Criminal Justice
Advocating for an Adult with a Mental Illness

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NAMI Minnesota champions justice, dignity, and respect for all people affected by mental illnesses. Through education, support, and advocacy we strive to eliminate the pervasive stigma of mental illnesses, effect positive changes in the mental health system, and increase the public and professional understanding of mental illnesses.
INTRODUCTION

This booklet is for anyone trying to advocate for a person with a mental illness who has been arrested or is otherwise involved in the Lane County criminal justice system. It contains basic information about the criminal justice process from the response to an incident all the way to release from prison. This booklet does not contain legal advice.

Too many people with mental illnesses become entangled with the criminal justice system due to lack or failure of treatment. NAMI works to ensure that community mental health services and supports are available so that people can live successfully in the community and so that contact with law enforcement and the criminal justice system does not occur. At the same time, it works to ensure that if people with mental illnesses do end up in the criminal justice system, they are diverted whenever possible from jails into treatment, that they have access to medications and treatment while incarcerated and that there is discharge planning to prevent recidivism.

Psychiatric symptoms, such as delusions and hallucinations, are often the reason a person with a mental illness encounters the criminal justice system. Sometimes it involves self-medicating through the use of alcohol or illegal drugs. When a crisis occurs, a law enforcement officer often responds, which leads to a criminal justice response (arrest, filing charges) rather than a mental health response (referral to crisis services, outreach or hospitalization).

Unfortunately, people with mental illnesses are overrepresented in correctional facilities. Across the country, an estimated 56% of people in state prisons and 64% of people in jails live with a mental illness (Bureau of Justice Statistics, 2006).

Advocating for your loved one with law enforcement officers and courts can be very difficult, stressful and intimidating—but it can also make a difference. As a family member, friend, peer advocate or community mental health worker, you should know that sharing information about the individual can be helpful. Key decision-makers—law enforcement officers, judges, prosecutors, defense attorneys and jail staff—will make important decisions about this person using the information that is available.

Advocating alone is not a good idea. Don’t hesitate to reach out to leaders in your faith community or groups you belong to and ask them to accompany you to the jail, court and so forth. Having someone with you in stressful situations, such as talking to law enforcement officers
or jail staff, can be a huge help. Not only is there another person to re-
member what was said, but it demonstrates that more than one person is
concerned about the plight of the individual with a mental illness. The
criminal justice system contains a lot of discretion, starting with the law
enforcement officers, then the prosecutor and finally the judge. Your
advocacy is important because it may result in improving the person’s
situation.

FLOW CHART OF EVENTS

- Crime or Incident
  - Response
  - Arrest
  - Charges Filed
  - Attorney Appointed
  - Plea Agreement or Trial
    - Sentencing
    - Incarceration
    - Release

At every stage in this chain of events (simplified in this illustration), the
chance exists that the person could be released or diverted out of the
criminal justice system into the mental health system. The next sections
will explain in more detail each stage in this chain of events.

MENTAL HEALTH CRISIS

For more in-depth guidance on, refer to NAMI’s booklet, *Mental Health
Crisis Planning: Learn to Recognize, manage, prevent and plan for your
loved one’s mental health crisis.*

When a mental health or behavioral emergency occurs, family mem-
bers or friends often don’t know what to do. If you are worried that the
person with a mental illness is in or nearing a crisis, you can seek help
in a number of ways. Before choosing which option to pursue, as-
Assess the situation. Consider whether the person is in danger of hurting themselves, others or property. Consider whether you need emergency assistance, guidance or support.

If you do not believe the person is in immediate danger, call a psychiatrist, clinic nurse, therapist, case manager or family physician who is familiar with the person’s history. This professional can help assess the situation and advise on further action. The professional may be able to obtain an appointment or may be able to admit the person to the hospital. If you cannot reach someone and the situation is worsening, do not continue to wait for a return call. Take another action, such as calling a county mental health crisis team or 911.

If you think the person with a mental illness needs emergency medical or psychiatric attention, drive them to the nearest emergency room—but only if you can do so safely. **If safety is a concern, call 911.**

If you want advice, support and someone to assess the situation, contact your county’s mental health crisis team. The teams differ greatly across the state, so it’s helpful to know in advance what type of crisis services they offer. Many teams are mobile and will come to a person’s home.

If they do come out, they can assess the person, offer options, and negotiate with the individual. They can also provide continued assistance for several days if needed. Even if the team doesn’t come out to the person’s home, they can provide advice and support.

Some of the teams are not heavily staffed, so they may refer you to law enforcement or another agency. If the situation changes, don’t be afraid to call the crisis team back. Although they could not come out the first time you called, they may be free later.

If the situation is life-threatening or if serious property damage is occurring, call 911 and ask for law enforcement assistance. When you call 911, tell them your loved one is experiencing a mental health crisis and explain the nature of the emergency. Telling the law enforcement agency that it is a crisis involving a person with a mental illness increases the chance that they will send an officer trained to work with people with mental illnesses. Be sure to tell them—if you know for certain—whether the person has access to guns, knives or other weapons.
When providing information about a person in a mental health crisis, always be very specific about the behaviors you are observing. Instead of saying “My son is behaving strangely,” for example, you might say, “My son hasn’t slept in three days, he hasn’t eaten anything substantive in over five days, and he believes that the FBI is transmitting messages through his fillings.” Report any active psychotic behavior, huge changes in behaviors (such as not leaving the house, not taking showers), threats to other people and increase in manic behaviors or agitation (pacing, irritability). You need to describe what is going on right now, not what happened a year ago. Finally, in a crisis situation, remember: when in doubt, go out. Do not put yourself in harm’s way.

**LAW ENFORCEMENT RESPONSE**

When the law enforcement officer arrives, provide them with as much relevant and concise information about the person as you can, including the individual’s:

- Diagnosis
- Medications
- Hospitalization history
- Previous history of violence or criminal charges

If the person has no history of violent acts, be sure to point this out. Lay out the facts efficiently and objectively, and the officer will decide the course of action.

Depending upon the law enforcement officer involved, they may take your loved one to jail instead of to a hospital emergency room. Law enforcement officers have broad discretion in deciding who to arrest, hospitalize or ignore. If you are at the scene, encourage the law enforcement officer to view the situation as a mental health crisis. Be clear about what you want to have happen without disrespecting the law enforcement officer’s authority. But remember, once 911 is called and law enforcement officers arrive on the scene, they determine if a possible crime has occurred and they have the power to arrest and take into custody a person that they suspect of committing a crime.

**THE ARREST**

Most arrests occur when a law enforcement officer has observed a crime or was told by a reliable person that a crime has just occurred. The behaviors of the individual with a mental illness could have been noticed by others in the community or the law enforcement officer directly. It is not always the family member who contacts law enforce-
ment. Again, it is important to remember that law enforcement officers have the power to arrest and take into custody a person they suspect of committing a crime.

It’s also important to know that once an officer arrests a person, the officer has the right to search them. If the officer discovers illegal possessions such as drugs or weapons, those charges will be added to the original ones.

