



RESPONDING
TO PEOPLE
WHO HAVE BEEN
VICTIMIZED BY
INDIVIDUALS WITH
MENTAL
ILLNESSES



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Responding to People Who Have Been Victimized by Individuals with Mental Illnesses

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About the Office for Victims of Crime (OVC)

The Office for Victims of Crime (OVC) was established by the 1984 Victims of Crime Act (VOCA) to oversee diverse programs that benefit victims of crime. OVC provides substantial funding to state victim assistance and compensation programs—the life-line services that help victims to heal. The agency supports the development of training and technical assistance to educate criminal justice and allied professionals regarding the rights and needs of crime victims. OVC also sponsors an annual event in April to commemorate National Crime Victims' Rights Week (NCVRW). OVC is one of five component bureaus of the Office of Justice Programs (OJP), U.S. Department of Justice, with: the Bureau of Justice Assistance; the Bureau of Justice Statistics; the National Institute of Justice; and the Office of Juvenile Justice and Delinquency Prevention. Additionally, OJP has two program offices: the Community Capacity Development Office, which incorporates the Weed and Seed strategy, and the Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office. More information can be found at <http://www.ojp.usdoj.gov>.

About the Council of State Governments Justice Center

The Council of State Governments Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. It provides practical, nonpartisan advice and consensus-driven strategies—informed by available evidence to increase public safety and strengthen communities. The Justice Center specializes in taking on complex issues at the intersection of the criminal justice, public health, and social services systems. Staff and members are committed to bringing a diverse range of professions and perspectives together to ensure that recommended policy reforms are practical and effective.

Council of State Governments Justice Center, New York 10005

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Any utility that this guide has to policymakers and practitioners in the field is due to the tremendous contributions that all of these individuals made to this project.

Introduction

WHAT ISSUES DOES THIS GUIDE ADDRESS?

The enactment of state statutes and passage of state constitutional amendments establishing legal rights for crime victims have been among the most important and heralded improvements to crime policy during the past two decades. During this same period, a growing number of people with mental illnesses have been arrested, detained, and incarcerated, which has attracted widespread attention among local and state elected officials. Despite the significance of both trends, there has been little, if any discussion, about the rights of victims when the person who committed the crime has a mental illness.

This guide, written for policymakers in state and local government, as well as for the people working on the front lines of the criminal justice and mental health systems, highlights issues related to this long-overlooked subset of victims. Policymakers can use this guide to enhance their understanding of issues related to the rights and safety of these crime victims.

A person who is a victim of a crime committed by someone with a mental illness—like many other types of victims—may experience frustration that, despite the existence of laws and amendments designed to protect victims' rights, he or she receives neither information nor opportunities for participation in the criminal justice process.* In addition, many times when the person who committed the crime has a serious mental illness, the victim is a family member, friend, or loved one. In such instances, as is the case in most crimes involving interpersonal violence, these victims may express not only compassion and interest in getting their loved ones the

* For further reading on compliance with victims' rights statutes and constitutional amendments, see the Office for Victims of Crime, U.S. Department of Justice, publication *Victims' Rights Compliance Efforts: Experiences in Three States*, available online: www.ojp.usdoj.gov/ovc/publications/infores/vrce.pdf.

treatment they need to address their problem behaviors, but also a range of conflicting emotions: anger, fear, and exhaustion from trying unsuccessfully to connect them to services while managing their loved ones' illnesses on their own. They may also experience guilt that they were unable to prevent the crime from occurring.*

Though much effort has been made to increase compliance with victims' rights statutes and to assist crime victims struggling with interpersonal violence, little attention has been given to the issues that arise when the person who committed a crime is transferred from the custody of the criminal justice system to the custody of the mental health system for treatment. Such scenarios may arise when a court orders a determination of competency or when the court has determined an individual to be "not guilty by reason of insanity" (NGRI), "guilty but insane," "guilty but mentally ill," or a similarly worded disposition.

The issues concerning this particular category of victims require special attention for several reasons. Whether family members, acquaintances, or strangers to the individuals who committed the crimes, victims of crimes committed by people with mental illnesses often have difficulty understanding *how* and *why* their cases are processed differently from other criminal cases. They perceive that services and information usually provided to other crime victims suddenly are unavailable to them when it is determined that the individual who committed the crime has a mental illness. They get conflicting information about the applicability of victims' rights when the person who committed the crime is ordered to a state mental health forensic facility. They express frustration at having to navigate two complex, often uncoordinated systems—first the criminal justice system and then the mental health system when authority over the person who committed the crime is transferred—and neither system seems capable of addressing their many questions and concerns. These victims have limited access to information and involvement in the ensuing proceedings.

Relatively speaking, the number of people who are victims of crimes committed by individuals with mental illnesses is small,

* For additional information on the dynamics of interpersonal violence, see the Family Justice/Office for Victims of Crime publication *Interfamilial Crime and Prisoner Reentry: The Role of the Family*, available online: www.nicic.org/Library/022628.

although there is a scarcity of data to assess the number of cases accurately.

