



Center of Excellence for Behavioral Health

Best Practices in Supporting Justice Involved Clients

April 17, 2024

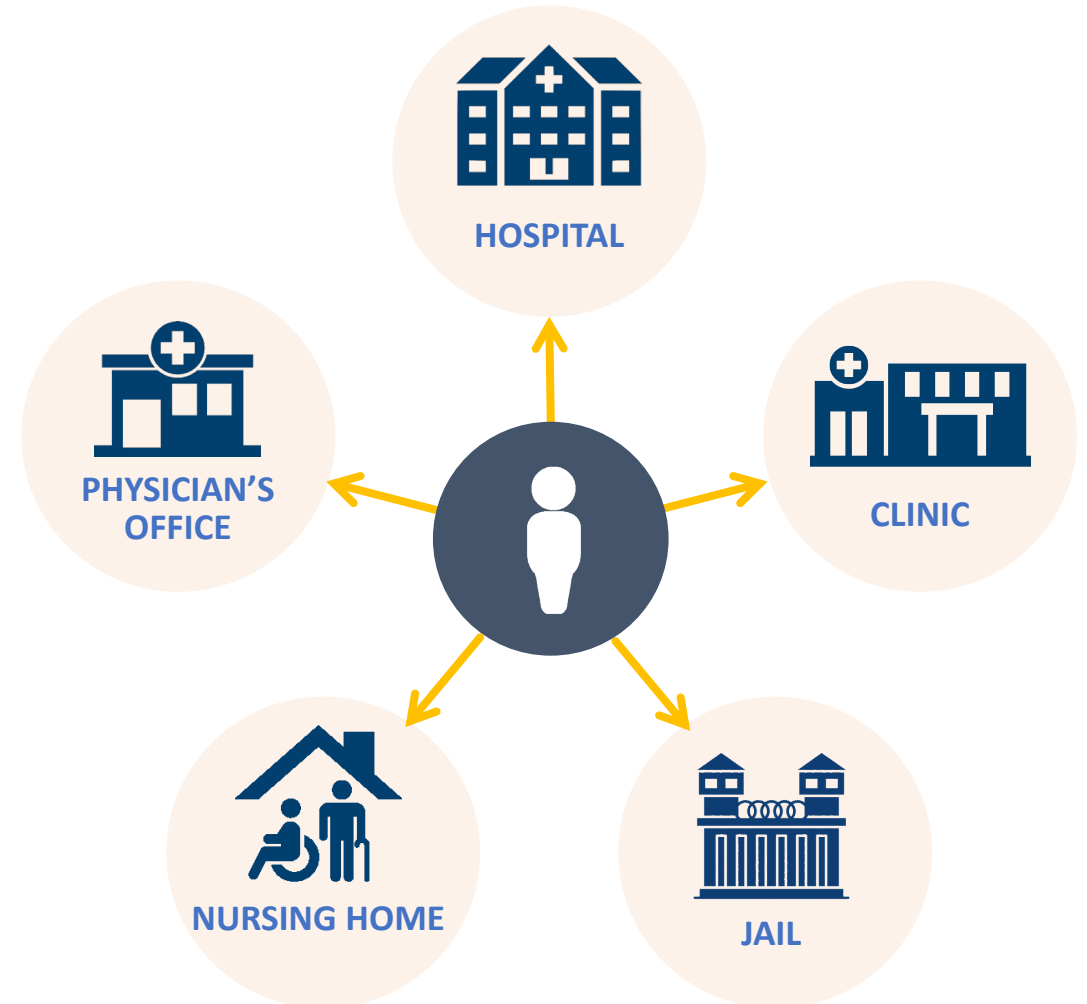
Who Am I?

- Public-interest attorney/policy nerd
- Work rooted in family and social experience
- Rural farmer



COCHS' Goal: Build a System of Care for People Involved in the Justice System to Improve Health and Public Safety

- **Build** a stronger health care system and advance widely accepted health system goals
 - ✓ Coverage
 - ✓ Population & community health
 - ✓ Integration
 - ✓ Costs
- **Support efforts** to reform criminal justice systems, reduce recidivism, and improve public safety
- **Eliminate significant racial disparities** in the health and criminal justice systems





Community Oriented Correctional Health Services

- Founded in 2005 to **create a system of care between correctional and community health care services**, with a focus on jails, to better achieve public health and public safety goals
- **Work in partnership with communities**, health care providers, and criminal justice professionals, policy makers, stakeholders and individuals by:
 - **Providing technical assistance to improve healthcare** and health information technology in ways that integrate jail and community health care
 - **Developing policies** at the federal, state and local levels to better **meet the healthcare needs of community members** who are temporarily displaced within correctional institutions
 - **Convening** stakeholders across the health and criminal justice systems to **find solutions** to the health crises that lead many people to cycle through the justice system.

Today's Session



- Describe the **co-evolution** of our health and justice systems
- Describe the statutory and regulatory changes reshaping the **opportunities to improve care delivery**
- Sketch out the ways to think about your work and advocacy that can **reduce the number of people incarcerated**

The Major Theme: Health, Social Service, and the Justice Systems are Deeply Intertwined

Prisons

'An Epic Fail:' Hawaii Inmate Medical Records System Hasn't Worked Right For Months

A top prison official said computer updates weren't done for the system, and health workers at Hawaii's jails and prisons lost access to thousands of records.




Prisons

Hawaii Inmates Are Kept Behind Bars To Complete Programs They Can't Get Into

Prisoners often face an uphill battle to complete drug and behavioral programs required by the parole board.



By Jake Indursky   / August 8, 2023

 Reading time: 9 minutes.



The Hawaii Paroling Authority held over 1,800 hearings for nearly 1,500 inmates seeking parole in fiscal year 2022. Over 70% of those hearings ended with the inmate remaining in prison, according to the most recent annual report.

