amy Jones, Judge, Marion Superior Court, in Indianapolis, Ind. (Feb. 15, 2019). See also Indianapolis Criminal Justice Reform Task Force, *Criminal Justice Reform Taskforce: Recommendations* (December 2016), <https://citybase-cms-prod.s3.amazonaws.com/ed1d914010e7410abd2aa78a97696031.pdf>. The current Arrest and Processing Center has limited mental health screening and no risk assessment at screening.

⁸⁹ Indiana Judicial Branch, *The Indiana Risk Assessment System (IRAS) and the Indiana Youth Assessment System (IYAS)* (last accessed on March 16, 2019).

⁹⁰ Brad Ray, *et al.*, *Behavioral Health Court Impacts on Mental Health in the Marion County Criminal Justice System*, IU Public Policy Institute (March 2017), http://ppidb.iu.edu/Uploads/ProjectFiles/MentalHealthBrief_Final_040617.pdf.

⁹¹ Misdemeanor and Level 6 felonies. (see also *Id.*).

⁹² Marion Superior Court Room 8, *Mental Health Alternative Courts*, PowerPoint Presentation.

Phase 1	Lasts one to three months and participants will appear in court once every two weeks and will work with the court to address any mental health issues such as medication; treatment; or therapy
Phase 2	Lasts a minimum of six months and participants must appear in court once every four weeks. During this time, participants must remain compliant with the program and work with the court to focus on “continued stabilization and lifestyle maintenance, including employment or meaningful activity.”
Phase 3	Lasts the remainder of the 12-month program and participants must appear in court once every six weeks; participants must continue to comply with all court and treatment programs and remain free from alcohol and drugs.

Table 1: Three Phases of PAIR.⁹³

Upon successful completion of the program, the participant may have all of his or her charges dismissed.⁹⁴ In 2015, there were 21 participants in PAIR. By 2017, that number had grown to 71.⁹⁵

MHAC - Post-Conviction Review

In Indiana, the Behavioral Health Court (“BHC”) assesses individuals who may have committed a serious offense, including major felonies.⁹⁶ These arrestees are generally classified as moderate to high-risk on IRAS and referred to BHC.⁹⁷ BHC consists of a court judge; court coordinator; recovery coach(es); probation officer(s)/community corrections case manager(s); public defender(s); and the prosecutor.⁹⁸ All work together throughout the four phases of the

⁹³ Brad Ray, et al., *Behavioral Health Court Impacts on Mental Health in the Marion County Criminal Justice System*, IU Public Policy Institute (March 2017), http://ppidb.iu.edu/Uploads/ProjectFiles/MentalHealthBrief_Final_040617.pdf.

⁹⁴ *Id.*

⁹⁵ Interview with Judge Amy Jones, Judge, Marion Superior Court, in Indianapolis, Ind. (Feb. 15, 2019).

⁹⁶ Interview with Judge Amy Jones, Judge, Marion Superior Court, in Indianapolis, Ind. (Feb. 15, 2019).

⁹⁷ *Id.* See Indiana Judicial Branch, *The Indiana Risk Assessment System (IRAS) and the Indiana Youth Assessment System (IYAS)* (last accessed on March 16, 2019).

⁹⁸ Brad Ray, et al., *Behavioral Health Court Impacts on Mental Health in the Marion County Criminal Justice System*, IU Public Policy Institute (March 2017), http://ppidb.iu.edu/Uploads/ProjectFiles/MentalHealthBrief_Final_040617.pdf.

Behavioral Health Court.⁹⁹ The success of the program has resulted in jail savings of nearly \$330,000 – or roughly \$8,000 per participant.¹⁰⁰

Phase 1	Participants will spend one to three months completing a risk assessment; being assigned a treatment provider; developing a treatment plan; and orienting to the program. Participants must also appear in court once a week; submit to drug tests; and meet with probation or community corrections
Phase 2	Participants spend a minimum of three months complying with their treatment plan; taking all prescribed medications; and attending court every two weeks where they submit to drug screens. If they have remained compliant and had no new arrests or drug use, participants will move on to Phase III. Phase III requires the participants to appear in court every three weeks; submit for drug screens; comply with their treatment plan; and remain drug free for 90 days.
Phase 3	Participants learn “life skills,” such as in employment; parenting; and education.
Phase 4	Successful participants move on to Phase IV where they will appear in court twice; continue to comply with their treatment plans; and submit to drug screens. Phase IV lasts two months and requires participants to be involved in social activities as well as in the community

Table 2: Four phases of BHC

There have been some due process concerns with the administration of BHC. Upon admission to BHU, the participant must admit to the charges against them and tell the court how his or her mental illness played into the crime.¹⁰¹ However, it can take 60 days from the arrestee’s initial appearance in front of a judge and his or her initial appearance in front of BHC; more if the defense attorney files motions on behalf of his or her client.¹⁰² It can often take up to six months before the initial hearing in front of MHAC.¹⁰³ During this waiting period, the participant could commit additional crimes and/or be re-arrested.¹⁰⁴

⁹⁹ *Id.*

¹⁰⁰ Brad Ray, *et al.*, *Behavioral Health Court Impacts on Mental Health in the Marion County Criminal Justice System*, IU Public Policy Institute (March 2017), http://ppidb.iu.edu/Uploads/ProjectFiles/MentalHealthBrief_Final_040617.pdf. (PAIR has resulted in a savings of \$40,000 – or \$417 per participant.)

¹⁰¹ *Id.*

¹⁰² *Id.* Sometimes, it’s easier for the arrestee to take the charge and avoid all of the PAIR requirements.

¹⁰³ *Id.*

¹⁰⁴ BKD CPAs & Advisors, *Jail Capacity Data Analytics Strategic Plan for the City of Indianapolis – Marion County*, Report to the Mayor (2016). “Increased use of pretrial release for low-risk defendants can lower current and future jail costs while improving community safety.”

The incarceration of individuals suffering from mental illness is a significant and crucial problem in Indiana as well as around the country. An offender may enter the criminal justice system with no identifiable mental illness but develop mental health issues while incarcerated; those entering with a mental illness may see their symptoms worsen.¹⁰⁵ Indiana and Marion County has recognized this concern and is working to address it from both within the criminal justice system and through legislation, volunteerism, and private efforts. Most recently, plans were passed to build a new Criminal Justice Center Campus that will incorporate a separate Assessment and Intervention Center designed to aid in treatment and diversion of those suffering from mental illness or addiction.¹⁰⁶

Part III – The Promise of the Marion County Assessment and Intervention Center: Details and Promises.