The U.S. Department of Justice estimates that approximately 16 percent of the country's prison and jail population has a mental illness.¹ In 1999, the Los Angeles County Jail and New York's Rikers Island Jail each held more people with mental illnesses than any psychiatric inpatient facility in the United States.² Many people with mental illnesses who are incarcerated have been charged with committing low-level crimes such as trespassing or public intoxication, behaviors that are often symptomatic of their untreated illnesses. Nearly half of prison inmates with a mental illness are incarcerated for committing a nonviolent crime (47 percent nonviolent vs. 53 percent violent).³

This guide does not focus on all victims of people with mental illnesses in prisons and jails, but rather looks at victims of those individuals who are either sentenced or directed to a state mental health forensic facility or are awaiting competency or other proceedings while being held in jails or prisons. The public and the media often associate mental illness and the criminal justice system with cases of individuals pleading NGRI. Such dispositions, however, are relatively rare. For example, a 1996 study of the Baltimore Circuit Court estimated that of 60,342 indictments filed during one year, only eight individuals ultimately pleaded not criminally responsible due to mental illness.⁴

While still a small percentage of overall criminal cases, the number of cases involving defendants who are placed within a state mental health forensic facility for competency issues is not insignificant.* For instance, in fiscal year 2007, 176 individuals were committed to the Missouri Department of Mental Health forensic facilities because they were incompetent to stand trial.⁵

The relatively small number of affected victims has prevented a concerted push for a coordinated and meaningful response to their needs. And though many of these victims have seen their cases

*For more information on competency to stand trial, see the Center for Mental Health Services' National GAINS Center publication *Quick Fixes for Effectively Dealing with Persons Found Incompetent to Stand Trial*, available online: www.gainscenter.samhsa.gov/pdfs/integrating/Quick_Fixes_11_07.pdf.

receive extraordinary media attention, little has been done to improve their involvement in criminal justice and mental health system processes. This disparity between high-profile media coverage and an insufficient response to the needs of victims can lead the public and some policymakers to sometimes call into question the effectiveness of the broader victim statutes, constitutional amendments, programs, and services that the advocacy community has worked so hard to establish. This guide underscores the necessity of addressing the devastating impact, both political and personal, that can result from current practices. More important, this guide provides an analysis of existing challenges and outlines action items communities may consider implementing to improve how these victims are served.

A Note on Guide Scope and Terminology

Target Population: The subgroup of people with mental illnesses that is the subject of this guide includes individuals with mental illnesses who have been ordered into the care (either inpatient or outpatient) of the state mental health authority for (1) assessment of competency to stand trial or for restoration of competency for those found incompetent to stand trial and/or (2) a disposition of “not guilty by reason of insanity,” “guilty but insane,” “guilty but mentally ill,” or similarly worded disposition.

Victim: The person against whom a criminal act has been committed—regardless of whether there has been a court finding to that effect—by an individual with mental illness who has been charged with the crime and ordered into treatment because of that charge.

State Mental Health Forensic Facility: These facilities are responsible for providing treatment to individuals with mental illnesses involved in the criminal justice system in a manner consistent with public safety needs. Forensic facilities may be

WHAT WILL THIS GUIDE HELP POLICYMAKERS ACCOMPLISH?

This guide is designed to help state and local government officials—including legislators, state mental health officials, judges, prosecutors, and victim advocates—as well as victims and their loved ones and leaders of community-based organizations to

1. understand the issues that make it particularly challenging to ensure that the rights of victims are protected when the person who committed the crime has a mental illness;
2. assess the extent to which criminal justice and mental health officials in a jurisdiction are currently meeting the needs of victims of crimes committed by individuals with mental illnesses;

operated as units housed within other state or local psychiatric facilities or as stand-alone institutions. Because this guide focuses on issues that arise during a transfer of custody from the criminal justice to the mental health system, “state mental health forensic facilities” do not refer to specialized units within jails or prisons for people with mental illnesses or psychiatric hospitals managed by departments of correction.

Incompetent to Stand Trial: Generally, an individual will be found incompetent to stand trial if the individual, as the result of a serious mental condition, is unable to understand the criminal proceedings or assist in his or her defense. Usually individuals who are found incompetent to stand trial are committed to state mental health forensic facilities for treatment to restore the person to competency.

Not Guilty by Reason of Insanity (NGRI): Generally, a person is found NGRI,* or not responsible for the criminal conduct, if the person, at the time of the conduct, was unable to appreciate the conduct and its wrongfulness as the result of a serious mental condition.

*Terms vary by state (e.g., “not guilty by reason of mental disease or defect,” “not criminally responsible”).

About the Development of This Guide

TO DEVELOP THIS GUIDE, the Justice Center worked with representatives from the Office for Victims of Crime, a planning group, and a bipartisan steering committee of leading practitioners, policymakers, and victim advocates. To view a list of planning group members and steering committee members, see appendices A and B, respectively. In addition, Justice Center staff surveyed prosecutors, forensic mental health directors, and victim advocates from a number of states on this issue and convened a focus group of victims of crimes committed by people with mental illnesses.

The methodology employed in the drafting of this document, however, did not include a scientific sampling of all relevant stakeholders, and thus data are not conclusive. Because of the relatively small sample size, readers are cautioned when generalizing the findings. Furthermore, the focus group results, like the surveys, relied entirely on self-reported data from individuals in a handful of states, thus information conveyed in this guide does not necessarily represent a comprehensive, current overview of practices in these states. Nonetheless, the views expressed by survey and focus group participants reveal a good deal about how victims' rights may be enforced and exercised in cases involving defendants with mental illnesses. This information, combined with the state-by-state legal research on the status of rights for this class of victims, provides a useful framework for defining challenges and recommended action steps to improve current practices. For a more detailed overview of the methodology used to develop this brief, see appendix C.

