

Navigating the Criminal Justice System

A NAMI resource for people with
mental illness and their families



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About NAMI

NAMI, the National Alliance on Mental Illness, is the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness. What started as a small group of families gathered around a kitchen table in 1979 has grown into the nation's leading voice on mental health. Today, we are an association of over 650 state and affiliate organizations who raise awareness and provide advocacy, education, and support in communities across the United States.

To locate your local NAMI, learn more about NAMI educational programs and advocacy initiatives, and access other guides and resources, visit nami.org.

Acknowledgements and Gratitude

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- "Family Guide to the Criminal Justice System," NAMI Maine (2021)
- "Criminal Justice: Advocating for an Adult with a Mental Illness," NAMI Minnesota (2020)
- "Beyond Punishment: Helping Individuals with Mental Illness in Maryland's Criminal Justice Center," NAMI Maryland (2018)
- "Understanding the Criminal Justice System: A Guide for Adults with Mental Illness, Advocates & Families," NAMI Connecticut (2016)
- "My Family Member Has Been Arrested — What Do I Do?," NAMI Glendale, an affiliate of NAMI Greater Los Angeles County (2015)
- "A Guide to Mental Illness and the Criminal Justice System," National Alliance on Mental Illness Department of Policy and Legal Affairs (2008)

Finally, we deeply appreciate NAMI grassroots advocates who work tirelessly to help individuals and families navigate the complicated criminal justice system.

Legal Disclaimer

The information provided in this guide does not constitute legal advice. All information, content, and materials made available through this guide are for informational purposes and are not intended to be a substitute for consulting a lawyer. Readers are encouraged to consult the laws and procedures of their states and localities and to seek legal counsel regarding the specifics of their case.

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There are numerous links throughout this document. To help you distinguish between internal links (links that take you to another part of this document, like a section or glossary term) and external links (links that take you outside this document), internal links will simply be underlined and external links will be underlined and followed by .

ABOUT THIS GUIDE

NAMI believes that people with mental illness deserve help, not handcuffs. Yet the unfortunate reality is that people with mental illness are overrepresented in our nation’s criminal justice system. About two million times each year, people with serious mental illness are booked into jails, and nearly two in five people who are incarcerated have a history of mental illness. Many people with mental illness are involved in the criminal justice system for committing non-violent, minor offenses related to untreated symptoms of mental illness and/or self-medicating with alcohol or other drugs.

This guide provides general information and resources that are intended to support people with mental illness — or their family members or friends — as they navigate the criminal justice system. The guide is broken up into sections dedicated to different topics or phases of the criminal justice system and includes definitions for key words and resources for support or more information. Additionally, it provides practical explanations of what you may experience by touching on criminal procedure and a few substantive areas of law with the intent of providing context for navigating this complex system.

Criminal law is almost entirely a matter of state law. As a result, while some things might be similar, the criminal justice system operates differently from state to state, and sometimes, from community to community within the state. Courts can also be impacted by resources or reforms in a community, such as the implementation of a mental health court or policies that prioritize diversion for people with mental illness. Therefore, there may be instances where your experience is different than what is presented in this guide, but we hope that the information included here provides a helpful baseline.

In this guide, you will see terminology that might feel stigmatizing or is inconsistent with the inclusive language NAMI uses. Terms such as “insanity,” “incompetent,” and “mental defective” are legal terms that are found throughout state and federal laws in the United States. We include them in the guide only as technical terms that have meaning and impact within the criminal justice system. NAMI otherwise uses person-first language.

Finally, we would like to emphasize that this guide is intended for informational purposes only and is not a substitute for a lawyer. Do not try to navigate the criminal justice system alone. Ensure you are reaching out to resources and experts in your community to support you. We strongly encourage you to connect with local resources and legal counsel that can help you in your journey through this complex system. No amount of research and information can substitute for having the support and guidance of a criminal lawyer with experience working in your state. For support and information about local resources, you can connect with your nearest NAMI affiliate.

MENTAL HEALTH EMERGENCIES AND THE CRIMINAL JUSTICE SYSTEM

People in a mental health crisis deserve a mental health response. Unfortunately, too many communities lack robust mental health crisis services, which results in law enforcement professionals serving as the primary first responders to people in mental health or suicidal crises. In these interactions, people with mental illness face an increased risk of becoming involved in the criminal justice system. A person experiencing a mental health crisis can't always clearly communicate their thoughts, feelings, needs, or emotions. They may also find it difficult to understand what others are saying. As a result, law enforcement professionals can sometimes misinterpret symptoms of mental illness as threatening behavior. Symptoms may also include impairments in judgment that contribute to someone breaking the law. Whether you are a family member, caregiver, friend, or person living with a mental illness, being prepared to respond when a crisis begins is important not only in helping get connected to care but also in diverting people in crisis from involvement in the criminal justice system.

What Is a Mental Health or Suicidal Crisis?

A mental health or suicidal crisis is any situation in which a person's behavior puts them at risk of hurting themselves or others and/or prevents them from being able to function effectively in the community. Mental health crises can occur even when treatment plans have been followed and mental health professionals are involved. For example, a person in crisis may experience one or more of the following: active thoughts about suicide or self-harm; erratic, unusual, risky, or harmful behavior; delusions, paranoia, or losing touch with reality (psychosis); or extreme withdrawal from everyday life.