Law enforcement officers may use what appear to you to be aggressive methods to make arrests. They are legally obligated not to use excessive force, but they are also trained to gain control over an arrestee very quickly if they believe that the arrestee has shown any sign of resistance. An arrest can be upsetting to observe. Officers are quick to react to any indication that people near the arrest might hinder or interfere with them. If you are concerned about the way that a person is being arrested, the best thing you can do is to step back and do nothing other than very calmly advise the person to go quietly with the officer. Even this behavior on your part may prompt a negative response from an officer.

Although officers must give you names and badge numbers if you request them, this is often an unwise thing to do in the heat of an arrest. Some officers will treat this question as interference with their work, which is a crime, and may arrest the questioner. You can easily get the identity of the law enforcement officer from the reports the officer must file after the arrest.

It is never wise to resist in any way officers who have decided to arrest your loved one. Any issues that arise during the arrest can be addressed by you, your loved one or their lawyer at a later and more appropriate time and place. You can be most helpful to your loved one by remaining calm and advising them to be calm as well. When the situation is under control, most officers are willing to hear about special needs of the person being arrested.

If your loved one is arrested, they may be referred to as an arrestee (a person who has been arrested), the accused or a suspect. These terms mean that the person is suspected of committing a crime and may face charges.

Once a person is arrested, the law enforcement officers will usually take them first to the local police station of the town or city where the arrest occurred. If the town or city is not large enough to have its own police department, the arrestee will be taken to the investigative department of the sheriff in the county in which they were arrested. If the arrest has been for a serious offense, the person will often spend time at the station being questioned. Fairly soon after most arrests, however, the
person will be transferred to the local county jail, which is under the control of the county sheriff and the sheriff’s deputies.

After a person has been arrested, the officers may decide to issue a citation and release the person. A citation briefly describes the charge and tells the person where and when to go to court to answer it. Law enforcement officers tend to give citations for minor offenses committed by persons who have a place to stay, adequate identification and present no indication that they will continue to offend if released. People who receive citations must obey them or face a warrant being issued for their arrest. Offer to take as much responsibility as you feel comfortable accepting. If you can promise the person will appear in court, the law enforcement officer may be willing to release them.

Issuing a citation, or what is sometimes referred to as an appearance ticket, rather than keeping the person in custody is generally within the law enforcement officer’s discretion. The decision is based on whether the law enforcement officer believes the person will show up for court and will remain law-abiding. If the law enforcement officer releases the person with an appearance ticket, do everything to ensure that the person appears in court on the specified date. If they do not appear on that date, a bench warrant will be issued and a law enforcement officer will re-arrest them.

If you have a complaint about the behavior of an arresting officer because he acted inappropriately or used excessive force with your loved one, it is best to discuss this with your loved one’s defense attorney before taking any action. The circumstances of the arrest might affect the outcome of the case. Write down what happened during the arrest as soon as possible.

Not all arrests take place when law enforcement officers have observed a crime or were told that a crime has just occurred. Arrests can also occur at the end of an investigation of some event that occurred days or even weeks earlier. Arrests can also occur if a suspect has failed to make a court appearance in response to another charge and a judge has issued a bench warrant for the suspect.

Sometimes, particularly when a warrant has been issued for a suspect, arrangements may be made with an arresting agency to turn the suspect in to the authorities, rather than wait for an arrest to occur. Ordinarily, the county sheriff’s office handles such arrangements. Advance notice to the sheriff’s office that the suspect has a mental illness may lead to authorities responding more appropriately to the suspect at the time of the surrender. On occasion, particularly for a minor offense, the sheriff’s office might advise that the suspect may surrender to the authorities early in the morning, before court convenes, in order to get the accused in front of a judge as soon as possible. This might result in a shortened detention for the individual, since he or she will have shown by surrendering to the authorities that he or she is a good risk for release pending the resolution of the criminal charges.
THE JAIL

If you are present when the person is arrested, the law enforcement officers can tell you where they are taking the person. But if all you know is that the person was or may have been arrested, finding them can be difficult, unless the individual calls you. For this reason, it is a good idea for your loved one to carry phone numbers of their case managers, family members and advocates at all times. There are several jails located in Lane County. Municipal jails are smaller facilities reserved for defendants in municipal court. Defendants facing charges in Lane County Circuit Court will be housed in the Lane County Jail, even if there is a municipal jail located closer to where the offense took place. Each jail has its own rules regarding visitation and phone calls.

Lane County Jail posts the current jail roster online. The roster is updated frequently and shows the inmate’s name, date of arrest, charging agency, and current charges. The roster can be found at inmateinformation.laneCounty.org

<table>
<thead>
<tr>
<th>Jail</th>
<th>Address</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lane County Jail</td>
<td>101 W 5th Ave Eugene OR 97402</td>
<td>541-682-4263</td>
</tr>
<tr>
<td>Florence Municipal Jail</td>
<td>900 Greenwood St. Florence OR 97439</td>
<td>541 997 3515</td>
</tr>
<tr>
<td>Springfield Municipal Jail</td>
<td>344 A St. Springfield OR 97477</td>
<td>541 744 4177</td>
</tr>
<tr>
<td>Cottage Grove Municipal Jail</td>
<td>400 E Main St. Cottage Grove OR 97424</td>
<td>541 942 3346</td>
</tr>
</tbody>
</table>

Once the person is taken to the jail, they will be searched again and often ‘booked.’ This process, which involves fingerprinting, photographing and running a criminal history, can be time-consuming, depending on how busy the jail is. Often, a person who is waiting to be booked has to wait for a considerable time in uncomfortable, sparse conditions. Persons who appear to have mental health symptoms might await their booking in segregation. People who have been arrested have the right to make a phone call only after the booking is complete.

Phone calls from the jail can be very expensive. For example, in order to make calls from the Lane County Jail, an inmate must have money on their phone account. Funds can be added to an inmate's phone account by using a credit card at www.gettingout.com.
Release

Release decisions in Lane County Circuit Court are initially made by the Pretrial Services Office. After booking into the Lane County Jail, a pre-trial release officer will do an interview with the inmate to determine whether he should be held in jail or released. The pretrial officer considers many factors when deciding whether to release an inmate. These factors include: the nature of the alleged offense, the inmate’s prior criminal history, whether the inmate has a local place to stay if released, and whether the inmate has a prior history of making court appearances.

Once the pretrial release officer has completed the interview, the inmate will be given release options. All inmates will have a bail amount set. The inmate must post 10% of the bail amount to be released. If the inmate does not appear for a future court appearance, the entire amount of the bail can be forfeit. Fees and other costs may be taken out of the bail amount at the end of the case. Family or friends of an inmate may call the pre-trial release office to inquire about release conditions.

Other release options may include a third-party release in which another person takes responsibility for the inmate and promises to help them get to their court appearances. Some inmates may be made eligible for electronic monitoring (an “ankle bracelet”) that tracks movements and monitors for alcohol use. Some inmates may be released on a release agreement with special conditions, such as staying away from alleged victims or checking in with the pretrial office daily.