In July 2018, Mayor Joe Hogsett entered into a 40-year lease for the \$570 million Criminal Justice Campus.¹⁰⁷ The campus will house a 3,000-bed jail and consolidate civil and criminal offices throughout the city.¹⁰⁸ The campus will also put to use a 140-acre lot in Indianapolis that has remained fallow for more than ten years.¹⁰⁹ This geographical efficiency

¹⁰⁵ World Health Organization and Red Cross, *Information Sheet: Mental Health and Prisons* (2005).

¹⁰⁶ Indianapolis Criminal Justice Reform Task Force, <https://www.indy.gov/activity/criminal-justice-reform-task-force> (last accessed March 12, 2018). The new Marion County Criminal Justice Center will conceptually consolidate approximately a dozen different offices around Marion County and include a separate Assessment and Intervention Center (“AIC”). AIC will place on emphasis on care coordination, involves deliberately organizing patient care activities and sharing information among all of the participants concerned with a patient’s care to achieve safer and more effective care. This means that the patient’s needs and preferences are known ahead of time and communicated at the right tie to the right people, and that this information is used to provide safe, appropriate, and effective care to the patient. The Agency for Healthcare Research and Quality Care Coordination, <https://www.ahrq.gov/professionals/prevention-chronic-care/improve/coordination/index.html> (Last accessed March 19, 2019).

¹⁰⁷ Mary Milz, *Residents glad to have new Community Justice Center as neighbor*, WTHR 13 (July 12, 2018), <https://www.wthr.com/article/residents-glad-have-new-community-justice-center-neighbor>; see also James Briggs, *Indianapolis council approves new jail, giving Mayor Joe Hogsett a signature achievement*, IndyStar (Nov. 19, 2018), <https://www.indystar.com/story/news/local/marion-county/2018/11/19/mayor-joe-hogsetts-jail-plan-passes-through-city-county-council/2056245002/>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

will allow Marion County to realize cost savings in the transportation of inmates and (pre-)arrestees. By separating (pre-)arrestees from CJC staff, the Center will likely increase overall safety for everyone. Further, the land used to build CJC will allow for ample parking, not available currently.¹¹⁰

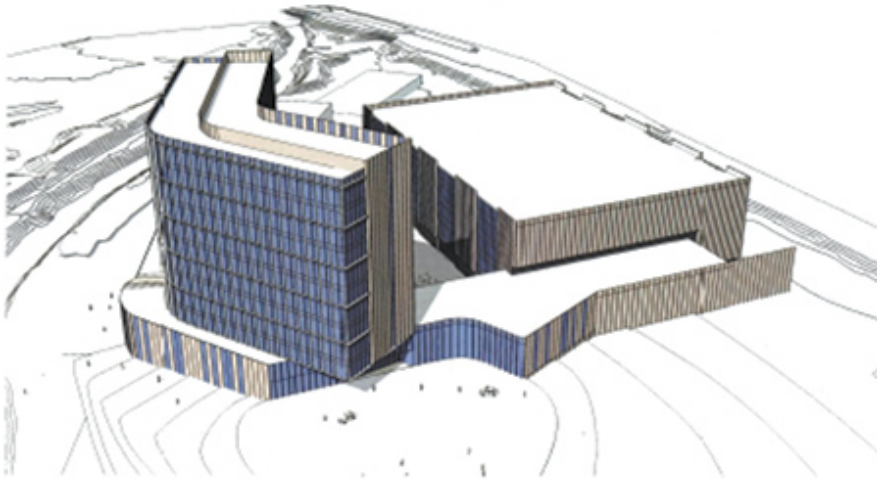


Figure 1: Marion County CJC Renderings: <https://indycjc.com>

¹¹⁰ Russ McQuaid, *Design for new court, jail center unveiled*, FOX 59 (January 17, 2018), <https://fox59.com/2018/01/17/design-for-new-court-jail-center-unveiled/>. (see also Indianapolis Criminal Justice Reform Task Force, *Criminal Justice Reform Summary Report* (December 12, 2016), https://img1.wsimg.com/blobby/go/fe52fe18-3a89-4dc8-8740-3f110586d132/downloads/1c4hqsmj_37220.pdf?ver=1552422254342. Diverting just half the number of offenders who spend 5 or fewer days in jail would result in an estimated savings of \$700,000” and reduce county lease costs. (Indianapolis ended a private jail contract with CoreCivic, which will save the county an additional \$16.5 million a year.)



Figure 2: Marion County CJC Renderings: <https://indycjc.com>

CJC will also be home to a “groundbreaking Assessment and Intervention Center.”¹¹¹ AIC will operate as a “mental health and addiction treatment clinic with a co-located temporary housing unit to facilitate assessment and intervention.”¹¹² At AIC, Health & Hospital Corporation of Marion County (“HHC”) will conduct assessments and provide care and referrals; staff from Eskenazi will provide care coordination.¹¹³ AIC will also allow assistance for short-term detoxification; behavioral health services; social services; access to defense and prosecutor staff; and will focus on wraparound services.¹¹⁴

¹¹¹ Indianapolis Criminal Justice Reform Task Force, <https://www.indy.gov/activity/criminal-justice-reform-task-force> (last accessed March 12, 2018). Currently, the Rueben Engagement Center provides some of the services of the future AIC. This process is part of Indianapolis’s pre-trial diversion system and is similar to how an “AIC lite” may operate once the CJC is complete.

¹¹² Indianapolis-Marion County, *Community Justice Campus Contractor Outreach* (Dec. 4, 2017), https://img1.wsimg.com/blobby/go/fe52fe18-3a89-4dc8-8740-3f110586d132/downloads/1c97agqdm_214728.pdf?ver=1552422254108.

¹¹³ The Indianapolis Office of Public Health and Safety provided a copy of an exhibit, Exhibit A *Personnel Services*. After inquiry, it is unknown to which contract or purchasing agreement this exhibit is attached. However, the language in the exhibit states: “HHC will provide personnel for the AIC to . . . assist with housing and intake . . . clinical staff . . . and security personnel.” Eskenazi Health is a Division of Health and Hospital Corporation of Marion County, formed under Ind. Code Ann. §16-22-8.

¹¹⁴ Indianapolis Criminal Justice Reform Task Force, *Criminal Justice Reform Summary Report* (December 12, 2016), https://img1.wsimg.com/blobby/go/fe52fe18-3a89-4dc8-8740-3f110586d132/downloads/1c4hqsrnj_37220.pdf?ver=1552422254342. (The AIC will also accommodate approximately 60

AIC will become the preferred method for diverting individuals suffering from a mental illness, chronic homelessness, or addiction from the criminal justice system. Not only will AIC participants have interactions with services such as MHAC, but they will also have access to the myriad of services located on one campus. Not only would it be much more efficient to transport someone from the jail to the courtroom, but the individual would also have access to mental health services and counsel without having to travel very far at all.