Man arrested after talking "out of his head" claiming to work for FBI

By Lootpress News Staff, 6 days ago

The Current State

- The United States is the **number one** incarcerator in the world
 - **25%** of the world's incarcerated population is in the United states
- **2 million** people are in some sort of detention
- **10.6 million** people got to jail each year
- At least **1 in 4** people who go to jail will be arrested again within the same year — often those dealing with poverty, mental illness, and substance use disorders, whose problems only worsen with incarceration.
- **7.2 million** people are on probation, parole, or another community supervision.
- In 2014, an estimated **65 million** people had some criminal record.

How did we get here?

An Early System of Control

- Policing has its root in “slave patrols”
 - See, e.g., Jill LePore, The Invention of the Police, *New Yorker* (July 20, 2020) available at <https://www.newyorker.com/magazine/2020/07/20/the-invention-of-the-police>.
- Police were convened to control a “dangerous classes” (which “consisted primarily of the poor, foreign immigrants and free blacks”).
 - See, e.g., Gary Potter, The History of Policing in the United States, available at <https://plsonline.eku.edu/sites/plsonline.eku.edu/files/the-history-of-policing-in-us.pdf>.

People Who Are Incarcerated are Disproportionately Low Income

Median annual incomes for incarcerated people prior to incarceration & non-incarcerated people ages 27-42, by race/ethnicity & gender, 2014

	Incarcerated people (prior to incarcerations)		Non-incarcerated people	
	Men	Women	Men	Women
All	\$19,650	\$13,890	\$41,250	\$23,745
Black	\$17,625	\$12,735	\$31,245	\$24,255
Hispanic	\$19,740	\$11,820	\$30,000	\$15,000
White	\$21,975	\$15,480	\$47,505	\$26,130

In addition, justice-involved people:

- Face high rates of unemployment, unstable housing and homelessness
- Generally have lower rates of education and literacy than do other populations

The See-Saw

- Researchers have demonstrated the **see-saw effect**, where **investment in punitive policies come during periods of disinvestment in social services and vice-versa.**
 - See, Loïc Wacquant, *Punishing the Poor* (2009).
- A study looking across 18 developed countries, showed a negative link between the share of national income devoted to the welfare state on the one hand, and the number behind bars on the other.
 - All seven of the nations most given to incarceration (US inclusive) have below-average welfare spending; and
 - All but one of the eight countries with the lowest prison population spend atypically heavily on welfare.
 - David Downes and Kirstine Hansen, *The Relationship Between Welfare Spending and Imprisonment* (2005) (available at https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Welfare_and_Punishment_webversion.pdf).

The Promise of Community Mental Health

“If we launch a broad new mental health program now, it will be possible within a decade or two to reduce the number of patients now under custodial care by 50 percent or more. Many more mentally ill can be helped to remain in their homes without hardship to themselves or their families. Those who are hospitalized can be helped to return to their own communities Central to a new mental health program is comprehensive community care. Merely pouring Federal funds into a continuation of the outmoded type of institutional care which now prevails would make little difference.”

-President John F. Kennedy



Re-Institutionalization

- While not the only, or even main, cause of the expansion of the carceral state, researchers estimate that 4-7 percent of the rise in incarceration come from decarceration without the subsequent creation of a robust community system.
- Important demographic differences between the populations involved—what few community supports exist did not flow to the already-disenfranchised populations

