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Los Angeles County's Blueprint for Change is Too Limited to Succeed

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On August 4, 2015, the Los Angeles County District Attorney presented a comprehensive report to the County's Mental Health Advisory Board that discussed existing efforts, identified gaps in services, and suggested priorities for improving mental health diversion efforts on an ongoing basis.[1] The report, *A Blueprint for Change*, described Los Angeles County's diversion programs and suggested how the County might improve its efforts at redirecting mentally ill offenders away from jails.[2] While Los Angeles County's intercept system has successfully implemented many innovative diversion strategies recommended by leading mental health organizations across the country, high-level offenders (those who commit serious or violent crimes) remain excluded from these diversion programs.[3] However, limiting diversion programs to low-level offenders ignores the influence of behavioral health conditions on criminal behavior.[4] Thus, Los Angeles County should remove this strict limitation of diversion programs and make diversion opportunities available to eligible mentally ill, high-level offenders.

This article discusses how Los Angeles County's diversion program works and why it should be more inclusive to high-level offenders who may be successfully rehabilitated in diversion programs. First, this article will look

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1. JACKIE LACEY, MENTAL HEALTH ADVISORY BOARD REPORT: A BLUEPRINT FOR CHANGE 2 (2015).
2. *Id.*
3. *Id.* at 1.
4. CTR. FOR HEALTH & JUSTICE, NO ENTRY: A NATIONAL SURVEY OF CRIMINAL JUSTICE DIVERSION PROGRAMS AND INITIATIVES 28 (2013).

at why Los Angeles County has a new sense of urgency to develop its diversion programs. Next, this article will look at traditional justifications for incarceration in the criminal justice system and argue that diversion programs should not automatically exclude high-level offenders in light of these justifications. Lastly, this article describes each stage of Los Angeles County's five-intercept diversion model and why it would benefit both mentally ill, high-level offenders and the public at large to extend this model to high-level offenders.

I. CALIFORNIA'S HISTORY WITH DEINSTITUTIONALIZATION

Starting in the mid-1950s, the deinstitutionalization movement took hold in California due to mental health hospitals' poor public image and studies that indicated treatment in the community was superior to treatment in a hospital.[5] Despite numerous reports that California's deinstitutionalization movement resulted in an increased population of mentally ill inmates in jails and prisons, the rest of the nation followed suit and deinstitutionalized.[6]

California's deinstitutionalization movement finally backfired when the United States Supreme Court found California's state prisons unconstitutionally overcrowded in the 2011 *Brown v. Plata* decision.[7] As a result, California's legislature passed Assembly Bills 109 and AB 117 (Collectively, "AB 109/117) in 2011 as part of a "realignment" strategy that shifted responsibility for the supervision of nonviolent and non-serious offenders from state prisons on to counties and county jails.[8] Specifically, AB 109/117 redirected non-serious and nonviolent offenders to county jails

5. Anastasia Cooper, *The Ongoing Correctional Chaos in Criminalizing Mental Illness: The Realignment's Effects on California Jails*, 24 HASTINGS WOMEN'S L.J. 339, 343 (2013).

6. *Id.*

7. Brown v. Plata, 563 U.S. 493, 501-02 (2011), (finding that overcrowding in California's prisons made the provision of prisoner care so difficult to achieve that prisoners' constitutional rights were being violated).