The AIC will accommodate staff from Eskenazi Midtown Community Mental Health (“Midtown”) to assist in the assessment and intervention of those with mental health or substance abuse concerns and to help provide care coordination services.¹¹⁵ The ultimate goal being both to help the participant get his or her life back on track and to reduce overall recidivism.



Figure 3: Marion County CJC Renderings.¹¹⁶

people from Eskenazi Health Midtown Community Mental Health (or “Midtown”) to assist in the assessment and intervention of those with mental health or substance abuse concerns and to help provide wraparound services).

¹¹⁵ The Indianapolis Office of Public Health and Safety provided a copy of an exhibit, Exhibit A *Personnel Services*. After inquiry, it is unknown to which contract or purchasing agreement this exhibit is attached. However, the language in the exhibit states: “HHC will provide personnel for the AIC to . . . assist with housing and intake . . . clinical staff . . . and security personnel.” Eskenazi Health is a Division of Health and Hospital Corporation of Marion County, formed under Ind. Code Ann. §16-22-8.

¹¹⁶ Indianapolis Criminal Justice Center, *Marion County Community Justice Campus*, <https://indycjc.com>, (last accessed on April 18, 2019).



Figure 4: Marion County CJC AIC Location.¹¹⁷



Figure 5: Beds at the Rueben Engagement Center.¹¹⁸

¹¹⁷ *Id.*

¹¹⁸ Mykal McElowney, *Take a look inside the Rueben Engagement Center*, IndyStar, <https://www.indystar.com/picture-gallery/news/2018/06/15/take-a-look-inside-the-reuben-engagement-center/36065413/> (last accessed on April 18, 2019).

But new buildings and parking lots will not solve the problem of providing consistent, quality care to (pre-)arrestees and those on probation or parole. Focus and effort should be placed on consolidation and access to services to facilitate holistic, mental health treatment and rehabilitation.

Part IV – Proposal: Provide a rule establishing a mental health coordination team in 440 IAC 11

By and large, Marion County’s criminal justice system has all of the services one would expect in a large American city. The services, though, are provided through a patchwork of bureaucratic entities, paperwork, mandatory appearances, eligibility requirements, and other state and federal laws and regulations.¹¹⁹ Missing is one central hub or person who coordinates care between the many health care and other services available to those with mental illness or substance abuse and the (pre-)arrestee him or herself.¹²⁰ For example, one individual that would pair with a justice involved individual displaying indicators of mental illness and work as a ‘boundary spanner’ between that individual and the criminal justice system as well as the local services available to the participant.¹²¹

¹¹⁹ Timothy Jost, *Appendix B Constraints on Sharing Mental Health and Substance-Use Treatment Information imposed by Federal and State Medical Records Privacy Laws*, Institute of Medicine of the National Academies (2006), https://www.ncbi.nlm.nih.gov/books/NBK19830/pdf/Bookshelf_NBK19830.pdf. See also Price v. *Indiana Department of Child Services*, 80 N.E.3d 170 (Ind. 2017); and Ind. Code Ann. §31-25-2-5(a)(2) allowing for 17 children monitored and supervised by one case manager

¹²⁰ When the Assessment and Intervention Center is complete, there will be many services both available to the individual and within his or her reach but without a centralized system to provide holistic care.

¹²¹ For a definition of boundary spanner, see Pettus, Carrie & Severson, Margaret, *Paving the Way for Effective Reentry Practice*, *The Prison Journal*, Vol. 86, No. 2 (June 2006), 206-229.

I propose a rule establishing a pilot program for a team of other behavioral health professionals (“OBHP”) located at AIC and supervised by a ‘licensed professional.’¹²² This proposal takes advantage of existing state structures and funding mechanisms allowing for easier implementation than if those structures and funding mechanisms were absent. Further, this proposal appeals to both sides of the aisle. On one hand, it is providing services to those in need. On the other, the services provided will likely reduce the amount of money the local political unit must spend on jail services and incarceration.

The OBHP is the workhorse of this proposal. OBHPs will work on an OBHP/participant ratio to coordinate between the individual displaying mental health symptoms and other state agencies or mental health systems in the community.¹²³ I propose Family and Social Services Administration establish a team within the existing Assertive Community Team (“ACT”) rule structure that will specifically focus on individuals with mental health issues currently involved in the Marion County criminal justice system.¹²⁴

I propose the following Rule:

440 IAC 11-3-2.5 Staff Requirements for teams serving justice involved individuals.

Sec. 1. (a) A team serving individuals with a mental illness and current or recent justice system interactions shall have qualified individuals to fill the staff positions and perform the functions in this section.

¹²² Licensed Professional is governed by 440 IAC 11-1-11 and refers to (1) a psychologist; (2) a physician; (3) a licensed psychologist endorses as a health services provider in psychology; (4) a licensed clinical social worker; (5) a licenses mental health counselor; (6) a licensed marriage and family therapist; and (7) a licensed clinical addition counselor.

¹²³ Sheriff spends \$8 million per year on additional health care and services for those with mental illness. The BHC has proven able to save the Department money - \$330,000 in savings – and PAIR has already resulted in \$40,000 in savings. See Brad Ray, *et al.*, *Behavioral Health Court Impacts on Mental Health in the Marion County Criminal Justice System*, IU Public Policy Institute (March 2017), http://ppidb.iu.edu/Uploads/ProjectFiles/MentalHealthBrief_Final_040617.pdf.

¹²⁴ 440 Indiana Administrative Code §11-1-4. ACT falls under the Division of Mental Health and Addiction.

(b) Each team serving individuals with current or recent justice system interactions must be composed of the required other behavioral health professional and a team leader.

(c) A team shall have OBHPs who shall meet the following requirements:

(1) A team serving individuals with current or recent justice system interactions shall consist of not more than one (1) OBHP and twenty (20) individuals; and

(i) and no more than thirty inactive cases.¹²⁵

(2) An OBHP shall:

(A) Provide its services once an eligible individual enters Indiana's criminal justice system to the time the individual is released from probation or parole.

(B) Monitor the individual's mental health and overall well-being and report to the team leader.

(C) Provide coordination between the individual and the myriad of services, public and private, in Marion County, or an adjacent county.

(D) Provide resources to the individual needed to satisfy any outstanding debt or obligations both in the community as well as in the justice system.

(E) Use its discretion when admitting individuals suffering from a non-DSM identified mental illness.