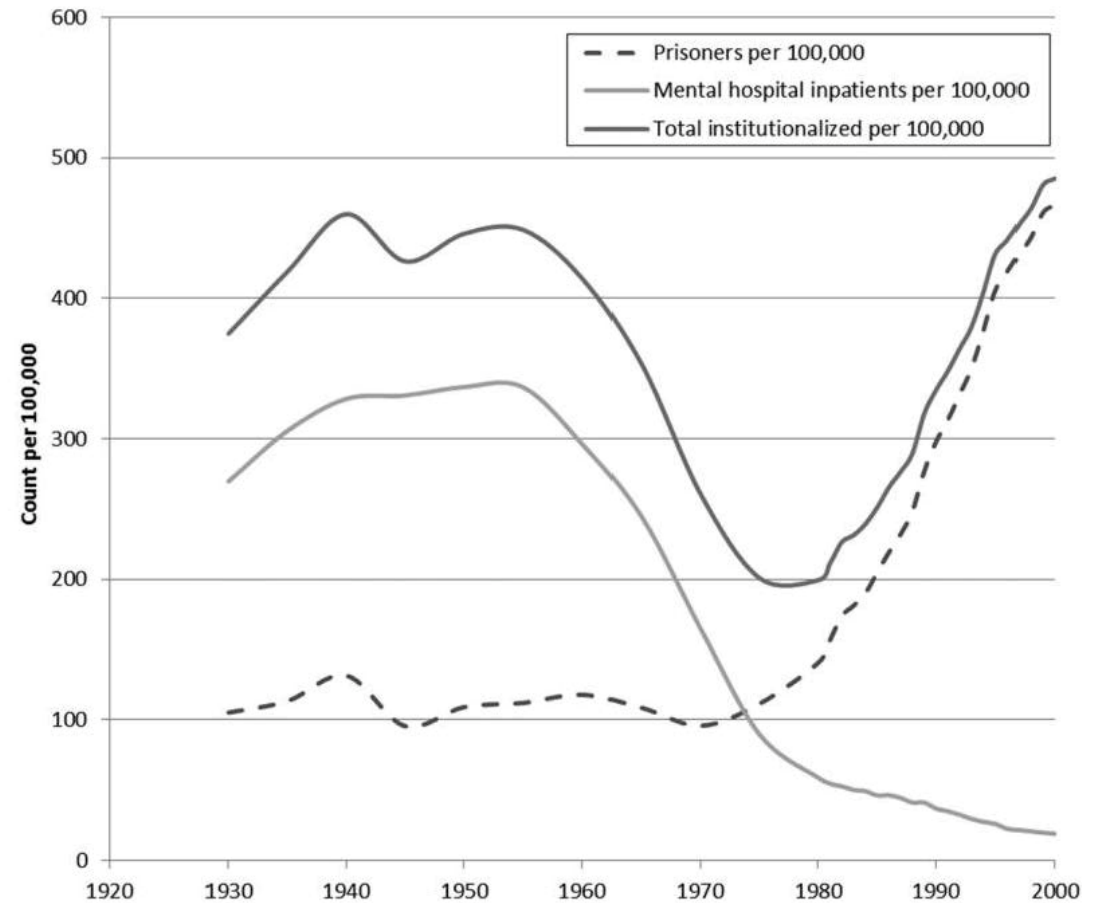
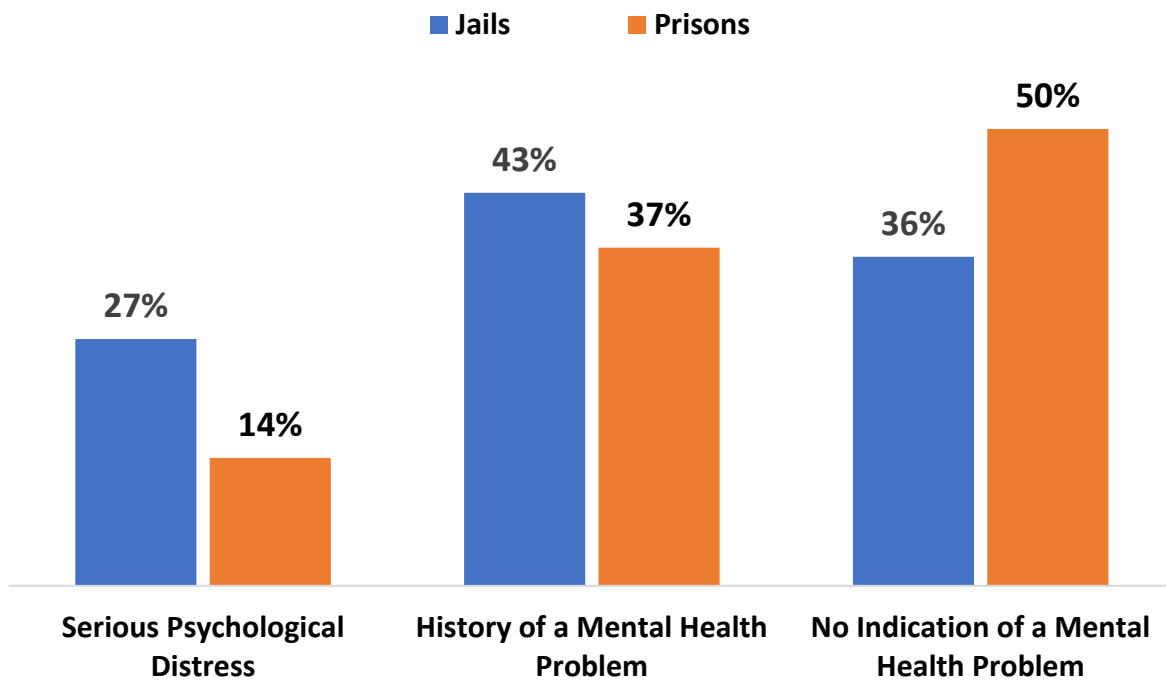


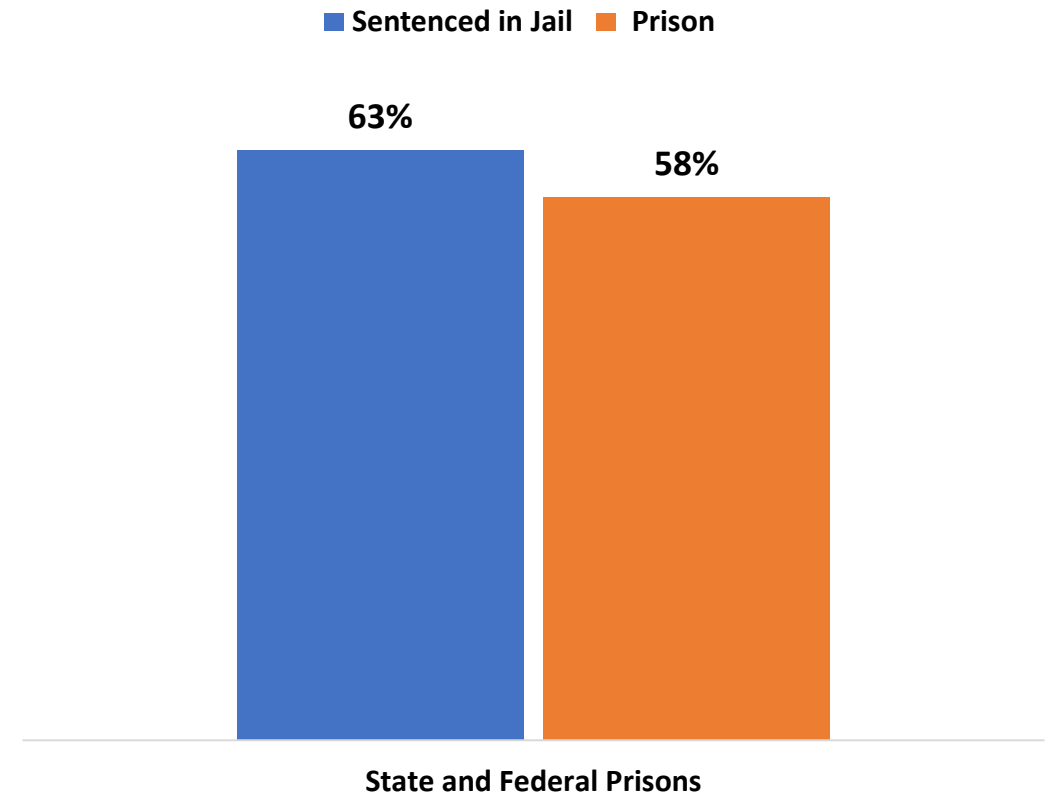
Figure 1. Prisoners, mental hospital inpatients, and all institutionalized persons per 100,000 residents, 1930–2000.