Individuals in crisis who cannot participate in the interview may be held until they are able to speak to the officer. Individuals charged only with minor crimes are not likely to be held in custody. Any inmate facing a charge alleged as domestic violence is very unlikely to be released without posting bail.

A judge can review the release determination of the pretrial office. Your loved one’s lawyer can file a motion to have the decision reviewed and to argue for other conditions of release or lower bail.

Municipal courts have their own practice for release decisions and posting bail. You should call the court where your loved one is facing charges to ask about the procedure for release, or speak to your loved one’s attorney.
When you care about a person who has a mental illness and they are jailed, you have a crisis. Your first priority is to ensure safety and appropriate treatment.

Ways to help your loved one:
- Advocate for their release and/or receipt of a citation or appearance ticket
- Be present at the arraignment
- Advocate for release with appropriate conditions
- Notify mental health staff or the nurse at the jail about which medications the person needs
- Notify jail staff and jail nurse if the person is suicidal.

*People who die by suicide in jail usually do so in the first couple of days. Notifying jail staff that an individual may be suicidal could save their life.*

**Mental Health Services and Medications in the Jails**

Many jails have access to health care services and mental health services. This access, however, varies greatly from county to county. People may not receive mental health services or medication if they do not ask. Jail staff cannot force an individual to take psychiatric medications, even if it is clear someone is suffering from a mental illness. Even if the person is identified as having a mental illness, the staff will not have information about treatment needs. You may have important information about your loved one’s medication that the jail’s medical staff, usually nurses, need. Some jails have limited access to doctors and psychiatrists.

Your first step is to contact the medical staff at the jail, generally the jail nurse. This may be difficult. Jail medical staff may not be willing to talk with you because of confidentiality rules. If this happens, be polite but persistent. Say something like:

“I’m not asking you for any information from you right now. I want to give you information.________(Name) was arrested and is in your jail. (Name) has a mental illness. Their diagnosis is _______, and they take ___ milligrams (dose) of_______(medication) and______ milligrams dose of _______ (medication) twice a day. Their doctor can be contacted at this number, __________. They have a history of suicide attempts. When you speak to them, could you please ask them to sign a release so you can speak to me about their condition? I will call you back tomorrow morning.”

Share whatever information is specific to the person’s condition and needs. If they are at risk of suicide, ask that they be put on suicide watch. This may involve placing them in segregation.

In some cases, it is possible to bring the person’s medications to the jail. Be sure that the medications are in their original bottles and that the prescription instructions are with the medicines. Try to be in contact with the jail nurse. Jails have an interest in giving their...
detainees appropriate medications. In most cases, accepting medication for detainees is a matter of jail policy and contributes to general security. However, your loved one must take the medicine when offered. The jail nurse will not force your loved one to take medication.

It is helpful to write down the name and phone number of every person with whom you speak. Consider contacting them regularly to follow up on the information you have shared. You may want to keep a notebook summarizing the conversations.

ARRAIGNMENT

The arraignment is the first time during the criminal process when a defendant sees a judge. It has two purposes: 1) to tell the arrestee what crimes are being charged and 2) to appoint a lawyer. In Lane County Circuit Court, the pre-trial services office will ask questions to determine whether an in-custody defendant qualifies for a public defender before the arraignment. Out of custody defendants will be asked to meet with a clerk in the courthouse before being arraigned to determine eligibility for appointed counsel. If the defendant qualifies for a public defender, the judge will ask if the defendant wants an attorney appointed.

Arraignments for in-custody defendants of Lane County Circuit Court and Eugene Municipal Court are held in the Lane County Jail. Out of custody arraignments are held in the court house for the jurisdiction bringing charges. In-custody arraignments at the Lane County Jail are conducted by video. Your loved one will not know that you are watching, but you will be able to see and hear the proceedings. Representatives from the public defender’s office are present at arraignments. Even though your loved one will not yet be assigned to a particular attorney, you may be able to give the lawyer at arraignments information about your loved one that can be passed on to their assigned attorney.
No Contact Orders

In many cases involving a named victim, the court will impose a no-contact order between the defendant and the alleged victim. A no contact order is a court order protecting a person or place (a particular business or address) from a defendant. These orders are imposed even if the parties in question are spouses or family members. If you are the alleged victim in your loved one’s case, you may be prevented from visiting or calling them in jail, or at the State Hospital.

If a no contact order is issued to your loved one, try to help them understand and comply with the order. If the order is violated, your loved one risks serious consequences. Though your loved one may disagree with the order, they should not ignore it. They may ask the defense attorney to try to have it lifted. If you are the alleged victim, you may petition the court to lift the no-contact order so that you may be involved in your loved one’s care. In Lane County Circuit Court, the Victim’s Service Office can assist in petitioning the court for a modification of a no-contact order.

DEFENSE ATTORNEYS

Every person accused of a crime has the right to be represented by an attorney. You or your loved one can hire a criminal defense attorney. If the person is indigent and cannot afford an attorney, the court will appoint a public defender. Private attorneys can become involved at any time—even before the arraignment. A public defender is appointed at the person’s first appearance before the court.

Public Defenders

The court appoints a public defender if it determines that the defendant cannot afford to hire a private attorney. A person can request at any time that a public defender be appointed, but this is usually done at the first court appearance. Once the court agrees, the local chief public defender decides which assistant public defender will handle the case. The defendant usually does not get to choose which assistant public defender will handle their case.

If your loved one is assigned a public defender, it may be challenging to find out who that person is. Your loved one may be able to tell you this information. Sometimes, the system is so confusing that a defendant can go through the process, be released or sent to jail without even knowing who represented them. Finding the defense attorney is possible with a little detective work. The clerk of courts may have that information. The court records will either include a certificate of representation, if your loved one has a private attorney, or the identity of the public defender. Generally, the public defender is named at the arraignment.

Public defenders are often hard-working, dedicated attorneys. It is important, however, to understand that public defenders work with
very limited resources, including insufficient funding and excessive caseloads. Try to be patient but persistent. Remember that the attorney does not represent you, but your loved one. If your loved one does not give their attorney permission to speak about the case with others, the attorney cannot give any information. It is not appropriate for a lawyer to pressure their client into allowing disclosure of case information. In a criminal case, even if a defendant is determined to be incompetent, an attorney cannot reveal confidential information to family members or friends without permission from their client. You may contact the court, district attorney, or victim’s services office for information about the case if your loved one’s attorney is not able to give you information. Many court houses also have public access computers where you may look up your loved one’s case to determine when court appearances are scheduled and what filings have been made.

There are several public defender agencies in Lane County. Which agency your loved one is assigned to depends on the jurisdiction bringing the charges. For charges arising in Lane County Circuit Court, your loved one will most likely be represented by an attorney from Public Defender Services of Lane County, or the Lane County Adult Consortium. The Adult Consortium is a group of attorneys who contract with the state to provide representation to individuals who are not able to be represented by the Public Defender’s Office. This may be due to a conflict of interest or case overflow.