(F) Receive an alert whenever an individual under the team's supervision enters into a participating facility.

(i) The alert shall be sent from a participating facility to the team simply stating the individual's presence in the facility.

(ii) An OBHP will then attempt to make contact with the individual to determine how the team can provide resources.

(d) An MHCT team shall have a team leader who must meet the following requirements:

(1) The team leader shall:

(A) Supervise all OBHPs in the team; and

(B) Function as a practicing OBHP with contact with participants for at least five (5) hours per week.

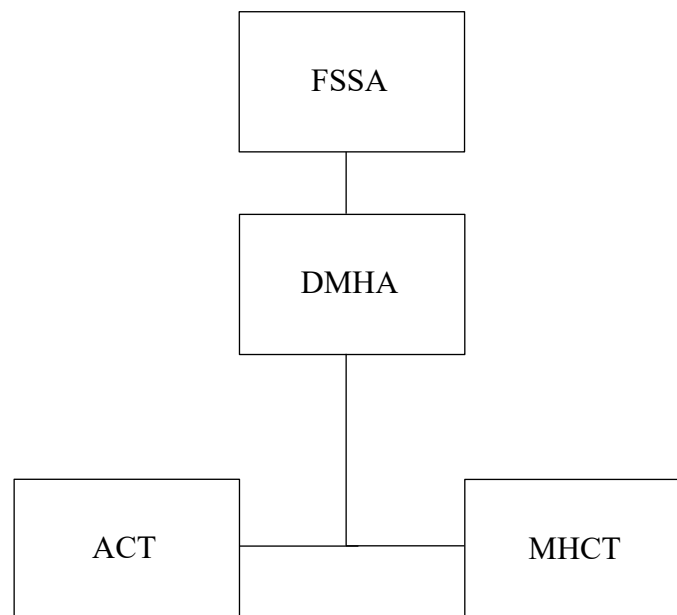
¹²⁵ This ratio is in accord with Ind. Code Ann. §31-25-2-5. The Department of Child Services mandates "seventeen children monitored and supervised in active cases relating to ongoing services." This was challenged by a case manager who complained her caseload was not in accord with the law. The Indiana Supreme Court in *Price*, the "statute is not susceptible to a judicial mandate to compel compliance with its terms" because it "does not require the Department to take specified steps to achieve that outcome." 80 N.E.3d at 174

Part V – Proposal Analysis

This section explores the funding, policy, and sustainability of the proposed Mental Health Coordination Team (“MHCT”). I will begin with discussing the establishment of the team and rule changes required as a result. I will next discuss the behavioral health specialist and his or her duties. I will then discuss MHCT funding and public policy. Finally, I will discuss MHCT sustainability and the possibility for expansion.

Establishment and Operations of MHCT

A Mental Health Coordination Team should be established under DMHA and parallel to the existing ACT team.¹²⁶ MHCT differs from the existing care coordinators proposed to be provided by Eskenazi in AIC in that MHCT is a longitudinal program; MHCT services begin once the participant is enrolled and ceases only after (1) the participant revokes consent; or (2) once the participant successfully completes his or her probation or parole.



¹²⁶ The Family and Social Services Administration has the authority to promulgate rules for the DMHA. Indiana P.L. 39-2015, §3.

Establishing MHCT with ACT under DMHA is appropriate as DMHA is currently involved with justice involved individuals who may be suffering from mental illness as well as responsible for certifying all community mental health centers in Indiana.¹²⁷ Under this proposal, a separate team under 440 IAC 11 would be formed exclusively at AIC. MHCT would work exclusively with individuals involved in the Marion County criminal justice system and suffering from a mental illness.¹²⁸ That is, MHCT will work with individuals that have either chronic or current law enforcement interactions who also suffer from mental illness. MHCT would act as a ‘boundary spanner’ or a care coordinator and would be dependent upon participants to voluntarily participate in the program.¹²⁹ A “participant” is defined in the proposal as an individual who has a mental illness *and* chronic or current interaction with law enforcement *or* a participating mental health provider.

FSSA is authorized by statute to adopt rules and must do so to implement the proposed MHCT.¹³⁰ MHCT will be established adjacent to ACT in title 440 of the Indiana Administrative Code. This is appropriate as DMHA already provides many of the services that would be provided by the OBHP on MHCT, albeit to a different population.¹³¹ FSSA would promulgate the rule at 440 IAC 11-3-2.5 *Staff Requirements for teams serving justice involved individuals*, which would establish a separate mental health coordination team of OBHPs and supervisory

¹²⁷ DMHA already has some process in place for working with mentally ill inmates. See Ind. Code Ann. §35-36-2-5 and Ind. Code Ann. §11-10-4. DMHA is also responsible for certifying all community mental health centers and addiction treatment providers. See their website: <https://www.in.gov/fssa/dmha/4521.htm>

¹²⁸ FSSA would have to accept those with encounters with the criminal justice system and some from some mental illness as defined in the DSM-IV as a ‘serious mental illness’ under 440 IAC §8-2-2. See also *ACLU & IPAS v. Commissioner, IDOC*.

¹²⁹ Care coordinators communicate with providers in the community and marshal personnel and other resources for the participant. The coordinator also tracks the participants progress in the program.

¹³⁰ Ind. Code Ann. §12-8-8.5-4 allows the secretary to adopt rules under IC 4-22-2 relating to the implementation of division programs.

¹³¹ Until 2015, DMHA had rule-making authority until it was transferred to FSSA. 440 IAC 11

licensed professionals. This team would work on a OBHP/participant ratio of 1/20 active cases with the possibility of working an additional 30 inactive cases.¹³²

MHCT will work with both active and inactive cases until the participant successfully completes his or her probation or parole. “Active cases” mean cases in which the (pre-)arrestee is currently *in need of* or is *currently* using many services referred by OBHP and otherwise *requires* monitoring and supervision.¹³³ These participants require assistance from MHCT to develop a case plan in order to address the participant’s shortcomings. MHCT will work with ‘active participants’ to ensure the participants receive both healthcare needs and mental health services as well as other needed services in the community.¹³⁴ “Inactive cases” refer to those (pre-)arrestees who are not currently *in need* of mental health services. Participants with “inactive cases” are currently using the services available and have demonstrated that they *do not need* constant monitoring or supervision by MHCT. However, MHCT will be available for the ‘inactive participant’ until, if necessary, that individual has completed probation or parole and is out of the Marion County criminal justice system. Individuals with chronic or current interactions with participating mental health providers would also be eligible to receive MHCT services. The termination of this OBHP/participant relationship would be made on a case by case basis.