Justice-Involved Populations Face High Rates of Substance Use Disorder and Mental Health Conditions

Mental Health Status of People in Prisons and Jail by type, 2011-2012

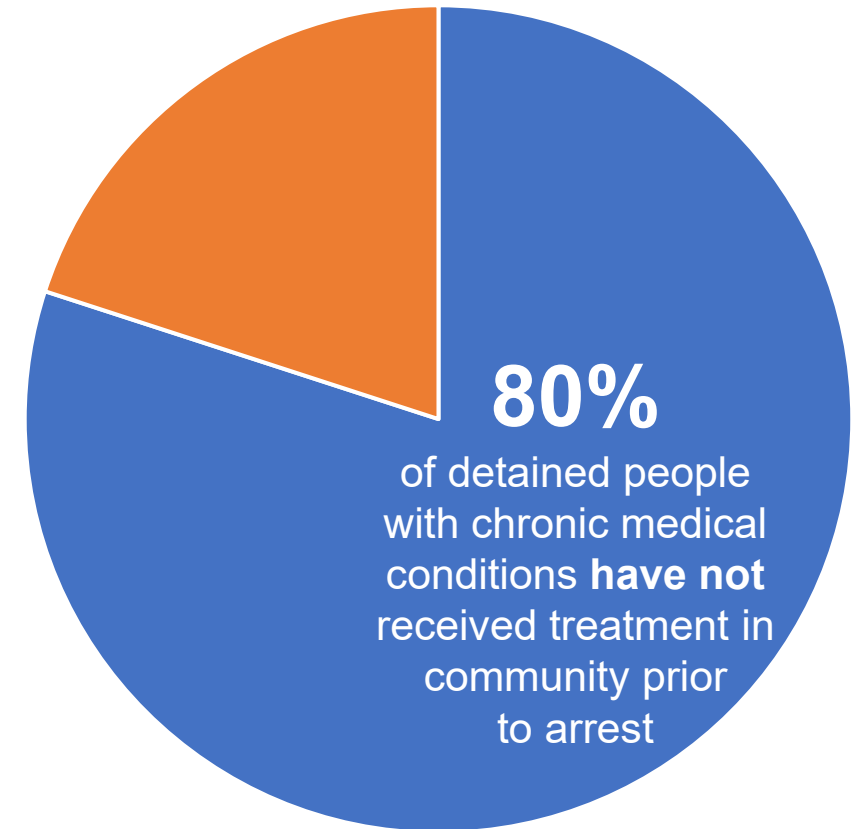


Meets clinical criteria for drug dependence or abuse, 2007-2009:



Access to Care and Outcomes for People Involved in the Justice System Need Improvement

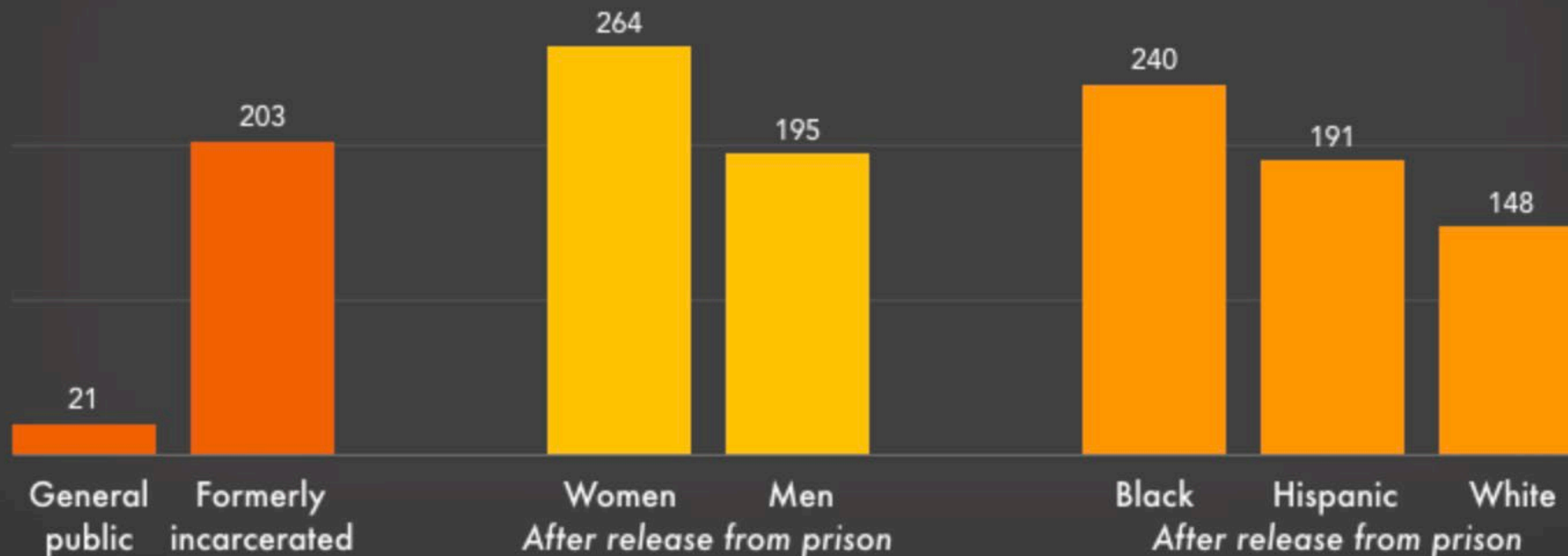
- **Fewer than one in 10 people** who are arrested and test positive for substance use have received any treatment in the previous year
- People leaving incarceration are:
 - **More likely to die** from all causes, including heart disease, homicide, suicide, cancer, and accidents
 - 12 times more likely to die in the **two weeks** following release
 - 120 times more likely to die of an **overdose** post-release (in Massachusetts and elsewhere)