8. Cooper*, supra* note 5, at 347.

instead of state prisons.[9] Furthermore, low-level parolees that would normally be released under State supervision became the responsibility of the local counties in which the parolees are released into.[10] If the parolees were to be re-incarcerated as a result of parole violations, they would be sent to county jails instead of returning to state prisons.[11]

In 1997, the United States Department of Justice found that Los Angeles County's jails had serious deficiencies in mental health care delivery, inadequate supervision, and poor environmental conditions that amounted to a deprivation of the prisoners' constitutionally protected right to mental health care.[12] This resulted in Los Angeles County entering into a Memorandum of Agreement (MOA) in 2002 with the Department of Justice (DOJ) to resolve a long-standing civil investigation into conditions of confinement at the jails under the Civil Rights of Institutionalized Persons Act (CRIPA).[13] Despite this MOA, the DOJ still found that Los Angeles County failed to remedy the situation and continues to violate prisoners' rights by providing inadequate access to mental health care.[14] Included in the litany of deficiencies found by the DOJ were fifteen suicides at the jails in less than thirty months—deaths that could have been prevented with proper suicide prevention practices.[15] The DOJ also found that the jails did not provide appropriate custodial supervision for prisoners, especially those with

9. *Id.* at 350-51.

10. *Id.* at 351.

11. *Id.*

12. OFFICE OF PUB. AFFAIRS, DEP'T OF JUSTICE, *Justice Department Concludes That Los Angeles County Jails System Has Made Progress, but Serious Deficiencies Continue*, JUSTICE NEWS (June 6, 2014), http://www.justice.gov/opa/pr/justice-department-concludes-los-angeles-county-jails-system-has-made-progress-serious.

13. *Id.*

14. *Id.*

15. *Id.*; Ken Kress, *An Argument for Assisted Outpatient Treatment for Persons with Serious Mental Illness Illustrated with Reference to a Proposed Statute for Iowa*, 85 IOWA L. REV. 1269, 1273 (2000) (mentally ill individuals are fifteen times more likely to take their lives as compared to members of the general population).

mental illness.[16] Correctional facilities' staff members were determined to be acting as "silos" when addressing suicide incidents, which led to breakdowns in the continuous care of the prisoners.[17] The prisoners' housing conditions also presented a suicide risk due to inconsistent safety checks and deficient living conditions.[18] Thus, the deplorable conditions that resulted in the deinstitutionalization of mental hospitals merely followed the mentally ill as they were ushered into facilities built for prisoners, not patients.[19] It is in this context that the Los Angeles County District Attorney released *A Blueprint for Change*. However well-intentioned the *Blueprint* may be, without an extension of the diversion initiatives to high-level mentally ill offenders, the *Blueprint* risks being another well-intentioned policy disaster following in the footsteps of the deinstitutionalization movement.

II. NO THEORY OF PUNISHMENT SUPPORTS INCARCERATING HIGH-LEVEL MENTALLY ILL OFFENDERS

A presumption of policymakers that low-level offenders present a low risk to public safety while high-level offenders do not deserve a second chance has led Los Angeles County to exclude high-level offenders from its diversion program.[20] However, many mentally ill offenders have symptoms of their illness manifest as criminal behavior. [21] Therefore, painting them as dire threats to the public is an oversimplification that ignores the influence of mental health conditions on criminal behavior.[22] As a matter of public policy,

16. Letter from Dep't of Justice to Los Angeles County Dep't of Mental Health, Dep't of Justice, (June 4, 2014) (available at https://www.justice.gov/sites/default/files/crt/legacy/2014/06/17/lajails_compltr_6-4-14.pdf).

17. *Id.*

18. *Id.* (living conditions were described as "dimly lit, vermin-infested, noisy, unsanitary, cramped and crowded).

19. Cooper, *supra* note 5, at 347.

20. CTR. FOR HEALTH & JUSTICE, *supra* note 4, at 28.

21. E. FULLER TORREY ET AL., MORE MENTALLY ILL PERSONS ARE IN JAILS AND PRISONS THAN HOSPITALS: A SURVEY OF THE STATES 13 (2010) (arguing that sometimes it is the dangerousness standard itself that necessitated law enforcement involvement for the individual).