Several attorneys and firms have contracts to represent defendants in the municipal courts. You can find out who is appointed to represent your loved one by contacting the municipal court directly.

| Public Defender Services of Lane County | 541 484 2611 |
| Lane County Adult Consortium | 541 687 9001 |
| Eugene Municipal Court | 541 682 5400 |
| Springfield Municipal Court | 541 726 3748 |
| Florence Municipal Court | 541 997 3123 |
| Junction City Municipal Court | 541 998 1113 |
| Cottage Grove Municipal Court | 541 942 3346 |
Private Defense Attorneys

People who have enough income to hire a defense attorney may do so at any time. However, those who qualify for a public defender should be cautious about going into debt to hire an attorney. Families should carefully consider their options before going into debt to hire an attorney.

It is very important to find an attorney who is experienced and effective. Some attorneys specialize in criminal defense and work extensively with defendants with mental illnesses. These attorneys have the expertise to handle the problems unique to people with mental illnesses. If you hire an attorney, make sure that criminal defense work is one of their specialties.

Other Options

A defendant has the right to act as their own attorney, which is called pro se representation. This is allowed only if a judge determines that the defendant is competent to do so. This is rarely a good idea in felony cases or any cases involving jail time.

Working with an Attorney

The best way to find out what is happening with the case is to work with the defense attorney. Often the most accessible person will be the attorney’s law clerk or legal secretary. They can relay information from you to the attorney.

There are two reasons you may want to consider contacting the defense attorney:

1. **THEY MAY HAVE INFORMATION THAT YOU WANT.** The defense attorney is the only person in the criminal justice system who has direct contact with the defendant who knows the defendant’s version of the facts leading to arrest and what is likely to happen. They also have the law enforcement officer’s and/or victim’s versions of what happened. The defense attorney will also know what the defendant wants to do (e.g., plead guilty or go to trial) and whether they are interested in receiving mental health and/or drug treatment. The defense attorney is your best source for information about the case.

   The defense attorney will not be able to talk to you about some aspects of the case, since they are required by law to keep a confidential relationship with their client. If you want to talk with the attorney about such information, ask your loved one to give consent to their defense attorney to talk to you about confidential matters.
2. **YOU MAY HAVE INFORMATION THE ATTORNEY NEEDS TO HELP THE DEFENDANT.** The defense attorney probably knows little about the defendant’s psychiatric diagnosis and history. Most defense attorneys have no specialized training in mental health issues. Even if the defendant has told the defense attorney that they have a mental illness, the defense attorney may not talk to their client’s mental health providers or family. By contacting the defense attorney, you have the opportunity to inform them about your loved one’s mental health history.

**Talking to the Defense Attorney**

Once you reach the defense attorney, be brief. Do not tell the defendant’s whole story.

**Relevant facts to share:**

- Information about their mental illness, recent hospitalizations, medication and treatment
- Contact information for their psychiatrist and mental health case manager
- Witnesses who can confirm their mental illness
- Brief information about what stressors might have been happening in their life at the time of the offense
- The individual’s criminal history
- Support systems and help available to the defendant in the community

It is a good idea to practice sharing your story before calling. Tell the attorney or clerk who you are calling about and that you have important information. Let the attorney ask you questions, and answer them. Avoid jargon. Do not hesitate to politely ask the attorney to explain any legal terms you don’t understand.

Another option is to provide the pertinent information in writing, especially since the attorney probably does not have much time for phone calls. This way, you can ensure the attorney will have the information if you are not able to get through to them by phone. All Oregon attorneys have email addresses you can find on the Oregon State Bar website. Even if you are unable to reach they attorney by phone, you can send an email to their address with the information you need to convey.

**Talking to Other Individuals in the Criminal Justice System**

You should not talk to the judge on your own unless you have the consent of the defense attorney. You may have the opportunity to address the judge in person on a court date, but you should do so only with the defense attorney’s approval.
Do not talk to the prosecuting attorney without the defense attorney’s consent. Information you think will help the defendant may be harmful in the hands of a prosecutor. However, the prosecutor also may understand that your loved one has a mental illness and work with the defense attorney. Your loved one’s defense attorney should be the one to speak directly with both the prosecuting attorney and the judge.

**Changing Attorneys**

The only person who may request a different attorney is the defendant. No matter how unhappy family members are with an appointed attorney, they cannot fire the attorney. The attorney represents the defendant only. Even if the attorney is hired and paid for by the family, the attorney’s responsibility is to act on the defendant’s wishes. That means that if the defendant tells the attorney not to talk to loved ones, the attorney may not talk to them. If the defendant makes choices that are not in their best interest (e.g., refusing a generous plea bargain offer), the defense attorney must obey the client’s wishes.

If the defendant is unhappy with an appointed attorney, they can request that the attorney be “relieved” from the case and a new attorney be appointed. The defendant must tell their attorney they want to do this, and the attorney will then tell the judge on the next court date.

**WARRANTS**

Generally, a warrant is issued for a person’s arrest if they commit an offense or violate a judge’s order.

*Examples of violations:*

- Fail to appear on a scheduled court date
- Do not pay a fine
- Do not complete community service as ordered by the court
- Leave treatment when it has been ordered by the judge
- Do not follow a condition set by the judge for release from jail

The warrant will likely be issued the same day as the missed court date or within days or weeks of not following the judge’s order. You should first make sure there really is a warrant. Call the court where the person thinks they were supposed to have appeared or was sentenced. Ask whether there is a warrant. You should not need to disclose the defendant’s whereabouts. If someone asks you, explain that the defendant plans to deal with the warrant. Ask when and where they should appear. If the court does not track warrants, the county sheriff should.
Ask the court how to reach that office. Be sure to contact the defense attorney. The defense attorney who represented the person when the warrant was issued may be able to help clear up the warrant. Call the attorney, explain there is a warrant and tell them if the defendant has a good excuse. The attorney should tell you when and where to go, and they may be able to meet you there.

Remember, it is not only the warrant that is pending but also the reason for the warrant. So, if criminal charges were pending, the defendant may face possible conviction. If the defendant did not successfully complete a probationary sentence, they will be resentenced.

If you can’t reach the defense attorney or they cannot help clear up the warrant, help your loved one respond to the warrant. Gather as much specific information about where you should appear and when from the sheriff’s deputy who holds the warrant or from the court that issued it. Sometimes a defendant will have to go back to jail before seeing a judge. Sometimes a defendant will be given instructions to go to a specific court where the judge will decide whether they can remain free or go to jail.

If you have the option of going to court, show up early and explain to the court officers that you want to clear up a warrant. You will be directed to a specific courtroom. When you arrive, if you have not arranged to meet the defense attorney, you should ask a court officer or attorney whether an attorney is there who can “stand up” for the person when the case is called. If an attorney can help, explain any excuse the person has for the warrant. Be prepared for a long wait. Clearing up a warrant can take all day. Even though it may feel like a waste of time, the presence of an advocate can make all the difference—often between jail and a second chance.