Consequences of Incarceration

Formerly incarcerated people have very high rates of homelessness, especially women and people of color

Number of homeless per 10,000 people in each category in 2008
(the most recent year data for formerly incarcerated people are available)



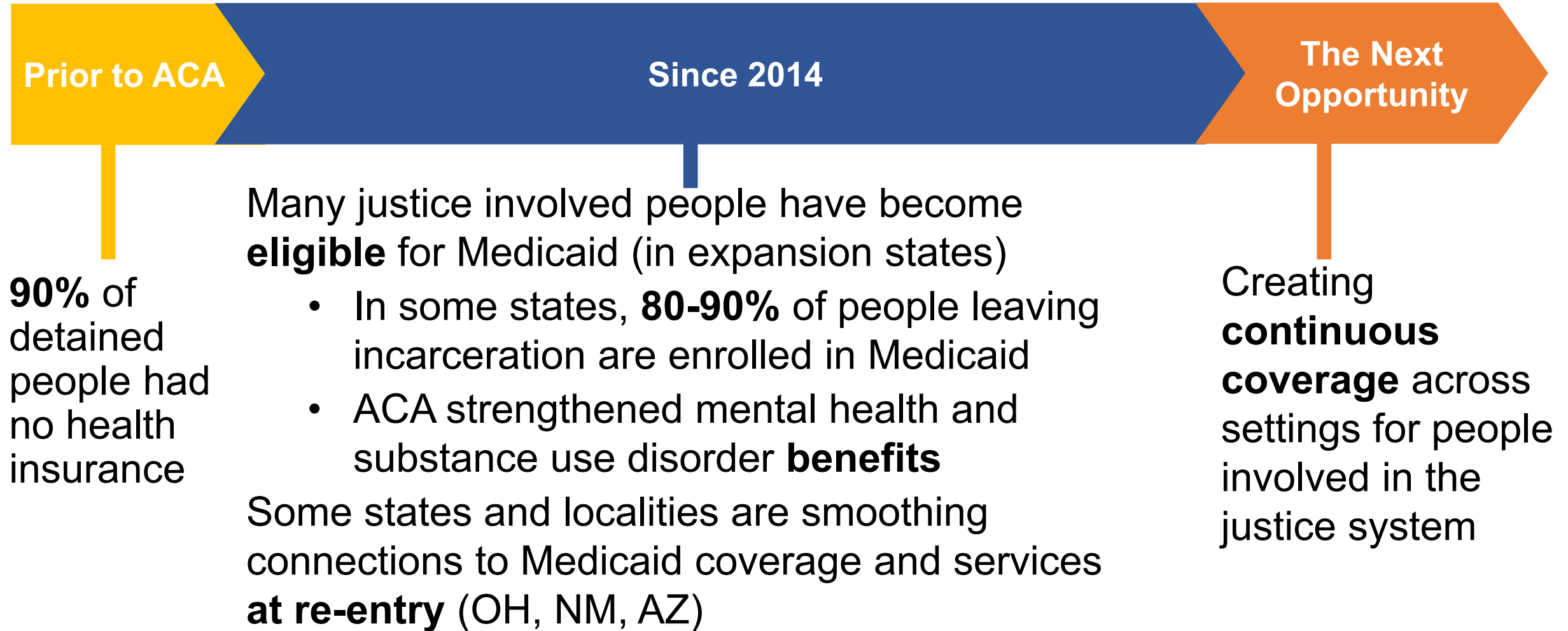
Sources & data notes: www.prisonpolicy.org/reports/housing.html

The Question



Can we invest in the needs of people involved in the justice systems to reduce reliance on justice systems?

Medicaid's Role in the Criminal-Legal System Has Evolved



Medicaid's "Inmate Exclusion" Isolates Correctional Health from the Health System as a Whole



The Inmate Exclusion

- Incarcerated people may be enrolled in Medicaid -- **but** Medicaid will only cover inpatient stays that exceed 24 hours, not other services.
 - **Exclusion established** when Medicaid was created in 1965
 - Primary purpose was to **prevent cost-shifting** to federal government
 - Reflects the **patchwork nature** of US health coverage pre-2014, when most people were not eligible for coverage

Medicaid Waivers Can Provide a Major Change To How Our Health and Justice Systems Relate