3. develop tools and make improvements to service delivery systems, programs, and responses so that people who are victimized by individuals with mental illnesses are better served.

HOW IS THIS GUIDE ORGANIZED?

This guide is divided into three main sections: the first section provides an overview of current policies and practices used in some jurisdictions to respond to victims of crimes committed by people with mental illnesses. The second section outlines key challenges and barriers that impede efforts to uphold victims' rights in cases involving this subset of victims, and the third highlights action items communities may find useful to improve responses to these victims.

Woven into the discussion of research findings and challenges that affect enforcement and implementation of victims' rights in these cases are examples of programs, policies, or elements of state statutes that illustrate one or more jurisdiction's attempt to implement a particular policy. By highlighting certain approaches, however, the issue brief is not promoting them as "best practices." They are simply efforts that involve partnerships, resourcefulness, or even longtime practices for other communities to consider.

Finally, the authors understand that communities, their problems, and potential solutions vary considerably across the country. What works in one community may not be a perfect fit for its neighbor, let alone for a community halfway across the country. Indeed, this guide emphasizes that each community must find its own solutions to these complex and interwoven problems. Accordingly, policy-makers, practitioners, and advocates using this guide may find it useful to initiate a comprehensive review of the prevailing laws, stakeholder opinions, and practices in their own jurisdictions to determine the extent to which the rights of victims of crime committed by individuals with mental illnesses are clearly defined and enforced.

Victims and Mental Health Courts

COURTS ARE INCREASINGLY INTERESTED in diverting criminal defendants with mental illnesses—particularly those accused of minor offenses—to programs like mental health courts in lieu of regular criminal proceedings. Because the legal proceedings in such diversion programs are so different from those associated with the types of criminal cases addressed in this document (cases where the person who committed the crime comes under the care of a state mental health forensic facility), this population of victims will be addressed in a companion publication under development by the Justice Center with support from the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice: *A Guide to the Role of Crime Victims in Mental Health Courts*.

Citing examples of victims' rights policies and practices in criminal courts, mental health courts, and other specialty courts including domestic violence courts, the mental health court guide proposes answers to two key questions:

- Why address the role of crime victims in mental health courts?
- How can victims' rights be incorporated into mental health courts?

The publication will be available at <http://consensusproject.org/issue-areas/victims/vpmi/> in summer 2008.

Current Policy and Practice

THIS SECTION OF THE GUIDE reports how, if at all, state mental health agencies, prosecutors' offices, and victim advocates interface with victims in cases in which the person who committed the crime is transferred to the custody of the mental health authority. As previously indicated, the findings presented here are based on reviews of relevant research and statutes, surveys involving professionals from a broad range of disciplines, and a focus group of victims of crimes committed by people with mental illnesses. These investigations focused primarily on two rights that have historically been cornerstones of the growing victims' rights movement: (1) notification and information concerning the location and case status of defendants and individuals convicted of crimes; and (2) participation in hearings and court proceedings related to the case.*

GENERAL FAMILIARITY WITH ISSUES UNIQUE TO VICTIMS OF CRIMES COMMITTED BY PEOPLE WITH MENTAL ILLNESSES

Prosecutors, victim advocates, and mental health system officials surveyed often reported having limited knowledge of issues unique

* Victim "participation" can be defined as either attendance at court hearings and proceedings or actual input at those hearings and proceedings.

to victims of crimes committed by people with mental illnesses. Few survey respondents could provide any data quantifying the extent to which they or their agencies typically address this group of crime victims; those who provided some data cautioned that the statistics were estimates only.

State mental health forensic directors could usually determine whether victims were associated with cases involving individuals found NGRI or awaiting competency restoration based on the type of crime that led to their involvement in the criminal justice system. However, rarely did any process or procedure exist to ensure that information was systematically provided to state mental health agencies about how and where to contact crime victims.

Surveys also showed that criminal justice and mental health officials usually have little basis for appreciating the challenges associated with serving victims of crime committed by individuals with mental illnesses. No prosecutor or victim advocate interviewed had received instructions or training about how to protect and serve this group of crime victims.⁶ In addition, no prosecutor or victim advocate had designated personnel within his or her office for managing cases involving victims of crimes committed by individuals with mental illnesses. Finally, most individuals surveyed said there was not (or they were not aware of) an individual assigned in either the mental health system or criminal justice system to serve as the point of contact between the forensic facility and the prosecutor's office or victim advocate.

NOTIFICATION AND INFORMATION

Most state crime victim statutes or victims' bills of rights include provisions designed to ensure that victims, if they so choose, are notified and can request information about certain events related to criminal proceedings. This notification is not necessarily automatically provided to victims.⁷ In most states, victims must proactively request notification. And while victim advocates can play a key role in alerting victims to these rights, victims often are simply unaware of their right to notification and information.

This problem is further compounded in cases involving victims of crimes committed by people with mental illnesses, because even

when victims request notification, their access to information is often extremely restricted. Research, surveys, and interviews suggested that two key issues, which are discussed further in this section, can contribute to this problem. First, limitations in the scope of automated victim notification systems often prevent victims from requesting notification and information once individuals are transferred to a state mental health forensic facility. Second, even in cases in which this subset of victims successfully request notification, confidentiality rules governing the release of health information frequently impede their efforts to obtain information about individuals under the supervision of state mental health forensic systems.