It is very important to clear up a warrant. Someone with a warrant for their arrest is unlikely to be able to ignore it forever. How aggressively law enforcement officers track down outstanding warrants varies. It is possible that the law enforcement officer will arrive the evening the warrant was issued to arrest that person. Generally, law enforcement officers put more effort into finding people with outstanding warrants who are charged with serious offenses. Even if the law enforcement officer does not arrive at the door, the warrant still exists and will reappear if the person has another encounter with police. Warrants do not disappear on their own, and there is no time limit on how long a warrant exists.

Even if a person is 100% confident that they will never have another encounter with the police, there is another good reason to clear up a warrant. In recent years, the Social Security Administration (SSA) has begun checking individual applicants to confirm whether they have outstanding warrants in the United States. If SSA finds out someone has a warrant, they send a letter stating that because this person is a
“fugitive,” they will no longer receive Supplemental Security Income (SSI) and that benefits cannot be reinstated until the warrant is cleared up. Cases have even occurred in which SSA has demanded that persons with outstanding warrants pay back all benefits received while the warrant was in effect.

There is one more reason for clearing up a warrant: stress. As long as someone has a warrant out for their arrest, they are considered a fugitive, no matter how minor the offense. The reality is that sometimes the stress of worrying about a warrant is worse than the actual consequences of clearing it up.

When a defendant voluntarily returns to court to deal with a warrant, the outcome depends on a variety of factors—mainly whether the person has an excuse and how old the warrant is. If there is a persuasive excuse—the defendant was in a psychiatric hospital or a social worker is able to verify that the defendant was psychiatrically disabled—or if the warrant was issued only a couple of days ago, the defendant may not be in additional trouble. In this situation, the defendant will likely be required to follow through with their prior sentence, such as show up for court, pay a fine or complete community service.

If it is impossible for the defendant to do this, explain the situation to the court. Having an advocate in court, if possible a mental health worker with knowledge of the defendant’s mental illness, will make the defendant more believable. If such a person is unavailable, it is helpful to bring a letter from the defendant’s treatment provider. If you are unable to appear in court, giving the defendant a letter to show the judge is better than nothing, but being there in person is the best option. If the defendant does not have a good explanation for the warrant, they are likely to be in more trouble than before the warrant was issued, particularly if more than a couple of days have passed. “More trouble” could mean the defendant may have to pay bail or wait in jail before going to court, or they may be sentenced to jail time, rather than paying a fine or doing community service or both. A person will usually be in less trouble if they voluntarily clear up a warrant than if a law enforcement officer must bring them in. Judges are impressed when a defendant shows responsibility.

Deciding to clear up a warrant is a difficult and stressful decision. The only one who can decide is the person subject to the warrant. The best thing you can do for a loved one with a warrant is to help them understand the options and consequences. Explain how you can help if they decide to clear up a warrant, and give them time to decide.

Probation and parole officers also have the power to issue a warrant (either directly or by asking a judge) if a person under their supervision fails to report or comply with probation or parole conditions. It is difficult to determine when a warrant will be issued for a probation or parole violation. It may be immediately with parole or
may take months with probation.
If your loved one believes that they have a warrant for a probation or parole violation and wants to clear it up, call the probation or parole officer. Ask whether a warrant was issued and try to prevent its issuance if that hasn’t already happened. Even if a warrant has been issued, try to convince the officer to give the person another chance. In this situation, the person is more likely to stay out of jail if they have an advocate.

**PLEA BARGAIN**

Most criminal cases never go to trial. Typically, the attorneys work out a deal beforehand, often on the day of the trial. This agreement is called a plea bargain and can entail a probationary sentence, a certain number of months in jail or prison, community service or even treatment. For people with mental illnesses, community service or treatment is preferable to being incarcerated.

**CRIMINAL COMPETENCY AND INSANITY DEFENSE**

All defendants must be able to understand the nature of the charges against them and be able to assist their attorney while going through criminal process. When there is a concern that a defendant is not able to proceed due to mental illness, the court or the attorneys may wish to have a psychologist or psychiatrist examine the defendant. The psychologists and psychiatrists who assist the court in determining whether a defendant can aid and assist are called Certified Forensic Examiners. Examiners are specially trained to understand the statutes regarding mental illness and the law. Even though your loved one may have a good relationship with particular providers, they may not advise the court regarding competency unless they are Certified Forensic Examiners. A defense attorney may contract with a particular examiner, or the court may order a defendant to the State Hospital for the evaluation.

If the judge finds the defendant incompetent, criminal proceedings will be suspended until the defendant is restored to competency. The judge will decide whether a defendant requires the hospital to be restored to competency, or whether services are available in the community. Hospitalization for competency restoration only takes place at the Oregon State Hospital in Salem. Community restoration is supervised by Lane County Behavioral Health through the Forensic Diversion Program.

Once a defendant is found unfit to proceed, a follow up evaluation must take place within 60 days. Defendants committed to the Oregon State Hospital will have their evaluations scheduled by their treatment team or the Forensic Evaluation Service. Defendants participating in the Forensic Diversion Program may have their attorneys schedule a follow up evaluation, or may be scheduled to appear out of custody at the Oregon State Hospital.
defendant recovers quickly, an evaluation may be conducted sooner than 60 days. After the first evaluation, if a defendant is still determined to be unfit to proceed, evaluations must take place at least once every 6 months.

Defendants committed to the Oregon State Hospital for competency restoration must remain in the hospital until discharge. If a defendant was in custody when admitted to the hospital, he will remain in custody after discharge. That is, the Sheriff will transport him from the hospital back to the jail to await further proceedings. Discharge takes place when a defendant is determined to be restored to competency, or when the hospital’s jurisdiction expires. The hospital has jurisdiction for the maximum sentence length of the most serious crime charged. For example, if a defendant is found unfit to proceed on a Class B Misdemeanor, the hospital may keep the defendant for 6 months, since the maximum sentence length for a Class B Misdemeanor is 6 months. Class A Misdemeanors have a maximum jurisdiction of one year. Class C Misdemeanors have a maximum jurisdiction of 30 days. Felony charges carry a jurisdiction length of 3 years. If a defendant is unable to be restored during their jurisdiction, he will be discharged and the charges will be dismissed.

Defendants are not required to accept treatment while committed to the State Hospital on a forensic basis. However, doctors at the hospital may order medication on an emergency basis if the defendant is thought to be dangerous to himself or others. If a doctor seeks to administer medication involuntarily, the defendant is entitled to an administrative hearing. These hearings take place in the hospital and are separate from their court case. A judge may also order a defendant comply with treatment orders for the purpose of restoring competency (Called a Sell order), but only after a special hearing. These types of hearings are rare in Lane County.

You may visit your loved one at the Oregon State Hospital as long as there is not a no-contact order in place. It is helpful to provide as much information as possible to the treatment team at the hospital.