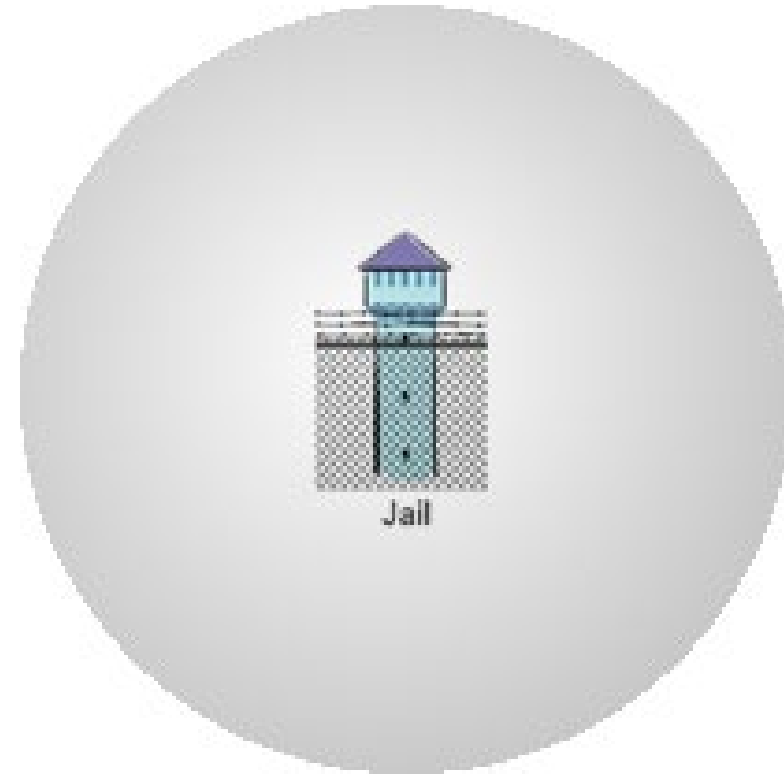
- On April 17, 2023, CMS released a State Medicaid Director Letter (SMDL), **“Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated.”**
 - **Beneficiary eligibility:** Flexible, but often targeted to MH/SUD
 - **Facility eligibility:** Flexible and decided by state (e.g., jail, prison, juvenile justice facilities, reentry centers) but *should not include* federal facilities.
 - **Benefit package:** Broad flexibility about what states can request full set of benefits or targeted benefits, but must include:
 - Medication assisted therapy
 - 30 days of bridge medication
 - Case management
- Waivers will happen **state by state**, and rollout will be slow.

Covered Benefit	Description
<p>Case Management to Assess and Address Physical and Behavioral Health Needs, and Health-Related Social Needs (HRSN)</p>	<p>Pre-release case management is a required reentry service to assess and address physical and behavioral health needs and HRSNs.</p> <p>Care managers are expected to conduct a comprehensive needs assessment; develop a care plan; ensure a warm handoff to post-release care manager (if different); conduct referral activities for post-release such as scheduling appointments and connect individuals to services upon reentry into the community; and provide on-going monitoring and follow-up activities to ensure the care plan is implemented.</p>
<p>Medication Assisted Treatment (MAT)</p>	<p>MAT is a required minimum service for all types of SUD as clinically appropriate, with accompanying counseling. CMS defines MAT as medication in combination with counseling/behavioral therapies, as appropriate and individually determined, and should be available for all types of SUD (e.g., both opioid and alcohol use disorders), as clinically appropriate.</p> <p>Coverage of MAT under a state plan includes all U.S. Food and Drug Administration–approved medications for opioid use disorder, including buprenorphine, methadone, and naltrexone, and acamprosate and naltrexone for alcohol use disorder.</p>
<p>30-day Supply of All Prescription Medications At Point of Release</p>	<p>Provision of clinically-appropriate medication(s) upon release may be as either a pre-release demonstration service or as a post-release Medicaid service furnished outside the scope of the demonstration.</p>