In most states, during criminal proceedings, regardless of whether the defendant has a mental illness, victims can request notification by submitting victim notification request forms, which they often do with the assistance of a victim advocate. These forms are then submitted to the prosecutor, department of corrections, or state Victim Assistance Network.* In addition, victims in many states can request notification and information directly through the Victim Information and Notification Everyday (VINE) system.† Enrollment in such automated notification systems typically ensure that victims subsequently receive the corresponding information regarding developments in their case.

Because victim advocates and automated notification systems often do not identify issues unique to cases in which the person who committed the crime has a mental illness, notifications and information often do not reach these victims once the person who is accused of the crime is transferred to a state mental health forensic facility. The information VINE provides ordinarily relates only to individuals within county and state correctional facilities. VINE and often victim notification request forms do not include the opportunity to request information regarding individuals who may have been transferred out of a jail or prison to a state mental health

* State Victim Assistance Networks are usually statewide nonprofit organizations that provide information on victims' service and criminal justice agencies, victim assistance programs, and advocacy groups.

† VINE is a computerized system available in most states that allows victims to register for information related to their cases directly via phone or the Internet. For a complete listing of which states and counties have implemented VINE, see www.appriss.com/sitedocs/VINE_800.pdf. All but one of the states surveyed for this issue brief had a VINE system in at least one county.

forensic system. Indeed, in all but one jurisdiction, survey respondents indicated that there were no systematic mechanisms for communicating a victim's request for notification and information to a state mental health forensic hospital on or after transfer.

Even if the victim's request for information did follow the person's transfer to a state mental health forensic hospital, the information received would still be limited to criminal justice information. In the states surveyed with these systems, victim notification request forms and VINE, for instance, offer victims the opportunity to receive notification or information about only those events related to an individual's criminal justice status, including custody status, case status, and court event information. Information specific to a person's status in a mental health facility, such as a modification of conditions of release, is usually not included in existing systematic approaches to victim notification and information.

However, even if victim notification request forms and VINE systems increased their scope to allow victims to request notification in such cases, there would be practical limitations to actually obtaining information about individuals in the custody of the mental health system. Nearly every victim advocate, prosecutor, and state mental health forensic director surveyed underscored restrictions, owing to policies that protect the confidentiality of people within state mental health forensic facilities, that make it unlikely for the victim to receive the extent of information he or she would receive if the person who committed the crime was incarcerated in a state prison or local jail. For example, victims of crimes committed by individuals in the custody of mental health systems are not allowed to be notified of custody status, diagnosis, treatment plan, or change in treatment plan. State mental health forensic directors did note that when they had the contact information for the victim (which, as indicated before, is often the exception, not the rule), they would notify the victim when an escape occurred.

Crime victims interviewed as part of this project corroborated the accounts of state and local government officials surveyed. Just one of the five victims interviewed was notified of the individual's transfer to a psychiatric hospital. None of the victims interviewed were able to access information about the diagnosis or treatment plan.

Furthermore, the crime victims interviewed reported that prosecutors, corrections staff, and mental health staff told them that such information could not be made available to them because it was protected under the Health Insurance Portability and Accountability Act (HIPAA).⁸ The same victims were skeptical of this justification, however, as they were also told that HIPAA prohibited sharing information with the victim about the status of the case, such as the timing of competency hearings and parole hearings, yet observed that the same information was typically communicated to prosecutors without objection.

PARTICIPATION

In the states surveyed, and as is the case in most states, victims' rights extend beyond the right to information and notification to include the right to participate in various case proceedings. Based on the information obtained through the surveys, however, criminal justice and state mental health authorities appear to lack a common understanding about which case proceedings victims of crimes committed by individuals with mental illnesses are entitled to participate in, and who, if anyone, should be responsible for advising victims of these rights.

The majority of the state mental health forensic directors surveyed reported that victims do not participate in decisions relating to an individual's level of detention, treatment plans, or transfer from facilities, although many said that victims are allowed to participate in hearings regarding conditional release, modification of release conditions, and discharge. Responses from victim advocates and prosecutors regarding victims' rights to participate in hearings on these issues, however, varied greatly both across and within the surveyed states, as did their opinions on victim participation in competency and post-NGRI determination hearings. In fact, in some cases, prosecutors and victim advocates were in direct disagreement with each other and state mental health forensic directors about a victim's right to participate in these proceedings.⁹

The different responses among survey participants mirror the varying experiences of the victims who participated in the focus group. Two victims who participated in the focus group reported

being allowed to participate in competency hearings, while none of the focus group members participated in hearings concerning conditional release, modification of release conditions, or discharge. In short, these victims were generally unsure when, if at all, they had the opportunity to participate in hearings and proceedings associated with their cases.

II

Challenges and Barriers

ALTHOUGH THERE HAVE BEEN considerable improvements in recent years, many victims still do not receive the notification, information, or opportunities for participation afforded to them under their state’s laws or constitutions. When individuals accused of crimes have mental illnesses, a variety of issues arise that make it particularly difficult for victims to gain access to information about their cases and to participate in the proceedings.

ROLES AND RESPONSIBILITIES

Officials from criminal justice and mental health systems in the states surveyed were uncertain whose responsibility it was to serve victims when crimes were committed by people with mental illnesses.