¹³² One OBHP will monitor and supervise a total of fifty cases. The AIC will contain a 3,000-bed jail and it is estimated that 40% of the population suffers from a mental illness. Thus, approximately 1,200 jail inmates at any given time suffer from a mental illness. As a result, this alone would require 24 OBHPs. Of course, not all available for MHCT services will voluntarily give permission to the team for assistance. (This ratio is higher than the 1/17 ratio required by Indiana Code §31-25-2-5, however, the Indiana Supreme Court in *Price v. Indiana Department of Child Services* held that the statute requiring the 1/17 ratio is “not susceptible to a judicial mandate to compel compliance with its terms” because it “does not require the Department to take specified steps to achieve that outcome.” See *Price v. Indiana Department of Child Services*, 80 N.E.3d 170, 174 (Ind. 2017)).

¹³³ Inactive participants may be employed and living on their own. They may be enrolled in educational classes. Inactive participants will generally be those who have been in the program long enough that they know the services available to them and are, hopefully, taking steps to get their life back on track. However, because they are still on probation or parole, they are still enrolled in, and can use the services of, MHCT.

¹³⁴ Such as housing referrals, workforce development assistance, substance abuse services, or other services required in order for the participant to leave the program as a positive contributor to society and his or her community.

As soon as an individual has an interaction with the criminal justice system or a participating mental health provider, MHCT gets involved. Participation, and access to medical and criminal records, must be voluntary. Further, in order to avoid eligible participants ‘taking a charge’ instead of participating in the program acceptance in to the program must be timely.¹³⁵ MHCT must, in a timely manner, contact the participant to follow-up and provide services and referrals. Furthermore, there must be few obstacles in enrolling and participating in MHCT or there would be a risk that participants ‘take a charge’ instead of participating in the program. Both acceptance and participation in the program must be timely, voluntary, and less restrictive.¹³⁶

Indications of mental illness *coupled* with chronic or current interaction with the criminal justice system should be considered a serious mental illness. A “mental illness” is defined as a psychiatric disorder that: (A) substantially disturbs an individual’s thinking, feeling, or behavior; and (B) impairs the individual’s ability to function.¹³⁷ ACT is currently authorized to provide services to those with a serious mental illness as defined under 440 IAC 8-2-2. DMHA would have to include those with *any* mental illness who also have chronic or current negative interactions with the criminal justice system in its definition of ‘serious mental illness.’ DMHA could also provide an exception for MHCT to assist those with no identifiable mental illness under DSM but with indicators of a chronic or current history of law enforcement interactions.¹³⁸ Because establishing one definition of mental illness is difficult, allowing MHCT

¹³⁵ Judge Amy Jones mentioned this drawback in the MHAC. Because the time from the initial interaction with law enforcement and the initial appearance in front of MHAC, participants can commit crime or use more drugs in the interim.

¹³⁶ If MHCT is to be effective, participants must be encouraged to participate in the program. Layers of bureaucracy, requirements, a delay in acceptance, etc. can all harm the participant’s chances of recovery.

¹³⁷ Ind. Code Ann. §12-7-2-130 definition of mental illness does not include a developmental disability.

¹³⁸ Ind. Code Ann. §11-3-3(c). MHCT would have to use its own judgement when admitting a participant into the program that does not have a DSM identifiable mental illness.

discretion to assist those who it identifies as suffering from a mental illness will allow flexibility in the services provided by the team.¹³⁹

MHCT, as a pilot program in Marion County, would have a narrow focus on the coordination between the participant and available services. Because the team is not providing clinical or other medical or psychiatric services, MHCT should be exempt from the specific requirements of ACT's current operating standards.¹⁴⁰ Specifically, because each OBHP will have their own caseload there would be no need to require, for example, "[d]aily team meetings."¹⁴¹ MHCT's operating standards should start broad and narrow as the DHMA analyzes data to determine the most efficient use of MHCT.¹⁴² ACT is heavily regulated in the Indiana Administrative Code, because MHCT would be a pilot program it will need broad operational authority until MHCT can realize the services and referrals requested or required by its participants. I recommend that before each annual legislative session, FSSA and DMHA review MHCT and narrow its operating standards as necessary.¹⁴³

The Coordinators

OBHPs are currently members of an ACT team and report to either the required psychiatrist or other authorized health care professional.¹⁴⁴ MHCT would be comprised of

¹³⁹ It may be the case that a particular 'illness' is not classified as a mental illness under the DSM but MHCT and Marion County perceive that particular 'illness' has problematic. If the Rule is broad and allows for MHCT discretion, MHCT could provide services to that demographic, without promulgating a new rule.

¹⁴⁰ FSSA would simultaneously propose a rule change to 440 IAC 11-3-3 to exempt the MHCT from specific requirements of the section.

¹⁴¹ 440 IAC 11-3-3.

¹⁴² 440 IAC 11-3.

¹⁴³ With time, the annual review would become unnecessary. However, this length of time is beyond the scope of this paper as it will be for the legislature and FSSA/DMHA to decide.

¹⁴⁴ 440 IAC 11-1-5; see also 440 IAC 11-3-1(b).

OBHPs who would report to a licensed professional on a predetermined basis.¹⁴⁵ The MHCT OBHP would satisfy the definition of ‘OBHP’ in the Indiana Administrative Code and would be assigned participants as they enter the program.¹⁴⁶ Once the participant is either (1) identified by the court; (2) identified by emergency services or a participating health care provider;¹⁴⁷ or (3) screened by the Sheriff’s office as someone suffering from mental illness the OBHP is notified and s/he will provide an assessment to ensure eligibility into the MHCT program.¹⁴⁸ If the individual is eligible, the participant must first give permission/authority for MHCT to provide services and referrals and receive notification whenever the participant enters the criminal justice system or a participating facility.¹⁴⁹ Once this revocable permission is given by the participant, s/he will be assigned to an OBHP and enrolled into the program. The OBHP will then provide a full screening of the participant to develop a case plan.¹⁵⁰ The OBHP will then work with the participant to coordinate both required appearances by the participant within the criminal justice system and other services available both in the criminal justice system and in the general community.

¹⁴⁵ 440 IAC 11-1-11; currently an ACT team reports to a required psychiatrist or AHCP. Because the work done by OBHPs do not require daily meetings, MHCT will establish their own internal operating standards as operating standards become known as MHCT provides its services.

¹⁴⁶ 440 IAC 11-1-12 “Other behavioral health professional” or “OBHP” means any of the following persons:

(1) An individual with an associate's or bachelor's degree, or equivalent behavioral health experience, meeting minimum competency standards set forth by the CMHC and supervising licensed professional.