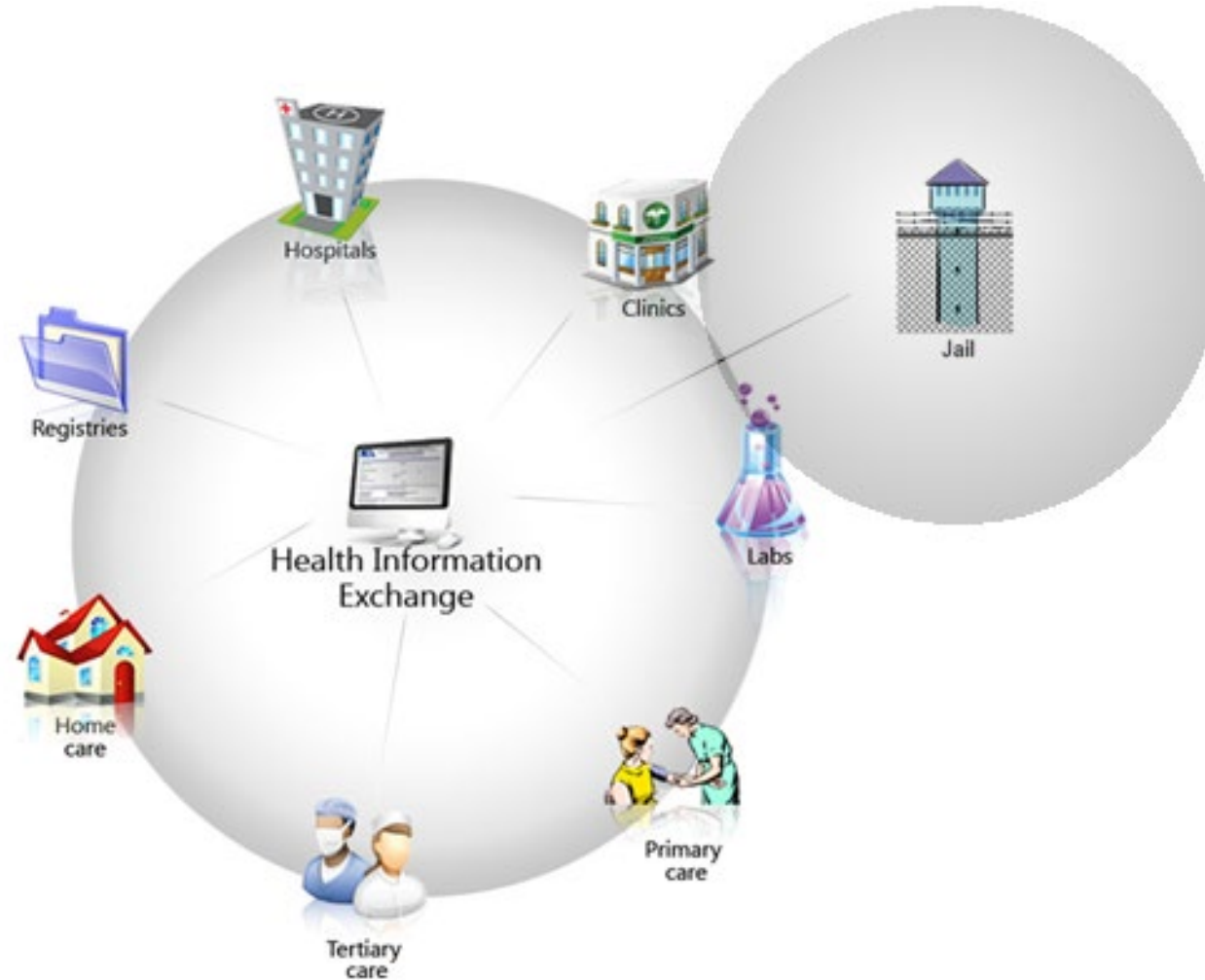
Investment and Reinvestment

- **CMS will consider state requests for time-limited investment financing for certain new expenditures that support implementation of the Reentry 1115 Demonstration.**
 - Development of new business and operational practices related to health information technology (IT) systems.
 - Hiring and training of staff to assist with implementing the initiative.
 - Outreach, education, and stakeholder convening to advance collaboration across the Medicaid agency, correctional facilities, providers, managed care plans, and community-based organizations, among others.
- Offset state and local dollars must be used to **reinvest** in improving community-based physical and behavioral health services, health information technology and data sharing, and community-based provider capacity

Health Information and Jails Today



Merging Islands to Create Shared Data Systems



Recent Legislation to Modify Inmate Exclusion Policy (as of March 2024)



Name	Year	Sponsor(s)	Description
Corrections Public Health and Community Re-entry Act	2018	Kuster (D-NH)	Would ensure MAT availability inside correctional facilities from pre-trial to release
Due Process Continuity of Care Act	2021	Cassidy (R-LA), Merkley (D-OR), Markey (D-MA)	Would ensure that pre-trial detainees are not removed from Medicaid
Humane Correctional Health Care Act	2021	Booker (D-NJ), Kuster (D-NH), Fitzgerald (R-PA)	Would repeal Inmate Exclusion and assess impact on Medicaid enrollment
Medicaid Reentry Act	2021	Baldwin (D-WI), Braun (R-IN), Whitehouse (D-RI), Brown (D-OH)	Would allow Medicaid to cover services provided to incarcerated individuals during the thirty days preceding their release from prison or jail
Kids Care Act (Passed!)	2022	Hudson (R-NC), Kuster (D-NH), Hinson (R-IA)	Would remove Inmate Exclusion for pre-trial juveniles and require that correctional settings provide EPSDT services for eligible juvenile.

The Omnibus Appropriations Law of 2023 incorporates the Kids Care Act Takes Effect in January 2025

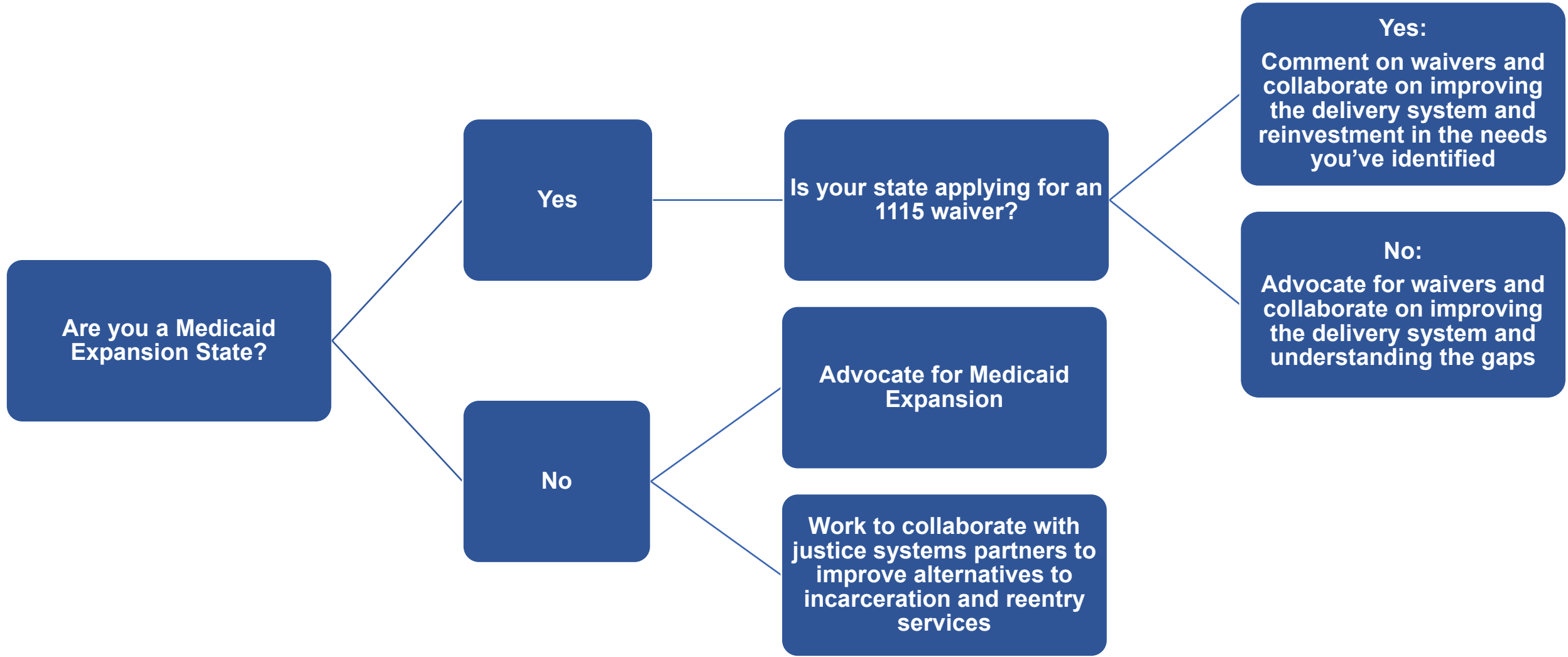


- **Section 5121 *requires***
 - Begin screening and diagnosis for sentenced juveniles 30 days before release (with caveats) and would require 30 days of enhanced case management before and after release.
- **Section 5122 would allow states to opt to:**
 - Maintain Medicaid benefits for incarcerated, unsentenced juveniles who are pending disposition