22. *Id.*

it makes little sense to incarcerate high-level mentally ill offenders. This can be demonstrated by examining the four traditional justifications for punishment in the criminal justice system (deterrence, retribution, rehabilitation, and confinement), none of which give reason to exclude high-level offenders from diversion programs.[23]

The deterrence theory supposes that the threat of imprisonment is so daunting to would-be offenders that it prevents criminal behavior.[24] However, deterrence cannot be achieved when a mentally ill individual is unaware of, or does not care about, future consequences.[25] For example, someone with schizophrenia who is suffering from delusions that he must protect himself from violence will not be deterred by the consequences of breaking the law.[26] Thus, deterrence cannot be a rational basis for excluding high-level mentally ill offenders.

Furthermore, retribution cannot be used to justify punishing someone for a crime committed as a result of a mental illness.[27] Under retribution theory, it is only acceptable to punish those who are capable of forming intent.[28] However, seriously mentally ill offenders who are unaware of their actions cannot truly be held culpable for criminal behavior.[29] In fact, the mentally ill offender can be viewed as a victim of his or her disease in the commission of the offense.[30] If the offense is a result of a mental illness, and not the mentally ill individual's discernment, then the individual is forced to suffer the

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23. Liesel J. Danjczek, *The Mentally Ill Offender Treatment and Crime Reduction Act and Its Inappropriate Non-Violent Offender Limitation*, 24 J. CONTEMP. HEALTH L. & POL'Y 69, 90 (2007).

24. Jennifer S. Bard, *Re-arranging Deck Chairs on the Titanic: Why the Incarceration of Individuals with Serious Mental Illness Violates Public Health, Ethical, and Constitutional Principles and Therefore Cannot be Made Right by Piecemeal Changes to the Insanity Defense*, 5 HOUS. J. HEALTH L. & POL'Y 1, 61 (2005).

25. *Id.* at 66.

26. Danjczek, *supra* note 23, at 90.

27. *Id.*

28. Bard, *supra* note 24, at 68.

29. Danjczek, *supra* note 23, at 90.

30. *Id.* at 90.

consequences of the mental illness' manifestation just as any other victim of criminal behavior.[31] Mentally ill offenders can even be viewed as victims of a system that funnels them into the criminal justice system instead of providing them mental health treatment in a clinical setting.[32] Therefore, retribution cannot justify the criminal punishment of high-level mentally ill offenders.

Rehabilitation, the theory that criminals can be resocialized into law-abiding citizens, cannot be a valid theory for the criminal punishment of mentally ill criminals. Even when mentally ill offenders receive mental health treatment while incarcerated, their mental conditions can still deteriorate while in jail or prison.[33] One reason for this deterioration may be that correctional settings are destructive to the professional relationship between the mental health provider and patient due to a disparity in trust and power.[34] Also, the patient has less freedom of choice in choosing who provides the medical care.[35] Furthermore, the mentally ill are more vulnerable to violence and getting injured in a fight while incarcerated than those without a mental health problem.[36] All of these conditions combined effectively rebut the theory that mentally ill should be incarcerated for rehabilitative purposes.

Lastly, confinement theory is premised upon safety, not punishment, neither of which are accomplished in Los Angeles County jails.[37] However, if a mentally ill offender can be effectively diverted, confinement would not

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31. *Id.*

32. *Id.* at 90-91; LeRoy L. Kondo, *Advocacy of the Establishment of Mental health Specialty Courts in the Provision of Therapeutic Justice for Mentally Ill Offenders*, 28 AM. J. CRIM. L. 255, 272 (2001) (the National Alliance for Mental Illness estimates that twenty-five to forty percent of the United States' mentally ill will come into contact with law enforcement).

33. Danjczek, *supra* note 23, at 91.

34. William J. Rold, *Thirty Years After Estelle v. Gamble: A Legal Retrospective*, 14 J. OF CORR. HEALTH CARE 11, 16 (2008).

35. *Id.*

36. *Id.* at 10.