Defendants participating in the Forensic Diversion Program must remain at the address approved by the court during their participation. Some defendants may continue working with their treatment providers, other defendants may be referred to begin treatment services in the community. Defendants will likely meet with a Lane County Behavioral Health counselor for legal skills classes and case management during program participation. If a defendant in the Diversion Program deteriorates or is arrested on new charges, the community release order may be revoked and the defendant will be ordered to the State Hospital for competency restoration.

Sometimes, the hospital will refer defendants back to the community before they are determined to be fit to proceed if they are no longer thought to be a danger, or if services in the community for restoration become available. The defendant’s attorney would work with Lane County Behavioral Health to facilitate transfer back to the Lane County Jail for a hearing to determine if community restoration and release is appropriate.
Mental Illness Defense

Oregon law sets the standard that the criminal courts use to determine if a defendant with a mental illness should be held criminally responsible for an offense. In Oregon, the mental illness defense, or what is commonly called the “insanity defense,” is referred to as the M’Naghten test, named for the defendant who was tried for murder in England, in 1843 and judged too mentally ill to be found guilty of the offense. The standard is that the defendant’s mental illness was so serious at the time of the offense that the defendant was unable to conform his conduct to the requirements of the law or did not appreciate that his conduct was wrongful. It is important to note that this is a very high standard and is not used very often by defendants. Intoxication will often disqualify an individual from raising a mental health defense, even if there is no doubt that a defendant was suffering from a mental illness at the time of the offense.

The standard requires a significant cognitive incapacity. Someone experiencing hallucinations, a thought disorder or delusional thoughts does not automatically meet the standard. The mental illness must directly interfere with the defendant’s understanding of the offense at the time the offense was committed.

Many defense attorneys are reluctant to use this defense, in part due to the high threshold necessary to be found not responsible but also because a successful defense will very likely cause the defendant to be committed to a hospital. The outcome of a successful insanity defense in Oregon commits a defendant to the supervision of the Psychiatric Security Review Board for the maximum length of the sentence. For felonies, this could be 5, 10 or 20 years. These supervision lengths are almost always substantially longer than the incarceration and supervision a defendant would have been sentenced to if the defendant had been found guilty.

THE TRIAL

If your loved one’s case ends up going to trial, it is important for you to be present in the courtroom. You must be quiet. You are not allowed to talk to the person if they are in custody, and you are not allowed to speak to the judge, jurors and often the attorneys. Your presence can help the person feel supported in what is often a scary experience. Also, your presence lets the jury know that this individual is more than just a defendant, that they are part of a family and a community.
If the person you love is at risk of going to jail or prison, you may want to advocate for treatment. Increasing numbers of defendants, even some charged with serious crimes, have the option to enter treatment rather than prison or jail. But you will need to get the attorneys and the judge to agree.

The defense attorney must protect the legal rights of their clients, usually by minimizing consequences or avoiding consequences altogether. Some defense attorneys may not believe that helping a client into treatment is their responsibility; however, many are happy to consider their clients’ treatment needs when the treatment is preferable to the sentence that would otherwise be imposed.

Treatment may not always be considered, especially when a defense attorney has an opportunity to quickly remove the client from the criminal justice system. If the defense attorney thinks that treatment is not appropriate, given the seriousness of the offense, or that the defendant will not succeed, they are not likely to pursue treatment as an option. If a defendant has a choice between two weeks in jail or a four-month treatment program and they decide to enter the treatment program, they may face consequences by the court if they fail to complete the treatment. Some attorneys may think that a civil commitment (six months) is a much worse option than a few weeks in jail. Some defendants may prefer to be in jail than in treatment.

The prosecuting attorney may not agree to treatment due to public safety concerns. They will look at how likely it is that the person will reoffend, the violent nature of the act and even the amount of publicity the case generated.

Family members are often looking after the person’s best long-term mental health interests. They may be frustrated that the defendant must commit a serious offense before the criminal justice system helps. Sometimes family members feel that intervention through the criminal justice system is the only way to help a person into treatment. Avoiding jail or prison may be preferable because people with mental illnesses who go to jail are more likely to be victimized and mistreated than individuals who do not have a mental illness. You can use your knowledge to convince the judge, prosecutor and others that this person would benefit from treatment and that there are treatment programs capable of helping them avoid reoffending. Work with the defense attorney to do this.

Typically, unless treatment has been ordered as condition of pretrial release, the person must plead guilty before they are released to the program. The defendant must successfully complete the program as a condition of staying out of jail. They are required to comply with the program and regularly report to a probation officer or the court. If the defendant leaves the program, refuses to take medication, uses illegal drugs or otherwise does not cooperate with treatment, the treatment...
program will notify the probation department or the judge. In this case, the judge may give the person another chance or may sentence them to jail or prison—perhaps for an even longer sentence. If your loved one is sentenced to treatment, make sure they understand the consequences of failing to go to treatment.

If your loved one is currently receiving supervision from a probation agent or a parole agent and is facing either new charges or revocation, the supervising agent can be a valuable ally in persuading the court to accept a treatment option. Often family members can establish good working relationships with supervising agents. Since the agent has prolonged contact with the client, the court often considers the agent’s recommendations very seriously.

**Treatment Programs**

Sometimes the most challenging part is finding a treatment program that will accept the person. Often, for serious charges, the judge and/or prosecutor will insist that the defendant go to a residential treatment program. However, there are not enough residential treatment beds in Minnesota, and the application process for these programs is complicated. Many programs will not accept people straight from jail. You and the defense attorney will need to find someone (usually a social worker or case manager) who can process the application to help the defendant enter a program. Most defense attorneys’ offices have their own social workers, called dispositional advisors, who can help explore programs. Otherwise, the social worker may work for the court or be part of a community agency providing this service.

Even when a social worker or case manager is helping the defendant, the process can be frustrating. Specific issues, such as whether the defendant has a substance abuse problem, affect how difficult it is to find a program. Stay in touch with the social worker or case manager. Check in regularly and encourage them to make this case a priority. Just be aware that the process may take months.

**SENTENCING: JAIL OR PRISON**

If your loved one ends up in jail or prison, you will want to continue to advocate for them. You want to make sure that the jail or prison staff is aware of their diagnosis, medications needed, history and so on. Be sure to learn the rules for visitation and what you can or cannot bring to your loved one.

When speaking with jail or prison staff about a loved one’s mental illness, it is important to remain as calm and tactful as possible. Many people who contact staff are agitated or angry. Your calmness can help set...
you apart and be more effective in advocating for your loved one. Talking to staff about your loved one’s mental illness will not necessarily make the person’s stay in the facility more comfortable. Facilities have different protocols their staff must follow regarding inmates with mental illnesses or risk of suicide. Facilities also vary in their ability to respond to mental health concerns. You may want to talk to staff about what options are available so you can weigh the pros and cons before raising your concerns.

Prisons and jails are hard places for people who have a serious mental illness. People in prisons feel pressure not to take their medications or ask for help for fear that they will be viewed as vulnerable, abused by other inmates or placed on suicide watch. It may be difficult for the person to follow the rules, and they may end up in segregation as a result.