(2) A licensed addiction counselor, as defined in IC 25-23.6-10.5, and supervised by a licensed professional or a QBHP.

¹⁴⁷ If placed under immediate detention.

¹⁴⁸ MHCT must collect contact information from the individual or the agency interacting with the individual. This is not unlike the BHU collecting contact information to provide a follow-up. The notification will be in accord with existing state statute or regulation. For example, after the participant authorizes MHCT, MHCT could receive an alert from a participating facility of the participants name and DOB. MHCT will then attempt to contact the participant in order to review his or her medical concerns in depth.

¹⁴⁹ “Participating facilities” or “partners” are community providers who agree to participate with MHCT. This would require that they notify MHCT once the participant enters their facility. MHCT would then attempt to contact the participant and re-engage with an existing case plan.

¹⁵⁰ The participant may be in a pre-arrest stage, in jail awaiting a hearing, convicted and sent to IDOC, or out of prison or jail but on probation or parole.

Currently, both the jail and the proposed AIC have healthcare providers available to (pre-)arrestees. These providers provide medication, assessment and intervention, and some wraparound care while the individual is at the facility.¹⁵¹ MHCT will not have the ability to prescribe medication or provide healthcare services. Instead, MHCT will establish a connection with the participant and work to provide both immediate and long-term ‘care coordination’ between the participant and services available in the criminal justice system and in the community. For example, an OBHP may both work to ensure the participant has current medications and assist the participant in his or her participation in MHAC. While there may be many programs in which the individual participates, MHCT provides a single monitoring/supervising coordinator for the participant. MHCT can monitor MHAC participation, Rueben Engagement Center stays, law enforcement interactions, interactions with other mental healthcare providers, and other issues or services in the community.¹⁵² In a perfect world, MHCT would continue to provide services even through the transition of pre-arrestee, to arrestee, to incarcerated individual, to releasee, and finally to the conclusion of the individual’s probation or parole period.¹⁵³

OBHP will report to a licensed professional, as identified in the proposed rule above, who will not only supervise a team of OBHPs but will operate as a functioning OBHP with his or her own caseload.¹⁵⁴ The supervisor will have a reduced caseload but will compile the reports written by OBHPs and provide a central point of contact for MHCT. The supervisor will also be

¹⁵¹ Wellpath requires self-reporting of mental health issues and uses a proprietary assessment. MHAC provides some wraparound care but because of the delay between the initial interaction with law enforcement and the individual’s appearance in front of MHAC, the individual can use drugs, commit crime, or refuse the program due to the requirements and delay in being accepted to the program.

¹⁵² Issues such as employment services or child support payments. OBHPs can coordinate and consolidate drug screens or seek funds for the participant to meet obligations. For example, MHCT can seek funds from MHAC on behalf of the participant.

¹⁵³ The feasibility of such may depend on funding mechanisms or grants.

¹⁵⁴ 440 IAC 11-1-11; compare to the supervisor role in 440 IAC 11-3-1 and 2

responsible for ensuring the MHCT team remains current regarding licensing and certifications as well as data collection and dissemination. Due to the criminal justice and healthcare elements of MHCT, a ratio of one (1) OBHP monitoring and supervising twenty (20) active cases will be maintained.¹⁵⁵

OBHPs will begin their involvement once an individual is identified, or self-identifies, as someone suffering from a mental illness.¹⁵⁶ This identification may come from BHU or MCAT, or the myriad of other services currently addressing this population, but could also come from the courts or the jail's Arrest and Processing Center.¹⁵⁷

A participant may self-identify as someone suffering from mental illness, whether or not they are engaged with law enforcement. Because the AIC is currently in the pre-construction stage, it is unclear how the Center will provide services to those who self-identify. As such, enrollment of those who self-identify in MHCT, and the termination of the program, is unknown at this time.

MHCT Funding

As a pilot program, MHCT will employ between 20-30 OBHPs and approximately five licensed professionals who will supervise the OBHPs. Each OBHP will make a salary of approximately \$39,000 a year. Each licensed professional will earn a salary of approximately \$49,000 a year.¹⁵⁸ Collectively, MHCT expenditures for salary would range from \$1.025 million

¹⁵⁵ The OBHP will also be authorized to monitor and supervise up to 20 inactive cases. 'Inactive cases' mean those participants who rarely have interactions with the criminal justice system or participating providers but who may be on probation or parole.

¹⁵⁶ This may occur in a participating provider; emergency services interaction on the street, as a report to the court, or screened at that jail.

¹⁵⁷ For example, Eskenazi Health Midtown Community Mental Health Center.

¹⁵⁸ This is in accord with the Bureau of Labor Statistics of the 2017 median pay for substance abuse, behavioral disorder, and mental health counselors and salaries for FSSA Mental Health and Addiction employees found on the Indiana Transparency Portal. Of course, this could be controlled by either paying MHCT employees less or by supplementing MHCT with students.

and \$1.766 million per year. However, there are additional costs. These include health benefits, employee training and retention, IT support, workers' compensation, retirement, and more.

Notwithstanding the funding requirements for MHCT, the services provided to those suffering from mental illness could be worth it.¹⁵⁹

Currently, FSSA Mental Health and Addiction Services is funded by Indiana's General Fund, Federal Funds, State Dedicated Funds, and Capital Funds.¹⁶⁰ Currently, FSSA receives 51% of its budget, or \$16 million, from Indiana's General Fund.¹⁶¹ In the 2017-2018 as-passed budget, FSSA was appropriated a total of \$112 million.¹⁶² I propose MHCT is funded 50% by FSSA and 50% by the City of Indianapolis.¹⁶³ As a pilot program, MHCT will work exclusively at the Marion County AIC. However, if MHCT is proven successful its services and best-practices could be extrapolated out state-wide. This expanded MHCT could utilize the initial mechanisms and structures established for the shared funding of the MHCT pilot program.

Diverting those with a mental illness or addiction from jail or prison results in cost savings.¹⁶⁴ States, cities, and other localities are realizing millions of dollars in savings simply by diverting those with a mental illness from jail. Miami, for example, saves \$12 million a year and Portland saves \$16 million a year.¹⁶⁵ Indianapolis has the potential to save \$8 million per year by diverting those suffering from mental illness from its jails. MHCT could in theory be funded

¹⁵⁹ Not only are there immediate cost savings to the state from the potential reduction in recidivism and/or AIC services, but there are also reductions in the social costs of crime as well as the potential for increased in overall well-being for those who participate in the MHCT program.

¹⁶⁰ Indiana Transparency Portal, *Total Expenditures*, <https://www.in.gov/itp/1342.htm> (last accessed April 19, 2019).