37. Bard, *supra* note 24, at 68.

be necessary.[38] Furthermore, since jails and prisons have proven to be inadequate places for mental health treatment, such inadequacy cannot truly preserve safety in proper balance with the mentally ill individual's right to liberty.[39] Thus, the confinement theory has proven to be a very impractical justification for incarcerating high-level mentally ill offenders.

Since none of the justifications for incarceration give sufficient reason to incarcerate the mentally ill, there is no reason to create a *de facto* exclusion of high-level offenders from diversion programs and initiatives. Deterrence does not work on those who do not act rationally. Retribution is inappropriate when mental illness removes culpability for behavior and rehabilitation and confinement in jails has shown to be impractical and ineffective. Therefore, high-level mentally ill offenders should have access to diversion programs when they are available.

III. LOS ANGELES COUNTY'S FIVE-INTERCEPT MODEL SHOULD INCLUDE HIGH-LEVEL OFFENDERS

Los Angeles County's sequential intercept model described in *A Blueprint for Change* is composed of five "intercepts," or contact points with the criminal justice system that may occur throughout the range of stages between pre-booking and post-booking.[40] While these five intercepts serve to divert mentally ill persons who commit low-level offenses away from jail systems, these programs should be expanded to include high-level offenders who are eligible for diversion.[41] Since Intercepts Four and Five are available to individuals whether they have been criminally convicted or successfully diverted, this article will focus more heavily on Intercepts One, Two and Three.[42]

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38. Danjczek, *supra* note 23, at 91.
39. *Id.* at 91.
40. LACEY, *supra* note 1, at 9.
41. *Id.* at 7-8.
42. *Id.* at 10-11.

A. Intercepts One and Two: Pre-Booking and Arraignment

Intercepts One and Two deal with diversion tactics prior to an arrest (Intercept One) and immediately after the arrest but before trial (Intercept Two).[43] During Intercept One, a law enforcement official responding to a situation through skills learned in Crisis Intervention Training, diverts a mentally ill individual to receive mental health services instead of being booked and placed in jail.[44] During Intercept Two, the prosecutor has sole discretion to advocate for a mentally ill defendant to enter various diversion programs.[45] Diversions at these stages are limited to low-level offenders because diversion is dependent upon whether a situation is criminal in nature.[46] The criminality of a situation is determined by the seriousness of the offense and whether violence or harm occurred.[47] However, this should not be the case because mentally ill offenders should not be held culpable for crimes that result from their mental illness.[48]

Intercept One is crucial to the whole diversion process because it is the first contact that first responders have with a mentally ill individual experiencing a crisis.[49] Thus, a vital element of Intercept One is comprised of Crisis Intervention Team ("CIT") Training through which law enforcement officers are encouraged to utilize community-based treatment options instead of arresting and booking mentally ill persons.[50] Another element to Intercept One pairs licensed mental health clinicians with a law

43. *Id.* at 10.
44. *Id.* at 9-10.
45. *Id.*
46. *Id.* at 10.
47. *Id.*
48. Danjczek, *supra* note 23, at 92-93.
49. LACEY, *supra* note 1, at 3; NAT'L ALL. ON MENTAL ILLNESS MINN., MENTAL HEALTH CRISIS PLANNING 1 (2013) (defines crisis as "any situation in which a person's behaviors puts them at risk of hurting themselves or others and/or when they are not able to resolve the situation with the skills and resources available.").
50. LACEY, *supra* note 1, at 4 (explaining that officers are given skills training to defuse potentially violent situations and prevent them from turning violent or fatal).

enforcement officer to jointly respond to patrol service requests when responders or those reporting an incident believe that an offender might have a mental illness.[51]

Beyond proposing to increase funding and expanding current capabilities, Los Angeles County recommended establishing a Mental Evaluation Bureau that would coordinate emergency services, operate twenty-four hours per day, and form a Consolidated Case Management Team to manage cases with persons who have had a violent history caused by mental illness or have had numerous encounters with law enforcement.[52] Such a streamlined and coordinated approach would maximize outcomes of a diversion program proven in a 1995 study to significantly reduce the criminalization of the mentally ill.[53] Under this streamlined approach, the recommended Mental Evaluation Bureau should have greater capacity to deal with high-level offenders as well.