In recent years, advocates have successfully increased victims’ involvement in many aspects of the criminal justice system, resulting in a marked improvement in that system’s response. Nevertheless, officials in the criminal justice system, including victim advocates working within prosecutors’ offices and departments of correction, may not understand their continued responsibility to

the victims when an individual moves off the “traditional” criminal justice track and into the care of the state mental health forensic facility. In addition, the mental health system (which may view the victim as someone the individual needs to recognize as part of his or her recovery rather than someone to whom the system has any particular obligation) has not experienced the same direction to respond to the needs of their clients’ victims. Accordingly, state mental health officials are not currently positioned to assume responsibility for the victim if and when the criminal justice system considers its obligations to the victim complete.*

Protecting the rights of victims and ensuring delivery of services to them when the person who committed the crime has a mental illness require a coordinated response by both the criminal justice and state mental health systems. Yet no one is charged with ensuring that communications take place that will meet continuing obligations to the victim and take into account his or her needs. Perhaps most important, when the person who committed the crime is transferred to the state mental health system, no policy exists defining when responsibility for carrying out victims’ rights and serving victims generally falls to the mental health system or to the criminal justice system, even if the capacity exists to perform those duties in a jurisdiction.

Consequently, a jurisdiction’s state mental health forensic director, prosecutors, and victim advocates are usually unclear about who is responsible for enforcing victims’ rights or how responsibility should be shared among them. For example, after a formal request for victim notification is submitted, the prosecutor may be tasked with ensuring that this right is enforced, but only while the defendant is under the jurisdiction of the criminal court. For proceedings occurring outside of criminal court, including parole board hearings (if the state has a parole board) or disposition hearings in NGRI cases, there may be an inconsistent understanding as to not only whether the victim should be notified but also whether it remains the prosecutor’s responsibility or falls to another party to provide this notification.

* For example, a mental health clinician may rely on a family member who is also a victim to provide valuable insight into an offender’s past treatment and behavior, information which could assist with the individual’s recovery.

LEGAL RIGHTS

Prosecutors, victim advocates, and mental health system officials in the states surveyed were generally unclear about the legal rights of victims of crimes committed by people with mental illnesses.

In most of the states surveyed, there is no statutory language specific to victims of crimes committed by individuals with mental illnesses.¹⁰ Even where such language exists, it may be difficult for mental health and criminal justice officials to find because it is often not located with other victims' rights in the state's victims' bill of rights, but rather may be found in the criminal procedure code.

In the absence of specific, ascertainable legal guidelines, policy-makers, leaders of the criminal justice and state mental health systems, and victim and mental health service providers in the states surveyed defer to victims' rights laws to guide practices. Because such statutes were not written to address the specific needs of this victim population, these laws may be not always be used effectively. For example, in one state surveyed, the state mental health forensic director and victim advocate agreed that a victim has the right to be informed of the defendant's transfer to and from the mental health facility, but the prosecutor was unsure about whether a victim should legally be provided this information. Thus, although the victim advocate and the state mental health forensic director expected such information to be conveyed through the prosecutor's office, the news may never have reached the victim.

CONFIDENTIALITY

In the states surveyed, representatives of the criminal justice and mental health system frequently perceived that laws and regulations restricting information sharing about individuals' mental illnesses precluded them from enforcing certain victims' rights.

Notwithstanding the potential confusion over who is (or should be) responsible for ensuring that this subset of crime victims' rights are enforced, state mental health forensic directors, prosecutors, and

victim advocates in states surveyed contended that certain rights are trumped by an individual's right to confidentiality. In some states, mental health forensic directors said a victim could be notified that an individual had been moved to a mental health hospital only with his or her consent to release that information; moreover, respondents indicated that no agency policy required them to seek such consent.

In addition, some survey respondents expressed concern about allowing victims to participate in competency hearings and other proceedings at which mental health treatment plans or discharge from a forensic facility might be discussed, as such events could involve discussion of confidential information. For example, some respondents stated that because of an individual's confidentiality privilege, the court *could not* notify a victim or allow a victim to participate in such proceedings. These issues, however, rarely occur in criminal cases in which the defendant does not have a mental illness. As a result, victims of crimes committed by people with mental illnesses appear to have greater difficulty accessing the legal rights granted to all other crime victims.

III

Action Items for Consideration

THIS SECTION SUGGESTS ACTION ITEMS for addressing obstacles described in the preceding section. Because many of the steps and strategies outlined here address multiple challenges and barriers, this section is not organized into the same three categories (roles and responsibilities, legal rights, and confidentiality). Rather, these challenges and barriers are referenced throughout the various action items.

Action items were developed based upon reviews of policies and practices from across the country and conversations with leaders in the field, victims, and victim advocates. As such, these items are not evidence-based practices, but rather approaches that stakeholders in some communities have found promising. Similarly, as with any list of possible approaches, stakeholder organizations will need to tailor action items to the unique needs and structure of their jurisdiction's criminal justice and mental health systems.

PARTNERSHIPS

Improve collaboration between the criminal justice and mental health systems to serve victims of crimes committed by people transferred between the two systems.

The following steps may serve to improve collaboration between the criminal justice and mental health systems and better clarify the

roles and responsibilities of criminal justice and mental health staff in responding to victims:

- Designate “point persons”—one in the prosecutor’s office, one in the state mental health forensic facility, and one in the department of corrections—who are responsible for obtaining relevant case and custody status information and sharing it as appropriate. The point persons should be well-versed in complying with both federal and state confidentiality laws and regulations. They should be in regular contact with each other and with local victim service providers.
- Provide guidance to state and local mental health agencies, prosecutors’ offices, and victim service providers concerning how information about the status of individuals with mental illnesses and their victims can best be collected, managed, and shared between the criminal justice and mental health systems.
- Encourage staff from prosecutors’ offices and state mental health agencies to take steps to promote continuity of care for the individual upon his or her release from a state mental health forensic facility (with an emphasis on services or treatments that will reduce future criminal behavior) and inform any victims involved in the case about such efforts.
- Recommend that mental health staff refer victims to a state- or jurisdiction-wide automated victim notification system, a victim advocate, or a designated prosecutor when victims call for information.