¹⁶¹ Indiana Transparency Portal, *General Fund Appropriations*, <https://www.in.gov/itp/1114.htm> (last accessed April 19, 2019).

¹⁶² Indiana State Board of Accounts, *2017 Agency Summary*,

https://www.in.gov/sba/files/AP_2017_B_1_2_1_Agency_Summary.pdf at B-12 (last accessed April 19, 2019).

¹⁶³ The Indianapolis Office of Public Health and Safety stands out as the most obvious funding source. The Office already has a re-entry program, operates the REC, and has an Office of Violence Reduction. The Office also has a focus on improving the overall well-being of Indianapolis neighborhoods. However, the State Department of Health and the Health and Human Services Division of Mental Health is another potential funding source.

¹⁶⁴ Brad Ray, *et al.*, *Behavioral Health Court Impacts on Mental Health in the Marion County Criminal Justice System*, IU Public Policy Institute (March 2017), http://ppidb.iu.edu/Uploads/ProjectFiles/MentalHealthBrief_Final_040617.pdf.

¹⁶⁵ Jean Wiseman & Stephen Goldsmith, *Why we need to move away from jailing the mentally ill*, Harvard (September 2, 2016), <https://datasmart.ash.harvard.edu/news/article/why-we-need-to-move-away-from-jailing-the-mentally-ill-902>.

solely by the diversion savings alone, but the state should have buy-in if MHCT is ever to be applied state-wide. For this reason, MHCT would receive approximately 1/2 its funding by FSSA and 1/2 by the City of Indianapolis.¹⁶⁶

There are, however, opportunities to receive federal grants for the MHCT effort.¹⁶⁷ Approximately 20% of state FSSA funding is received from federal funds.¹⁶⁸ In fact, federal funds are already being utilized by many agencies in Indiana, including the DMHA.¹⁶⁹ Appropriating additional state or local funds is not often a popular decision. However, while MHCT would require \$1-3 million in total yearly funding, it has the potential to realize nearly \$8 million in savings per year.¹⁷⁰

Sustainability of MHCT

The social costs of crime are staggering. Costs can range from the economic losses suffered by the victim; criminal justice system costs; opportunity costs associated with the criminal's choice to forego engaging in legal and productive acts; and intangible costs such as pain and suffering or a decreased quality of life.¹⁷¹ When someone with a mental illness commits a crime, the costs are even more wide-spread as even more resources are required. If MHCT services are successful and results in a decrease in recidivism, not only will the Marion County

¹⁶⁶ The Indianapolis Office of Public Health and Safety adopted a 2019 budget of \$13 million. However, \$13 million was adopted in 2018 but was revised to \$18 million. <https://citybase-cms-prod.s3.amazonaws.com/ad7a6e1d8e994aceae4b3e1217c19752.pdf>.

¹⁶⁷ Funding options include: Substance Abuse and Mental Health Services Administration, the Department of Justice, Health Resources and Services Administration, and others. See <https://www.communitycatalyst.org/resources/publications/document/Pre-Arrest-Diversion-Report-SUD-Final.pdf?1477316423>

¹⁶⁸ <https://www.in.gov/isdh/files/IN2017VOR1AnnualReportkh.pdf> Page 50

¹⁶⁹ *Id.*

¹⁷⁰ MHCT will likely require more appropriated funds than the \$1.5-2 million discussed earlier. However, because this is a proposal, and the AIC is not complete, it is difficult to estimate the total costs of MHCT.

¹⁷¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2835847/pdf/nihms170575.pdf>.

Sheriff's office realize cost savings but so too will Hoosiers across the state from less crime and less people in jails and prisons.¹⁷²

In addition to the social costs of crime, there are added costs to the state. The Sheriff's office spends nearly \$8 million a year caring for inmates with mental illnesses.¹⁷³ Marion County taxpayers paid an average of \$12,000 a year for 25 participants in MHAC programming.¹⁷⁴

While MHCT will require an initial funding source, the anticipated cost savings alone could potentially fund the team.¹⁷⁵ However, a sustainability plan must be completed for long-term utilization of MHCT. This plan should include partnerships between MHCT and other community services and providers, such as REC or Midtown Community Health, and a plan for ongoing staff training and evaluation methods.¹⁷⁶ There is also a concern that low pay could force high-turnover of OBHPs. This concern could be buffered by using technology or interns/externs to provide services to those in need. As the program evolves over time, opportunities to use technology or interns/externs will become clear.

Drawbacks and Legal Concerns

As with any administrative proposals, discussion will need to be had and negotiations are likely. Because medical records and criminal records are involved when addressing the concerns

¹⁷² Community Solutions, Marion County Re-entry Coalition Case Study, <http://communitysolutionsinc.net/portfolio/marion-county-re-entry-coalition-case-study/> (last accessed March 20, 2019). It is estimated that for every 1% reduction in recidivism, savings of \$1.5 million to \$2.6 million result.

¹⁷³ Russ McQuaid, *Marion County mental health court now certified*, Fox 59 (March 16, 2016), <https://fox59.com/2016/03/16/marion-county-mental-health-court-now-state-certified/>.

¹⁷⁴ *Id.*

¹⁷⁵ There may also be redundant positions within Indianapolis and the State that could be eliminated, resulting in even more savings.

¹⁷⁶ Office of Justice Programs, Research Guided Pre-implementation Resources for Communities, <https://www.ojjdp.gov/mpg-guides/topics/diversion-programs/EnsureSustainability.html>. (last accessed March 20, 2019)

of someone suffering from mental illness, there are additional legal considerations of which to be mindful. Finally, because MHCT will require public funding this too will require deliberation and consent.

HIPAA is beyond the scope of this paper, however, the legislative goal of MHCT is to provide a holistic response to mental illness while keeping bureaucratic confusion to a minimum. Therefore, MHCT will not overtly require the sharing or dissemination of medical or criminal records. Once a participant agrees to participate in the program, s/he may give MHCT authorization to view his or her medical records. This authorization can come in the form of a waiver or a power of attorney and could be used to receive records of prior mental health providers who may have previously provided services to the MHCT participant.¹⁷⁷ Even with authorization, MHCT will not store medical or criminal records, per se.¹⁷⁸ MHCT's goal is to provide care coordination between the participant and the state or community services, not to be a central hub for medical and criminal record collection. MHCT will have the participant's authorization to view medical and criminal records but will view the records to develop a case plan and monitor participation.