Intercept Two is considered a "second chance" diversion because it encompasses the stage between arrest and arraignment when prosecutors have the discretion to evaluate whether an incident should be handled criminally or non-criminally.[54] While Los Angeles County refers to Intercept Two as part of the diversion system in place, no formalized diversion currently exists at this stage beyond the regular scope of options that a prosecutor has in any criminal case.[55] As a result, Los Angeles County proposed a Public Defender Mental Health Team where clients could be

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51. *Id.*

52. *Id.* at 41-42 ("The Consolidated Case Management Team would also manage a database to track and update contacts with mentally ill persons and other data which would help to evaluate and improve departmental crisis responses.").

53. *See* TREATMENT ADVOCACY CENTER, MENTAL HEALTH DIVERSION PRACTICES: A SURVEY OF THE STATES 6 (2013) (discussing a 1995 study of Los Angeles' SMART unit found that this type of program resulted in a 2% booking rate of mental health crisis referrals as opposed to a 16% booking rate found in an earlier study of traditional policing in Chicago).

54. LACEY, *supra* note 1, at 10.

55. HANK STEADMAN ET AL., SEQUENTIAL INTERCEPT MAPPING REPORT – LA COUNTY, CA 9 (2014).

evaluated by in-house psychiatric social workers in order for the Public Defender's Office to engage proactively with the client and other stakeholders such as the Sherriff's Department and the Department of Mental Health.[56] This direct intercept is a move in the right direction as it would also help build trust more easily between the client, the psychiatric social worker, and the legal team.[57] It can be difficult for a trusting relationship to develop under the current system, which randomly assigns a psychologist or public defender to the offender.[58]

Diversion at Intercepts One and Two essentially turns on the criminality of the offense because Los Angeles County prioritizes victims' rights to justice above a mentally ill offender's right to treatment through diversion.[59] This reasoning runs contrary to both legal precedent and the Eighth Amendment.[60] In *Atkins v. Virginia*, the United States Supreme Court held that offenders with mental disabilities are ineligible for the death penalty because of their reduced capacity.[61] Under the same reasoning, high-level offenders who are seriously mentally ill should not be banned from diversion initiatives such as Intercepts One and Two.[62] If they are banned from these diversion initiatives, the effect is that mentally ill offenders are effectively unfairly treated as having the same level of responsibility as a mentally healthy offender contrary to the legal precedent set forth in *Atkins v. Virginia*.[63]

Furthermore, the Supreme Court also found that punishments that are

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56. LACEY, *supra* note 1, at 38.
57. *Id.*
58. *Id.*
59. LACEY, *supra* note 1, at 1 ("Mental health diversion also must not come at the price of victims' rights. It is not just a priority, but a given, that the rights of victims will be preserved while efforts are being made to enhance mental health diversion.").
60. Danjczek, *supra* note 23, at 92-93.
61. Atkins v. Virginia, 536 U.S. 304, 320 (2002).
62. Danjczek, *supra* note 23, at 92.
63. *Id.* at 93 (this is especially unfair when the crime was the result of treatable mental illness that the mental health system failed to adequately address).

incompatible with "the evolving standards of decency that mark the progress of a maturing society" or that "involve the unnecessary and wanton infliction of pain" are "repugnant" to the Eighth Amendment.[64] Accordingly, it can be inferred that even if an act were deemed criminal, the prisoner still has an Eighth Amendment right to appropriate mental health treatment, regardless of victims' rights to judicial remedies.[65] By banning diversion opportunities to high-level offenders, Los Angeles County is effectively disregarding an individual's right to mental health treatment. Thus, high-level offenders should not be banned from Intercepts One and Two because law enforcement officials and prosecutors are in the best position to ensure a mentally ill individual's access to effective mental health treatment instead of sending them into an environment which could further deteriorate their mental health condition.