**Data Privacy**

The Department of Corrections cannot share health-related information with the family unless the person signs a release form. You can request that the facility ask your family member to sign a release form. Also, the department is unlikely to share information if the family has initiated a lawsuit against the department. However, you can always share important information with your loved one’s treatment providers.
SENTENCING: PROBATION

Probation is a type of sentence that is used as an alternative to jail and for when a person has a stayed sentence. Some probationary sentences include jail time with a portion of the jail time held over the defendant’s head while the defendant tries to follow the conditions of probation.

Probationers are supervised in the community and must comply with specific conditions set by the probation officer and the judge. Probationers must regularly report to their officers. If a person on probation fails to comply, the probation officer may ask the court to issue a warrant for their arrest. If a warrant is issued and the person is arrested, they will appear before a judge who will decide whether to continue probation or sentence the defendant to incarceration.

Make contact with your loved one’s probation officer before there is a problem. Call the probation officer and introduce yourself. By making contact early, the officer will be more likely to call you if a problem arises.

People with mental illnesses who are on probation need advocates. A single probation officer may be supervising over 100 people. Most probation officers do not have special training with mental health issues. By helping a probation office understand your loved one’s mental health needs, you may prevent your loved one from violating probation.

LEAVING THE JAIL OR PRISON

Reentering the community from jail or prison involves many challenges, from getting back onto benefits to finding housing and employment. You and your loved one can take action to make this transition easier, especially if you take action before the person is released.

Discharge Planning

Before your loved one leaves jail or prison, you will want to advocate for discharge planning. Discharge planning connects people to benefits and services in the community before they leave jail or prison. These services and benefits can include medications, treatment, benefits, housing, employment, economic assistance and more. Please note that your loved one’s participation in discharge planning is voluntary.

Contact the mental health staff or nurse in the jail and the release planner in prison months before the person’s release day. In prison, this process will start at least 90 days before they are released.

Release planners can share information with the family if the person signs a release form. You may also want to ask if the facility will let
you participate in the discharge planning meetings. Some facilities may allow this if your loved one is willing. Ask specific questions about the plan to make certain that, when the person leaves jail or prison, they will have their medications and prescriptions, case management services, community mental health services and housing or residential treatment available immediately upon release. Without a privacy release, release planners can listen to your concerns and suggestions, but they cannot share information with you.

If your loved one is in a jail that does not provide discharge planning services, keep in contact with the nurse or the mental health staff. In some situations, the local county human services department may help the person connect to benefits, case management or psychiatrist appointments (in some counties, the department that does this is called social services or family services instead of human services).

Maintain regular contact with the release planner assigned to the case. They will work with willing family members and send them the plan when the person is about to leave. Make sure that when the person leaves jail or prison, they have everything they need to successfully move back into the community.

Health & Financial Benefits

Most public benefits stop once a person is incarcerated. There is a slightly different process to restart each benefit.

*Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI)*

If someone has SSI or SSDI and is incarcerated for less than one year, they need to reapply for these benefits, but their disability status remains unaffected. If someone is incarcerated for more than one year, the person will need to be recertified as disabled before reapplying. If the person’s card was lost or not returned upon discharge, Social Security can provide another one. The toll-free phone number for Social Security is 1-800-772-1213. The website for Social Security is www.ssa.gov.

*Temporary Assistance for Needy Families (TANF)*

If your loved one is the parent or guardian of a minor, they may receive TANF funds to help support the family. While incarcerated, these funds may be reassigned to the minor’s caretaker. An application must be filled out to make that happen. To acquire TANF benefits after release, your loved one will have to prove they are the minor’s caretaker once again, and they may have to complete a drug or alcohol treatment program.
Veterans’ Benefits
Veteran health care benefits are not available while the person is incarcerated but are available immediately upon their release. For veteran disability compensation, misdemeanor convictions do not affect the amount of cash benefits. Felony convictions will reduce your loved one’s cash benefits by half after 60 days of imprisonment. If your loved one receives a veteran’s pension, both misdemeanor and felony convictions will cause your loved one’s cash benefits to be suspended after 60 days of imprisonment. Your loved one can call 1-800-827-1000 to find the regional Veterans Affairs (VA) office and reapply. You can also visit www.macvso.org to find your local County Veteran Service Officer (CVSO), who will usually be your first contact to assist with VA benefits and issues.

Treatment, Services & Supports
There are many treatment options for people with mental illnesses or chemical dependencies or addictions. What is available depends on a person’s health insurance coverage and economic situation. Community mental health centers, for example, can provide treatment using sliding fees for low-income clients with no health insurance.

Having a diagnosis can provide access to some programs and limit access to others. For example, people with serious and persistent mental illnesses are eligible for county case management. However, having a mental illness may limit access to some chemical dependency programs that lack the expertise needed to treat mental illnesses. Similarly, some mental health programs will not accept clients who use drugs or alcohol.

For people with mental illnesses who abuse drugs or alcohol, the best results can be achieved by treating both issues together. Treating both disorders at the same time, preferably with the same treatment team, is called integrated dual diagnosis treatment. Integrated treatment uses the best techniques from mental health and chemical health treatment, combining them into a unique approach specifically designed for co-occurring disorders. Finding a program that can do this often takes extra time and effort, and these programs are not available everywhere. When looking for a program, ask whether the provider offers integrated treatment, or integrated dual diagnosis treatment. It is important to know that integrated dual diagnosis treatment is new, and there are very few programs at this time.

Finally, many family members benefit from counseling or therapy for themselves during this difficult time. If you have insurance, call your insurance company to find therapists covered by your insurance (the
phone number is on the back of your insurance card).

**Housing**

Finding a place to live is an important but often challenging step toward successful reentry. Also, finding housing within a specific period of time after release is usually a condition of probation.

There are many types of housing. What works best will depend on your loved one’s financial situation and conditions of release. Many housing options may be limited by certain types of convictions, especially sex offenses and violent offenses.

Housing options for people released from jail or prison include:

**Private Rental**

Rental housing is the most widely available option. It may be possible to receive public assistance to help pay for rent or the security deposit. However, rental property owners may screen for and refuse to rent to people with criminal backgrounds.

**Living with Family Members**

This option may provide emotional and financial support and is likely to be immediately available. However, living together may not work for some families due to too much stress, instability or other reasons. The family should find out whether their housing could be lost if a person with a criminal record moves in.

**Public Housing (for example, Section 8 housing vouchers)**

Rent is based on income in public housing, so this option may be more affordable than private rental. Be prepared for long or closed waiting lists. You should know that the law allows public housing programs to screen for and refuse to accept people who have been convicted of certain offenses. Also, formerly incarcerated individuals may not be immediately considered “homeless” and therefore not be prioritized for placement in some programs. Additional services and supports are sometimes available with public housing.