CROSS-TRAINING AND TECHNICAL ASSISTANCE

Educate mental health and criminal justice system officials about issues unique to this subset of victims.

To increase awareness among criminal justice and state mental health officials about the challenges unique to protecting the rights of victims of crime committed by individuals with mental illnesses, leaders of the criminal justice and mental health systems, and policy-makers generally, should consider the following actions:

- Develop and disseminate tools and other educational materials to state mental health forensic directors, prosecutors, and victim advocates to ensure they understand how each system works.
 - A catalog describing victims’ rights laws and how to enforce these laws in cases involving victims of crime committed by individuals with mental illnesses. The catalog would detail information to which victims are entitled, which includes a list of events that should trigger some notification to the victim.
 - An explanation about why all victim contact information can and should remain confidential if the particular victim so chooses, along with guidelines for protecting that confidentiality.
 - An outline of the circumstances under which an individual might be released from either the criminal justice or mental health system.
 - Glossaries for state mental health forensic directors and prosecutors that define terms frequently used in one system but likely uncommon to the other.
- Develop training materials for court-, corrections-, and community-based victim advocates addressing the needs of victims of crime committed by individuals with mental illnesses, especially when the following circumstances arise:
 - The victim is a family member.
 - The person who committed the crime is diverted from the criminal justice system to the mental health system.
 - The person who committed the crime is found NGRI, guilty but mentally ill, not competent to stand trial, or similarly worded disposition.
- Train state mental health forensic directors about the core elements of appropriate responses to victims of crime committed by individuals in their care.
- Seek assistance in designing a quality assurance system that enables state mental health officials to assess and track compliance with both state victims’ rights laws—including laws that are specific to crimes committed by individuals with mental

illnesses—and privacy regulations that govern the confidentiality of health information.

- Include provisions in state mental health forensic policy and procedure manuals explaining how to seek an individual's voluntary consent to release information to his or her victim and when it is appropriate to seek such consent.
- Ensure that state bar associations, or other sources of continuing legal education, provide training opportunities for members on how to enforce victims' rights in cases involving crimes committed by individuals with mental illnesses. Such trainings should also include information on maintaining communication with the mental health authority about the individual's case when he or she is transferred to the state mental health authority's care.
- Suggest that the state mental health authority, or other source of continuing medical education, initiate trainings for staff members on victims' rights and how HIPAA and other confidentiality restrictions do and do not limit these rights, such as the right to notification.
- Provide technical assistance to mental health, corrections, and victim assistance agencies about the information state or local automated victim notification systems should be required to collect, and who should be responsible for keeping this information current. This guidance should assist states in developing state-of-the-art systems for notifying crime victims of important dates and developments that are not protected by confidentiality restrictions, including the following:
 - Notice from departments of corrections of the escape, furlough, early release, conditional release, modification of conditional release, petition for discharge, transfer, or authorized absence of an individual found guilty but mentally ill
 - Notice from the mental health treatment facility of escape, furlough, early release, conditional release, modification of conditional release, petition for discharge, transfer from facilities, or authorized absence of an individual found NGRI
 - Notice from prosecutors about any hearings of which they are aware, including competency hearings, NGRI dispositions, NGRI plea hearings, or other proceedings

- Support court-, corrections-, and community-based victim advocates interested in reviewing and revising their policies, procedures, and service delivery systems as they relate to victims of crimes committed by individuals with mental illnesses.
- Educate prosecutors' offices about how they can quickly, effectively, and efficiently communicate relevant case information to the victim or his or her representative.
- Disseminate information about promising practices, model legislation, and innovative programs developed and implemented in different jurisdictions that address the needs of these victims to criminal justice and mental health administrators.

VICTIM OUTREACH AND SERVICES

Inform victims of crimes committed by people with mental illnesses about their rights when the person who committed the crime is transferred to the custody of the mental health system and explain to these victims how the criminal justice and mental health systems interface during case proceedings.

When the criminal justice system does not have clear jurisdiction over a case because the defendant is not competent to stand trial, has been found NGRI, or is not incarcerated in a corrections-operated facility, the victim may not be aware that he or she still has rights. Even if such victims do know their rights, they may not know how to advocate for their enforcement. Implementing the following steps will increase the likelihood that victims understand and receive the benefits of their rights:

- Develop materials for victims involved in cases in which the person who committed the crime has a mental illness, which explain the following:
 - Information victims are entitled to know about their cases
 - An explanation that all victims' contact information can remain confidential if they so choose
 - Highlights of what victims can expect during court proceedings, what participation involves, and reasons why they may want to participate