B. Intercept Three: Mental Health Court

Mental health court (MHC) as established by Intercept Three is another diversion tool that utilizes community justice partnerships involving mental health treatment and social services providers to place eligible offenders on a judicially supervised treatment plan.[66] Studies have shown that MHCs are highly effective and cheaper than traditional criminal sentencing in dealing with mentally ill offenders.[67] In Los Angeles County, a judge in a MHC can

64. Estelle v. Gamble, 429 U.S. 97, 103 (1974) (citing Tropp v. Dulles, 356 U.S. 86, 101 (1958); Gregg v. Georgia, 428 U.S. 153, 173 (1976)) (these cases were decided around the Eighth Amendment which bans cruel and unusual punishment).

65. Danjczek, *supra* note 23, at 93.

66. *Id.;* KIDEUK KIM ET AL., URBAN INSTITUTE, THE PROCESSING AND TREATMENT OF MENTALLY ILL PERSONS IN THE CRIMINAL JUSTICE SYSTEM 27 (2015) (as of 2011, there have been at least 240 court-based mental health interventions identified by the the Criminal Justice/Mental Health Consensus Project).

67. Danjczek, *supra* note 23, at 106-07 ("While the participants in the Broward County MHC were all non-violent misdemeanor offenders, a King County, Washington study involved offenders with violent criminal activity and found that for MHC participants, violent criminal activity was reduced by 88%. In addition, that study found that 75% of the participants did not commit any offenses one year after their graduation from the MHC program. A Hamilton County, Ohio MHC has also successfully reduced recidivism in cutting

give offenders alternatives to incarceration as a sentencing choice upon conviction.[68] One alternative unique to Los Angeles County is the Assisted Outpatient Treatment program, which allows for court ordered supervised outpatient treatment of mentally ill adults who would otherwise resist treatment.[69]

MHCs have very limited capacity and only address a small fraction of cases that could go to specialty courts.[70] Thus, offenders who do not receive adequate mental health treatment and discharge planning while incarcerated are at a higher risk of recidivism because they fall back into the revolving cycle of incarceration due to their lack of treatment.[71] Furthermore, in Los Angeles, these specialty courts are post-conviction courts, which means that the mentally ill offender is already deeper in the criminal justice system by the time this intercept occurs.[72]

A radical solution to this problem would be a complete overhaul of the MHCs in Los Angeles County according to the "Mental Health Prison Oversight Court" ("MHPOC") model as proposed by Stanford Law School Three Strikes Project.[73] Under this model, a MHPOC composed of both judges and mental health professionals would work together to provide appropriate sentencing and monitoring as necessary.[74] This new court would also have the authority to oversee the mental health treatment of an

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re-offender rates to less than 10%.").

68. LACEY, *supra* note 1, at 10.

69. *Id.* at 25.

70. STEADMAN ET AL., *supra* note 55, at 10.

71. KIM ET AL., *supra* note 66, at 30 (among nearly 300,000 prisoners released in 15 states in 1994, 67.5 percent were rearrested within three years**)**.

72. STEADMAN, *supra* note 55, at 10.

73. STANFORD L. SCH. THREE STRIKES PROJECT ET. AL., WHEN DID PRISONS BECOME ACCEPTABLE HEALTHCARE FACILITIES? 3-4 (Feb.19, 2015) (the Stanford Justice Advocacy Project (formerly the Three Strikes Project) represents inmates serving unjust prison sentences for minor crimes, assists released prisoners successfully reentering their communities, and advocates for fairer and more effective criminal justice policies in California and across the country).