**Nonprofit or Privately Owned Affordable Housing**

In these programs, the tenant pays a certain percentage of his or her income (usually 30%) toward rent. This is often more affordable than private rental. Additional services and supports are sometimes available through this type of housing. Again, be prepared for long or closed waiting lists. Owners are bound by Fair Housing laws but may exclude people with criminal histories.
**Halfway Houses or Transitional Housing**

No two halfway houses or transitional housing programs are alike, but they usually provide supervision for people just after release from jail or prison. Many also provide substance abuse programs. Most do not provide mental health programs. Residents usually must follow certain rules to live in this type of housing. Waiting lists may be long. Many of these programs have a rigid structure, which may not work well for people who have serious mental illnesses. Also, most of these programs provide short-term housing only and do not address long-term housing.

**Supportive Housing (for those with special needs or who are homeless)**

In these programs, the tenant pays a certain percentage of his or her income (usually 30%) toward rent. Like public housing, this is often more affordable than private rental. This type of housing includes case management and support services. The focus is usually on stability instead of behavior change or treatment. This type of housing can lower the risk of re-arrest among formerly homeless people who have mental illnesses. Some programs may exclude people who have criminal records.

**Employment**

Finding a job after incarceration is often difficult, especially for people who have had a felony conviction. There are some organizations that can help connect people to employment. They can help search and apply for jobs, prepare for job interviews, learn to answer the question: “Have you ever been convicted of a felony?” and so on.

**Education**

If a person has been convicted of a felony, it is important to research whether they can work in their field of interest before spending money on education in that area. Many people have gone back to school only to find that they cannot get a job in their field because of a felony conviction. A felony conviction limits which jobs a person can perform legally. For example, people with certain felony convictions cannot be school bus drivers or nurses.

**Identification**

Proper identification is an important tool for everything from seeking a job to cashing a check. If your loved one is in prison, they can ask a caseworker or a transition staff member for help, including copies of applications, fee assistance and a form letter verifying his or her name.
CONCLUSION

Advocating for someone in Oregon’s criminal justice system can be confusing, frustrating and overwhelming. It is important to find people who can help you understand the system and advocate for your loved one.

This booklet is not intended to provide legal advice. Its purpose is to help you understand the basic workings of the criminal justice system so that you can ensure that your loved one who is living with a mental illness has an opportunity to be diverted out of the criminal justice and into the mental health system or to receive mental health treatment while in the criminal justice system.
**COMMON TERMS**

**Adjournment:** a postponement in a criminal case or the time between court dates.

**Allocution:** a defendant’s right to make a personal statement at sentencing.

**Arraignment:** the first appearance before a judge after a person is arrested. Should be held within 36 hours of arrest. The purpose is to inform the defendant of the charges against them and decide the conditions under which they may be released.

**Arrest:** taking a person into custody so that the person may be held to answer for a public offense. Includes actually restraining a person or taking them into custody.

**Arrestee:** a person in custody following arrest.

**Arrest warrant:** a notice to the law enforcement officers that a person is wanted and should be sought out and arrested.

**Bail:** the amount of money a defendant must pay in order to be released from jail while a criminal case is pending. Designed to ensure that defendant does not run away.

**Bail bondsman:** a person who receives a nonrefundable fee, usually 10% of the bail ordered, to pay a bail on behalf of a defendant.

**Bench warrant:** a warrant issued by a judge, usually because an individual did not return to court when they were supposed to.

**Charge:** accusation relating to the specific law that a defendant is said to have violated.

**Civil commitment:** court-imposed treatment for people with mental illnesses who refuse or cannot seek treatment and are a danger to themselves or others due to their mental illness.

**Continuance:** a postponement in a criminal case or the time between court dates.

**Conviction:** having been found guilty of a crime.
**Defendant:** person charged with a crime.

**Detention:** being held in jail awaiting trial.

**Disposition:** the sentence received by a defendant after a finding of guilt.

**Felony:** a crime punishable by more than a year of incarceration.

**Forensic:** relating to the law or legal proceedings.

**General population:** the regular, unsegregated section in a jail or prison.

**Gross misdemeanor:** a crime punishable by imprisonment for one year, a fine of up to $3,000 or both.

**Indictment:** an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.

**Indigent:** poor, usually unable to afford an attorney.

**Inmate:** a person in jail or prison.

**Jail:** a local correctional facility where people awaiting trial and people sentenced to less than one year of incarceration or who have less than 18 months remaining to serve are held.

**Mentally ill and dangerous (MI & D):** a term that refers to a person with a mental illness who presents a clear danger to the physical safety of others due to his or her illness.

**Misdemeanor:** an offense punishable by not more than 90 days of incarceration or not more than a $1,000 fine or both.

**Parole:** supervision in the community of someone who has been released from prison.

**Plea bargain:** an agreement in which a defendant pleads guilty to an offense in return for a concession by the prosecutor (usually a better sentence than they would have received after losing a trial).

**Prison:** a state correctional facility where people convicted of felonies and sentenced to more than one year of incarceration are confined.
**Probable cause:** enough evidence to believe that a person committed a certain crime.

**Probation:** a sentence of supervision in the community which sometimes includes jail time.

**Prosecutor:** an attorney representing the “people of the state of Minnesota” whose job it is to prosecute people accused of crimes and to defend the interest of the community in public safety and quality of life. The prosecutor does not represent crime victims.

**Public defender:** a defense attorney who is paid by the government to represent criminal defendants who cannot afford to hire an attorney.

**Rap sheet:** the record of every time a person has been arrested and what happened in each case.

**Search warrant:** a written order allowing a law enforcement officer to search and hold any property seized.

**Sentence:** the punishment imposed at the conclusion of a criminal case.

**Suicide watch:** when a jail inmate who is believed to be potentially suicidal is checked regularly as a preventative measure.
RESOURCES

Bazelon Center for Mental Health Law
www.bazelon.org

The mission of the Judge David L. Bazelon Center for Mental Health Law is to protect and advance the rights of adults and children who have mental disabilities. The center envisions an America where people who have mental illnesses or developmental disabilities exercise their own life choices and have access to the resources that enable them to participate fully in their communities.

GAINS Center
www.gainscenter.samhsa.gov/html

The center’s primary focus is on expanding access to community-based services for adults diagnosed with co-occurring mental illnesses and substance use disorders at all points of contact with the justice system. The center emphasizes the provision of consultation and technical assistance to help communities achieve integrated systems of mental health and substance abuse services for individuals in contact with the justice system.

Consensus Project
www.consensusproject.org

The Criminal Justice/Mental Health Consensus Project, coordinated by the Council of State Governments Justice Center, is an unprecedented national effort to help local, state and federal policymakers and criminal justice and mental health professionals improve the response to people with mental illnesses who come into contact with the criminal justice system.

The Innocence Project
www.ipmn.org

Established in 2002, the Innocence Project of Minnesota (IPMN) is a private, volunteer-based, nonprofit 501(c)(3) organization that provides free investigative and legal assistance to prisoners trying to prove their innocence. IPMN investigates potential claims of wrongful conviction from prisoners convicted of crimes in Minnesota, North Dakota and South Dakota.

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