- Descriptions of how victims can ensure continued notification, even after an individual has been transferred out of the criminal justice system to the mental health system
 - An outline of the circumstances under which individuals might be released from either correctional or mental health facilities
 - Glossaries defining terms frequently used by the criminal justice and/or mental health systems when the person has a mental illness*
- Provide information to victims through the prosecutors’ office, department of corrections, or community corrections about laws indicating how long a person can be held, conditions of release, and whether there is someone who is responsible for ensuring that people in the custody of the mental health authority for restoration to competency or NGRI purposes take their medication and receive treatment upon their release. Prosecutors might also provide answers to basic legal questions such as the difference between a defendant who has been found NGRI and one who has been found not competent to stand trial.
 - Notify victims, if they so choose, through automated systems (such as the VINE system), victim advocates, or other means, about nonprivileged and nonconfidential information pertaining to individuals in the custody of state mental health authorities. Such information could include notice of competency hearings, transfer of an individual from a jail or prison to a mental health facility, or other proceedings. In developing these procedures, jurisdictions should be aware of and in compliance with federal, state, and local privacy restrictions (including HIPAA provisions).
 - Require mental health agency staff to notify victim advocates, administrators of automated systems, or victims directly about an individual’s release from a forensic mental health facility at least 30 days prior to that event.

* Glossaries and all printed materials should be posted wherever information for victims is generally accessible, including police stations, prisons, community mental health centers, and courts. These materials should be available both in print and on the Web. Any written information should be available in multiple languages and should be culturally competent.

Missouri's Victims' Bill of Rights

THE MISSOURI VICTIMS' BILL OF RIGHTS contains several provisions specific to victims of crime committed by individuals who are found not guilty by reason of mental illness. Victims are granted the right to confer with and be informed by the prosecutor regarding pleas of "not guilty by reason of mental disease or defect."

In addition, victims have the right to be informed by the custodial mental health facility of any release-related court hearings for an individual committed as not guilty by reason of mental disease or defect; such court hearings could relate to temporary, unescorted visits to the community or longer-term releases. Victims have the right to be present and heard at such hearings or to offer a written statement or video/audio recording in lieu of a personal appearance. Victims also have a right to be notified of the individual's escape from a mental health facility within 24 hours.

According to Missouri statute, section 595.209, victim notification is mandatory when certain types of dangerous felonies have been committed. In such cases, state mental health staff provide automatic notice to victims. In cases involving other types of crimes, state mental health staff will notify victims after receiving a written request for notification. Information regarding victim contact information is obtained from police reports, prosecutors' offices, or victim advocate offices or directly from victim requests.

Custodial mental health staff provide notification by sending a letter with information on conditional release court hearings to victims and requesting updated victim contact information when that is needed to provide continued notification.

Provide tailored services and supports to victims of crime committed by individuals with mental illnesses.

Victims of crimes committed by individuals with mental illnesses require special services and supports tailored to their specific needs as they navigate the criminal justice and mental health systems. These are some suggested improvements to service models, staffing patterns, and administrative supports:

- Hire case managers who are dedicated to working with these victims and are able to address the service needs unique to this population. These case managers should have a clear understanding of the mental health and criminal justice systems, as well as how cases involving individuals with mental illnesses and their victims may be processed differently than other criminal cases. In addition, specialized case managers should be qualified to explain to victims what information they can or cannot have access to, given confidentiality requirements.
- Require that safety plans be tailored to the particular circumstances of victims of crime committed by individuals with mental illnesses. For example, safety plans should account for the possibility that individuals undergoing competency evaluations or found NGRI or similarly worded disposition may be granted some form of conditional release or discharge from a state mental health forensic facility.
- Develop specialized peer support groups and incorporate them into victim service programs, so that victims involved in cases that never go to trial because of competency issues can share experiences with (and offer support to) each other.

VICTIM PARTICIPATION

Give victims meaningful opportunities to participate in the case proceedings of individuals with mental illnesses who are or may be transferred to the custody of the mental health system.

Prosecutors, victim advocates, and state mental health forensic directors should recognize that the victim may have valuable information

about the crime, and should consider the possibility that participation in particular proceedings may be part of the victim's recovery process. To these ends, criminal justice and mental health policy-makers can take a number of steps to actively engage victims in case proceedings:

- Provide victims with the opportunity to inform decisions made throughout the case—from adjudication to discharge—when confidentiality or other laws do not preclude such involvement. Examples of proceedings in which victims could be allowed to participate include the following:
 - Pretrial hearings or meetings with prosecutors, public defenders, victim advocates, or judges
 - Post-NGRI hearings
 - Parole board hearings (if the state has a parole board)
- Inform victims about the limits to their participation and why, in some cases, their participation may be restricted to attendance at selected proceedings.
- Invite victims to participate in proceedings and decisions via written victim impact statements, as well as in-person testimony, when legally permitted.
- Maintain records of the victim's role in various proceedings in the defendant's court file and in the mental health authority's case file so that the victim's input may be considered throughout the case, even when the victim cannot be located.

Conclusion

THE FINDINGS OF THE SURVEYS and focus group conducted by Justice Center staff and its project partners indicate that victims of crimes committed by individuals with mental illnesses are less likely to receive information, services, and protection than other crime victims. The relatively small number of cases in which an individual with a mental illness is ordered into the care of a state mental health forensic facility should not diminish the importance of this issue. The extent to which this subset of victims fall through the cracks of the criminal justice and mental health systems compromises not only the integrity of constitutional amendments and victim statutes but also partnerships between these systems.

Action items suggested in this issue brief are just some of the many ways to improve practical and systemic responses that protect the rights of and ensure delivery of services to victims of crimes committed by individuals with mental illnesses. By highlighting many of the key issues facing this underserved population, the guide offers a starting point from which more comprehensive and collaborative responses between the criminal justice and mental health systems can be developed.