74. *Id.* at 3.

incarcerated defendant and order changes to the treatment plan as the court deems appropriate.[75] This partnership model between mental health professionals and judges would help ease the burden on MHC judges who may not have experience interacting with those suffering from mental illnesses and would help the criminal justice system provide appropriate sentences that actually rehabilitate the defendant.[76] In relation to high-level offenders, the breadth of partnerships within the MHPOC would have greater oversight to reduce any risks to the general public.

Regardless of whether a MHPOC is established, high-level offenders should not be banned from mental health courts. In Brooklyn, New York, a MHC has been established that accepts violent felons in addition to low-level offenders.[77] Under Brooklyn's model, an offender is screened out of the MHC if he or she is considered to possess too high of a risk for violence or possesses too low of a likelihood of successful treatment completion.[78] The results of Brooklyn's MHC have been positive with only sixteen percent of participants being arrested in the first year after being diverted through the MHC.[79] These results should encourage Los Angeles County to expand the eligibility for MHCs to be inclusive of high-level offenders who are deemed to have a likelihood of successful rehabilitation.

C. Intercept Four and Five: Community Reentry and Community Support

Intercepts Four and Five revolve around an offender's reentry back into the community.[80] Intercept Four encompasses appropriate discharge planning.[81] This includes planning where a person will live, how the

75. *Id.* at 4.
76. *Id.*
77. Danjczek, *supra* note 23, at 109 ("As of June 2006, violent offenders accounted for 42% of the 562 total referrals and 43% of the 262 participants.").
78. *Id.*
79. *Id.* at 110.
80. LACEY, *supra* note 1, at 10-11.
81. *Id.* at 10-11.

discharged will support himself or herself, and whether he or she will be supervised by the criminal justice system.[82] Meanwhile, Intercept Five focuses on the person's continued and permanent access to resources including permanent housing and peer and family support.[83]

Similar to Intercept One, the structural elements of Intercepts Four and Five are on the right track but the initiative itself lacks sufficient resources and coordination to keep up with the need.[84] These intercepts especially have difficulty in securing permanent housing for the individuals and ensuring affordable access to mental health care treatment and medication.[85] Thus, the expansion of administrative entities and services such as data collection capabilities, expanding various treatment resources, and the establishment of the Permanent Mental Health Diversion Planning Committee - a committee designed to bridge the gap between policy decisions and implementation[86] - would help facilitate the coordination of Intercepts Four and Five.[87] Since these Intercepts are already available to all those re-entering society from the criminal justice system,[88] including the high-level offenders, the expansion of these administrative entities and services would only serve to help high-level offenders even more. Thus, investments in coordination and resources would help all offenders undergoing community re-entry including high-level offenders.

IV. CONCLUSION

Until Los Angeles County recognizes the connection between dangerous or violent criminal behaviors and mental illnesses, its diversion programs will

82. *Id.*
83. *Id.* at 11.
84. STEADMAN ET AL., *supra* note 55, at 12-13.
85. *See id.* at 12-13; LACEY, *supra* note 1, at 27.
86. LACEY, *supra* note 1, at 7.
87. *Id*. at 7-8.
88. *Id.* at 10.

continue to wrongfully prioritize victims' rights to justice over the rights of high-level offenders to mental health treatment.[89] While the County's diversion programs for low-level offenders may greatly reduce the number of mentally ill inmates in the criminal justice system, scores of high-level mentally ill offenders will get left behind and pulled into a cycle of fragmented care and incarceration.[90] Opening Los Angeles County's intercept model to high-level offenders is not only possible, but consistent with every mentally ill offender's Eighth Amendment right to be free from cruel and unusual punishment.[91] Furthermore, there is no theory of criminal punishment that justifies the incarceration of mentally ill individuals, no matter what type of crime they commit.[92] Therefore, Los Angeles County should take the bold step of allowing high-level offenders to participate in its diversion initiatives.

89. *Id*. at 1.
90. Danjczek, *supra* note 23, at 76.
91. Atkins v. Virginia, 536 U.S. 304, 320 (2002).
92. Danjczek, *supra* note 23, at 90.