



# PRINCIPLES OF JAIL DIVERSION FOR CLINICIANS

- NorthCare Network Training FY21

# TRAINING OBJECTIVES

1. Clinicians will understand the CMHSP's legal responsibilities for providing jail diversion screening.
2. Clinicians will understand the two jail diversion options: pre-booking or post-booking.
3. Clinicians will know when to use the Emergency Screening, the Jail Diversion Screening and the Jail Diversion Contact Note to document jail diversion efforts.

# STATEMENT OF PURPOSE

There is a general consensus that the needs of the community and society at large are better served if persons with serious mental illness, serious emotional disturbance or developmental disability who commit crimes are provided effective and humane treatment in the mental health system rather than be incarcerated by the criminal justice system.



## Michigan Mental Health Code (MMHC) Section 330.1207 Diversion from jail incarceration states:

Sec.207.

Each community mental health service program shall provide services designed to divert persons with serious mental illness, serious emotional disturbance, or developmental disability from possible jail incarceration when appropriate. These services shall be consistent with policy established by the department.

# PRACTICE GUIDELINE

Jail diversion programs are used to prevent or shorten the incarceration of individuals with serious mental illness, developmental disability, or co-occurring disorders who come into contact with the criminal justice system ***when their disability has either contributed to the alleged offense and/or if incarceration would seriously exacerbate their disability.***

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## PRACTICE GUIDELINE CONTINUED

- Jail diversion programs are intended for individuals alleged to have committed misdemeanors or certain, usually non-violent, felonies who **voluntarily** agree to participate in the diversion program.
- Note--while mental health in-jail services may be an important part of an inmate's care, they do not constitute a jail diversion program

# WHEN DOES JAIL DIVERSION OCCUR?

- The decision to use mental health services in lieu of incarceration can be reached at any time deemed appropriate by law enforcement officers: before the individual is taken into custody, after they have been taken into custody or arrested, before or after booking, before or after arraignment, and as a condition of bond or probation. Jail diversion may be initiated after an inmate is incarcerated.
- Two types of jail diversion:
  - **Pre-booking**
  - **Post-booking**

# PRE-BOOKING PROCESS

- Occurs at the point of the individual's contact with law enforcement officers before formal charges are brought. The officers seek CMHSP assistance to assess individual's mental status and needs.
- Relies heavily on effective interactions between law enforcement officers and community mental health and substance abuse treatment providers.
- A more informal process than post-booking, it generally occurs during the provision of emergency services.



## PRE-BOOKING CONTINUED

Pre-booking diversion generally occurs during the delivery of emergency services, but may occur during routine office hours. Individuals who accept pre-booking diversion become voluntary consumers of mental health services, and no follow-up is required between CMHSP and law enforcement.

## PRE-BOOKING CONTINUED

- Individual may or may not be hospitalized for psychiatric treatment.
- Individual is linked to an appropriate array of community-based mental health and social services.
- ***Intent must be diversion from further legal action.***

# PRE-BOOKING SCENARIO

- Officer determines need for mental health assessment/intervention with intent of diverting from arrest.
- Officer transports individual to the hospital or CMHSP for evaluation.
- Evaluation is completed by CMHSP clinician and the individual voluntarily accepts recommendations made for hospital or outpatient services.
- No further follow-up with law enforcement is required.

# DOCUMENTING PRE-BOOKING JAIL DIVERSIONS IN ELMER

- Pre-booking jail diversions are best recorded on the Emergency Screening form as a crisis support contact or a pre-admission screening for hospitalization.
- Use the Presenting Problems narrative box to clearly identify the **minor or serious offense that would have likely resulted in arrest, or how the consumer was removed from a situation that could potentially lead to arrest.**
- Verify with law enforcement that the consumer will not be arrested or booked if diverted.

# DOCUMENTING CONTINUED

1. Document the **Corrections Related Status** as **Diverted from arrest or booking** under the **Legal Issues** Tab of the Preadmission Screening. *Note --if individual is also on probation – chose the diversion radio button rather than the probation radio button.*
2. Document under the **Legal Issues** Tab as **Jail Diversion - Pre-Booking**
3. Document under the **Disposition** tab in the **Clinical Rationale for Disposition/Recommendations** the need for Jail Diversion, Substance Abuse Services, Housing Supports, Primary Medical Supports, Financial Supports, etc.

# PRE-BOOKING SUMMARY

**Eligibility** : Adult with Serious Mental Illness,  
Developmental Disabilities, or Co-occurring Disorders

**Type of Offense**: Misdemeanor or non-violent felony

**Law enforcement will not pursue legal charges** and  
individual will not go to jail if voluntarily accepting  
treatment.

## SUMMARY CONTINUED

### **Voluntary:**

Involuntary hospitalizations are not jail diversions. However, if following the involuntary hospitalization, the consumer defers/stipulates or signs the formal voluntary agreement and does not go to jail that would be counted as a successful pre-booking jail diversion.

### **Reminder:**

Notify your supervisor if you have documented a jail diversion or if you have any questions about the disposition.