Currently, the delay between an arrestee's initial appearance in court and his or her initial appearance in front of BHC can take up to six months.¹⁷⁹ During this time, the arrestee can commit additional crimes, use drugs, and/or be re-arrested.¹⁸⁰ Due to the requirements of MHAC, participants often 'take the charge' rather than participate in the program. In order to avoid this problem, MHCT eligibility will remain broad and removal from the program must be

¹⁷⁷ Ind. Code Ann. §16-39-1-4 allows for the sharing of medical records with authorized personnel.

¹⁷⁸ This would allow MHCT to avoid statutes or regulations regulating the storage of medical records. For example, 410 IAC 27-7-1, which requires birthing centers to store records for seven years.

¹⁷⁹ Interview with Judge Amy Jones, Judge, Marion Superior Court, in Indianapolis, Ind. (Feb. 15, 2019).

¹⁸⁰ *Id.*

difficult. MHCT will offer its services to anyone suffering from a mental illness and with chronic or current interactions with the Marion County criminal justice system or a participating healthcare provider. With broad applicability, concerns regarding eligibility are lessened. Further, requirements to complete the program are also broad.¹⁸¹ With timely induction and consistent communication, MHCT will encourage rather than inhibit participation.

Funding is commonly a concern with new legislation or regulation. As discussed earlier, MHCT will require an initial appropriation of \$1.5 to \$3 million funded by the State of Indiana and the City of Indianapolis, continued with an annual appropriation thereafter. While this is a significant amount of taxpayer money, the savings alone will likely dwarf the cost of the program. Currently, the Sheriff's Office spends nearly \$8 million a year to care for inmates suffering from a mental illness. Further, for every 1% reduction in recidivism, the governing unit saves between \$1.5 and \$2.6 million dollars.¹⁸² If Indianapolis saw just a 2% reduction in recidivism from MHCT, the program would, in theory, be able to fund itself.¹⁸³

MHCT is a program that provides comprehensive care coordination for those suffering from mental illness who also have chronic or current interactions with law enforcement or a participating healthcare provider. As a pilot program, if MHCT is unsuccessful the rule may be amended. However, with the demonstrated success of MHAC, MCAT, BHU, REC, and others it is likely MHCT will prove successful as well.

¹⁸¹ MHCT's goal is to ensure the participant meets all MHCT established individual milestones, whether those milestones involve housing, healthcare, judicial requirements, or other obligations such as back child support, GED completion, or workforce development skills, and more.

¹⁸² Community Solutions, Marion County Re-entry Coalition Case Study, <http://communitysolutionsinc.net/portfolio/marion-county-re-entry-coalition-case-study/> (last accessed March 20, 2019).

¹⁸³ *Id.* Providing specific care to individuals suffering from a mental illness has resulted in a reduction of recidivism. See Brittany Cross, *Mental Health Courts Effectiveness in Reducing Recidivism and Improving Clinical Outcomes: Meta-Analysis*, University of South Florida (1-1-2001). See also Frank Sirotych, *The Criminal Justice Outcomes of Jail Diversion Programs for Persons with Mental Illness: A review of the evidence*, the Journal of the American Academy of Psychiatry and the Law (December 2009).

Alternative Options to MHCT

MHCT is a proposed program within a proposed facility. The MHCT proposal recognizes potential challenges to the program. This sub-section addresses additional options for services offered to justice involved individuals suffering from mental illness.

The first alternative is to establish the program in a different county in Indiana. Marion County, Indiana's largest county, may experience political opposition to MHCT and MHCT funding. Establishing MHCT in a county with less political opposition, may allow for experimental operations that may, if successful, be implemented in Marion County or the state at a later time. Specifically, Hamilton County is an obvious option for MHCT implementation due to less political opposition as a result of its homogenous political culture. Hamilton County has also recently accepted a \$125,000 grant to address mental illness within its jail, therefore, it seems, the desire and potential funding is there.¹⁸⁴ If MHCT is successful in Hamilton County, there will likely be more interest in implementing the program in Marion County.

The second alternative is to contract MHCT services to a private company. Just as Wellpath is the jail's current health care provider, the City could decide to enter into a contract with a private company that would then provide the services to (pre-)arrestees. The City would have to place tight restrictions on the contractor in order to ensure the City is getting both the services and outcomes it expects. It is recommended that the contract have an expiration date.¹⁸⁵ This would allow the City to periodically reevaluate the success of the program or contemplate the possibility of absorbing the program under FSSA or DMHA or even IDOC as a whole. The

¹⁸⁴ *Commissioners Approve Mental Health Program at Hamilton County Jail*, WRCBtv (January 16, 2019), <https://www.wrcbtv.com/story/39801618/commissioners-approve-mental-health-program-at-county-jail>.

¹⁸⁵ A two to three-year expiration date would allow time for the contractor to establish operations and being implementing its services. Two to three years would allow the City to evaluate substance in determining whether to renew the contract.

City would also evaluate the cost of the contract and whether or not the City is getting the best return on its investment.

Part VI: Conclusions and Steps Forward

The current state of incarceration of individuals suffering from mental illness is a result of hundreds of years of evolution in criminal justice policy coupled with societal understanding of mental and neurological health. Indiana, specifically, has made recent attempts to address mental illness both within the criminal justice system and among pre-arrestees; many of these attempts have resulted in cost savings.¹⁸⁶ Diverting those suffering from mental illness from jails can aid in their diagnosis and treatment as they are diverted to programs specifically designed to assist individuals in similar need. Many individuals suffering from mental illness may not have interactions with law enforcement, or sporadic and minor interactions. While these numbers may not weigh directly on recidivism statistics, common sense tells us that providing comprehensive mental health care to those who need it, whether or not they are involved with the criminal justice system, is the right thing to do.

FSSA should establish MHCT under DMHA and parallel to ACT. MHCT will provide a continuum of care to those with mental illness and chronic or current law enforcement interaction in Marion County.¹⁸⁷ While mental health courts and other diversion programs are available, simply observing those services and their effects on recidivism rates is a but a fragment of the overall continuum of care needed in Indianapolis.

¹⁸⁶ Indiana's mental health courts were established in the 1990s and it wasn't until 2016 that the BHU, MCAT, ACLU settlement; and AIC was established.

¹⁸⁷ Or participating healthcare provider.

There is no shortage of individuals suffering from mental illness in Marion County's criminal justice system.¹⁸⁸ MHCT will provide comprehensive, longitudinal, and individualized treatment to those (pre-)arrestees suffering from mental illness. The centralized and consolidated location of the Assessment and Intervention Center on the Criminal Justice Campus will prove invaluable to providing efficient and effective services to targeted populations.

¹⁸⁸ Indianapolis Criminal Justice Reform Task Force, *Supra* note 2