Appendix A

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Appendix C

Methodology

THE COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER*

received a grant from the Office for Victims of Crime (OVC), Office of Justice Programs, U.S. Department of Justice, to help state and local government officials better serve victims of crimes committed by individuals with mental illnesses. This section describes the research and policy analysis that the Justice Center conducted between March 2004 and September 2005 to determine the challenges that these victims face, the legal context in which criminal justice and mental health officials seeking to serve these victims work, and the steps policymakers and practitioners could take to better address their needs.

LEGISLATIVE RESEARCH

The Justice Center partnered with the National Center for Victims of Crime (NCVC) to conduct broad reviews of “not guilty by reason of insanity” and “incompetent to stand trial” criminal procedure codes, to determine if they included language relevant to crime victims and their rights. Based on these reviews, Justice Center staff identified 10 states that varied considerably in the degree to which their victims’ rights authorities considered explicitly victims of crimes committed by individuals with mental illnesses. These states were also diverse geographically, and at least some of them had a mental health court in operation at the time of the survey.¹¹

The Justice Center then contracted with NCVC to address three questions with respect to each of these states: (1) which states have language in their victims’ bill of rights that pertains specifically to victims of crime committed by individuals with mental illnesses; (2) which states include such language in separate statutes; and

* Because the CSG Criminal Justice Program later evolved into the Justice Center, all references within this publication are to the Justice Center.

(3) which states have no laws that speak specifically to victims of individuals with mental illnesses?

SURVEYS OF PROSECUTORS, VICTIM ADVOCATES, AND STATE MENTAL HEALTH FORENSIC DIRECTORS

Justice Center staff administered three separate surveys to representatives from each of the following groups in the states selected from the legislative research: (1) prosecutors, (2) victim advocates (both community-based and criminal justice system-based), and (3) state mental health forensic directors.¹² Participants were identified through professional listservs, steering committee members, and state agency databases. A total of 60 individuals were contacted, and 24 (40 percent) responded to the surveys. Specifically, 11 victim advocates, seven prosecutors, and six state mental health forensic directors from the 10 states participated in the surveys. These individuals provided details about their policies, procedures, and state laws for responding to a person victimized by someone with a mental illness.¹³

FOCUS GROUP OF CRIME VICTIMS

Following the survey administration and analysis, project staff contacted victim advocates, steering committee members, and journalists to help identify potential focus group participants. The group that met in Washington, D.C., included victims who were family members, acquaintances, and strangers to the person who committed the crime. The Justice Center convened five individuals who had been victimized by someone with a mental illness. This focus group enabled project staff to complement the survey findings with the experiences of individual victims.

Notes

1. Paula M. Ditton, *Mental Health and Treatment of Inmates and Probationers* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, July 1999).
2. E. Fuller Torrey, “Reinventing Mental Health Care,” *City Journal* 9, no. 4 (Autumn 1999).
3. Ditton, *Mental Health and Treatment of Inmates and Probationers*.
4. Jeffrey S. Janofsky, Mitchell H. Dunn, Erik J. Roskes, Jonathan K. Briskin, and Maj-Stina Rudolph Lunstrum, “Insanity Defense Pleas in Baltimore City: An Analysis of Outcome,” *American Journal of Psychiatry* 153, no. 11 (1996): 1464–68.
5. Missouri forensic mental health data, as reported by the state mental health forensic director, Richard Gowdy, in a personal communication with Hope Glassberg, November 2007.
6. State mental health forensic directors were not asked whether they received special training relating to this population of crime victims.
7. Even if a victim has not specifically requested notification, however, most states require a mental health provider to warn the victim when the person in the provider’s care presents a serious threat of violence to the victim. See *Tarasoff v. Regents of University of California*, 551 P.2d 334 (Ca. 1976).
8. Codified at *U.S. Code* 42 (1996) § 1320d. This federal statute is intended to provide portability of employer-sponsored insurance from one job to another in order to prevent employee’s inability to change jobs for fear of losing health insurance. Among its provisions is a requirement that the federal government develop privacy standards and protections related to individually identifiable health care information.

9. Some laws state that victims are allowed to participate in all “open court” or “public” hearings, but whether certain hearings, such as competency hearings, are considered public remains unclear to many victims, prosecutors, and state mental health forensic directors.

10. As the first stage in research for this guide, the CSG Justice Center worked with the National Center for Victims of Crime to examine whether and to what extent a select number of states include rights specific to victims of crime committed by individuals with mental illnesses among other legal protections for crime victims. For more information on the methodology underlying this report, please refer to appendix C.

11. The project team selected states where there were mental health courts or other diversion programs designed for individuals with mental illnesses to highlight whether jurisdictions with specialty programs respond to victims’ needs differently. The CSG Justice Center coordinates the delivery of technical assistance to grantees of the Mental Health Courts Grant Program, which is administered by the Bureau of Justice Assistance (BJA). Like OVC, BJA is a division of the U.S. Department of Justice’s Office of Justice Programs.

12. Of the state mental health forensic directors surveyed, three were psychiatrists, one was a clinical psychologist, one had a doctorate in clinical social work, and one was a lawyer.

13. Project staff first contacted survey participants via fax and mailed letters. The team then followed up with the participants by phone to schedule times for phone interviews. Most of the individuals who did not participate in the surveys were those who did not respond to the letters or phone calls; few individuals who were successfully contacted by phone refused to participate.

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