# POST-BOOKING

## The Basics

- Occurs after the individual has been booked and is in jail, out on bond, or in court for arraignment.
- Clinicians work with the individual and stakeholders such as prosecutors, attorneys, community corrections, parole and probation officers, community-based mental health and substance abuse providers and the courts to develop and implement a diversion plan that can be implemented in the community.



## POST-BOOKING CONTINUED

- Post-booking diversion occurs following a request from law enforcement or the individual or family member. If initiated by the individual or the family through the CMHSP, the CMHSP must coordinate with law enforcement to conduct the jail diversion screening process.
- The CMHSP will offer a jail diversion screening within 24 to 48 hours of law enforcement or jail personnel referral, or will conduct an emergency assessment if the situation warrants.

## POST-BOOKING CONTINUED

The referring agency will be informed if the individual meets both the need and eligibility requirements for jail diversion and CMHSP services. If diversion is ordered by the criminal justice system, the CMHSP will comply with monitoring of the diversion plan as determined by the Court.

# POST-BOOKING SCENARIO

- Individual, Jail, Court, Probation identifies need for mental health screening with intent to possibly divert from jail.
- Law enforcement requests CMHSP complete a screening for jail diversion.
- Evaluation is completed by a CMHSP clinician to determine:
  - Appropriateness for jail diversion services, and;
  - Eligibility for CMHSP services.
- MHSP provides court with a summary of the screening and recommendations.
- Court makes final determination on diversion.

# DOCUMENTING POST-BOOKING JAIL DIVERSION IN ELMER

- Follow the ELMER **Clinical Directive for Jail Diversion** under the **HELP Menu** for specific details.
- **For an inmate who is not a current consumer**, the Jail Diversion Screening form is used to document the face to face screening done at the jail. It is located in the ES menu.
- The Clinician must complete the Jail Diversion Contact note to inform law enforcement of the outcome of the screening and request law enforcement return the Contact Note completed with their decision whether to divert or not.

## DOCUMENTING CONTINUED

**For an open consumer,** the primary clinician will be responsible for responding to the request for diversion and will complete the Jail Diversion Contact note without needing to complete the Jail diversion screening form.

# POST-BOOKING AND INPATIENT CARE

- The situation may arise where you may be completing an **Emergency Screening** for hospitalization to initially document a post-booking jail diversion. Select the appropriate Demographic and Legal Issues to identify the disposition as a post-booking jail diversion.
- Whether the individual is a new consumer or an open consumer, a Jail Diversion Contact Note needs to be completed after the Emergency Screen to document the involvement of the legal system.

# DOCUMENTING CONTINUED

- You must secure an Universal Consent to communicate with law enforcement/court. Jail Diversion is a strictly voluntary process and the inmate must consent for information to be released between the two agencies.
- Jail Diversion Contact Note--Clinical Summary/Narrative Box will outline the information gathered to support the disposition you are proposing. The summary contains specific information supporting the diversion (or lack of support) based on the clinical and legal information as well as any other factors that contribute to your recommendation.

## DOCUMENTING CONTINUED

- Eligibility for services is determined by NorthCare Access. You must notify and obtain a decision from NorthCare Access before the final recommendation is offered to law enforcement.
- For all individuals considered for jail diversion, a Contact Note is completed identifying eligibility, a summary of the case, and your recommendation as to the request for jail diversion.



## DOCUMENTING CONTINUED

- ELMER will generate a letter (Print Jail Notice) from the Contact Note to provide notice to law enforcement/court contact person who made the referral regarding the screening results
- The Contact Note is not complete until the clinician enters the information provided by the court as to whether or not diversion was ordered and the terms of the diversion.

# DOCUMENTING CONTINUED

- The conditions of diversion provided by the court will guide the CMHSP's role in reporting to law enforcement.
- In ELMER, there is an attachment function for the Jail Diversion Contact note so the document(s) from law enforcement can be scanned and attached directly to the note.
- Dispositions are considered jail diversions if they meet the following:
  - voluntary AND
  - court sanctioned AND
  - CMHSP providing services OR providers outside the CMHSP system IF the CMHSP referred the individual there

# POST-BOOKING SUMMARY

- More formal process than pre-booking
- Requested by legal system. *Note: family member or inmate may request but legal system must be part of the formal process.*
- Intent must be to divert from incarceration or further incarceration rather than provide jail services or temporary psychiatric hospitalization with a return to jail
- Individual must voluntarily consent to services
- Individual must meet NorthCare Access eligibility criteria for services

## THINGS TO REMEMBER:

**Eligibility:** Adult with Serious Mental Illness,  
Developmental Disabilities, or Co-occurring Disorders

**Type of Offense:** Misdemeanor or non-violent felony

**Law enforcement will not pursue legal charges** and  
individual will not go to jail (or remain in jail) if accepting  
treatment

**Voluntary:** Involuntary Hospitalizations are not Jail  
Diversions; the individual must meet NorthCare Access  
eligibility criteria to receive CMHSP services