How to Get Started

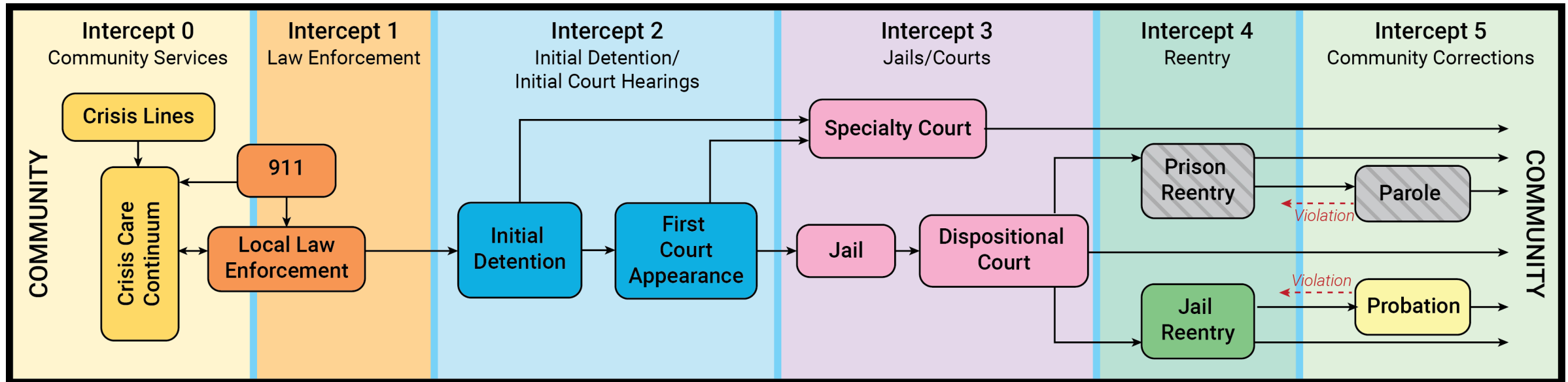
- Jurisdictions **vary dramatically** on collaboration in health and justice issues.
 - Know where you are
 - Know where your levers are
 - Start pulling!

Advocacy Workflow



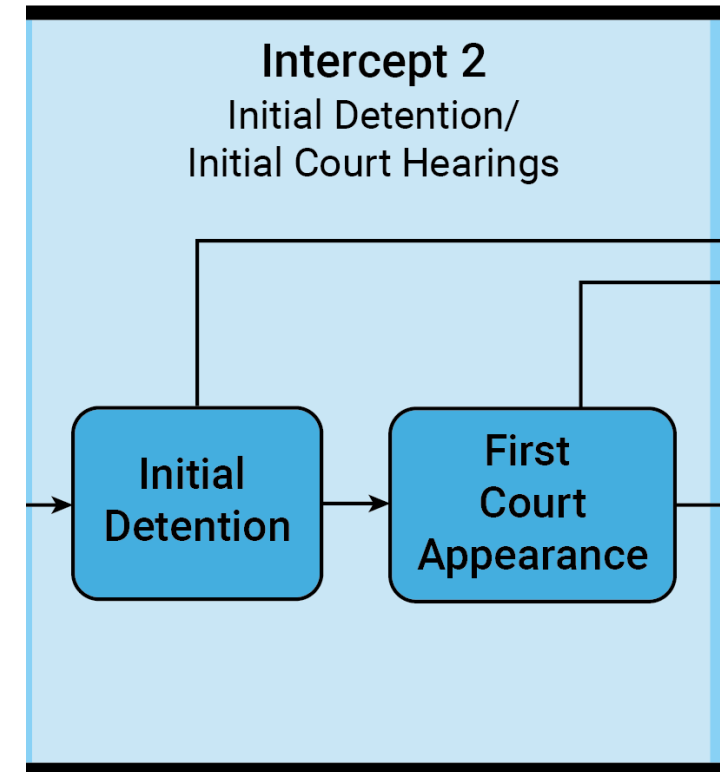
A Great Place to Start: The Sequential Intercept Model

- SAMHSA's **Sequential Intercept Model** provides an insight into the spaces across the justice system that could be transformed by reliance on the health system.



Intercept 2- Initial Detention and Court Hearings

- Health system coordination at **Intercept 2** can improve evaluation and provision of needs and improve the function of the justice system
 - Improved coordination with the health system for **competency evaluation** and **restoration to competency** in the community
 - Opportunities for health plans and community providers to intervene at arraignment or during pretrial evaluations to **improve chances** of being released on their own recognizance
 - Use of **peer support** to improve appearance at arraignment and reduce likelihood of incarceration
 - Support for screenings and referral into **mental health diversion programs**



Conclusion

- **Health and justice systems are deeply intertwined**, even if it is not overt
- Statutory and regulatory barriers have resulted in health justice systems that **exacerbate disenfranchisement**
- New federal changes create opportunities and incentives to **improve linkages** to services that support individuals and families
- We need **YOU** to make this a success

Center of Excellence for Behavioral Health

Thank You

→ iowacebh.org

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Community Oriented Correctional Health Services