For an in-depth guide to mental health crisis prevention and planning, please read "[Navigating a Mental Health Crisis](#)," a NAMI guide. This guide outlines what can contribute to a crisis, warning signs that a crisis is emerging, strategies to de-escalate a crisis, and tools to begin creating a personal crisis plan for yourself or your family member.

Who to Contact? 988 Versus 911

	What to Expect When Calling 911	What to Expect When Calling 988 Suicide and Crisis Lifeline
WHAT:	911 is the universal dialing code for emergency services that connects callers to emergency medical services (EMS), fire, and/or law enforcement.	The 988 Suicide and Crisis Lifeline (988 Lifeline) is the nationwide number to call for anyone experiencing a mental health, substance use, or suicidal crisis — or any period of emotional distress. It is also available for someone reaching out on behalf of a person in distress or crisis.
MAIN PURPOSE:	To dispatch help to your location. Often, in mental health crises, law enforcement is the primary service dispatched through 911. <i>Anyone experiencing an emergency that requires immediate medical attention or physical danger should call 911.</i>	988 connects help seekers to crisis care through a network of over 200 crisis call centers that offer support through phone, text, and chat (at 988Lifeline.org). When you contact 988, you are connected to a trained crisis counselor who will listen, assess the problem, provide support, help de-escalate the crisis, and connect you to mental health resources.
TIPS IN A MENTAL HEALTH CRISIS:	If you call 911, specify that you are calling about a mental health emergency. Tell them someone is experiencing a mental health crisis and explain the nature of the emergency, your relationship to the person in crisis, and whether there are weapons involved. Ask the 911 operator to send someone trained to work with people with mental illness in crisis such as a <u>Crisis Intervention Team (CIT)</u> or a mobile crisis team.	You can reach the 988 Lifeline by dialing or texting “9-8-8” or chat at 988Lifeline.org . Services are available 24 hours a day, 365 days a year. The 988 Lifeline has specially trained counselors for Veterans and Spanish speakers and includes video chat options for people who are Deaf and Hard of Hearing. To learn more about 988, read <u>NAMI’s 988: Frequently Asked Questions</u> .

For most people in crisis, 988 is the primary intervention, with an in-person response not necessary in most situations because crisis counselors are able to resolve the urgent needs of the majority of people who reach out for help. If there is an imminent risk to the life of the person calling 988, crisis counselors work to obtain the consent and cooperation for an in-person intervention, which may be a mobile crisis team in some communities or connecting to 911 to dispatch emergency services. SAMHSA estimates that only a small percentage of callers require an in-person emergency response.

What Crisis Services Are Available in Your Community?

Crisis resources and services vary by community. As part of planning for a crisis, it is important to learn what is available in your community. Many communities have Crisis Intervention Teams (CIT), made up of law enforcement officers trained in crisis response and de-escalation. A growing number of communities have mobile crisis teams, made up of social workers, nurses, and peer support specialists who can de-escalate crises without law enforcement intervention. Still other communities may have co-responders, a blend of trained law enforcement and mental health professionals. Knowing what is available in your community will help you prepare for who might respond in a crisis.

- Start by contacting your local law enforcement agency. They can provide information about the availability of CIT, mobile crisis, or co-responder teams, and their protocols for responding to mental health crises.
- You can also contact your [state mental health agency or authority](#) to learn more.
- Connect with your local 988 crisis call center to learn about crisis services in your community. They can share more about their services and whether they dispatch mobile crisis response or work with 911 to dispatch an in-person response. You may also want to ask about their policies and procedures for interacting with local emergency response such as EMS or law enforcement.
- The Right Response, an organization that aims to facilitate access to localized, community-based services as alternatives to conventional law enforcement, maintains a [growing list](#) of mobile crisis response teams by state.

If You Call 911

If you call 911, here are a few tips to remember that can help dispatchers best respond to your situation:

1. Remain calm.
2. Explain that you are calling about a mental health crisis.
3. Describe what is going on right now, not what happened in the past. Be very specific about the behavior you are observing.
4. Report any active signs of psychosis, significant changes in behavior, and/or threats to others or themselves. Be brief and to the point. For example, instead of saying “My sister is behaving strangely,” you might say, “My sister hasn’t slept in three days, hasn’t eaten anything in over five days, and believes that someone is talking to her through the television.”
5. Include information about whether the person in crisis is in possession of or has access to a gun or other weapon.
6. Ask for a Crisis Intervention Team (CIT) or a CIT trained officer, if available.

Remember, 911 will produce the fastest in-person response, but it will likely be a police response.

If Law Enforcement Responds

If law enforcement arrives on the scene, how they respond will depend on whether a crime has been committed and if there is a risk for harm to the individual or to others. Police are trained to maintain control and ensure safety. The best way to ensure a safe outcome is to stay calm.

When law enforcement and/or emergency responders arrive:

1. Try to meet them first and calmly brief them on the situation before they interact with the person in crisis. Many first responders will approach a mental health situation differently if they know what to expect.
2. Start by calmly saying, **“This is a mental health crisis.”** Provide them only with relevant information in a concise way. Information that might be important for a response includes:
 - Diagnosis
 - Medications
 - Hospitalization history
 - Anything specific that might escalate or de-escalate a crisis
 - If the person in crisis is in possession of or has access to a gun or other weapon
 - Previous history of suicide attempts, violence, and/or interaction with law enforcement

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

3. Calmly advise your loved one to cooperate with the officers.
4. Step out of the way to let law enforcement do their job. *If you disagree with the officers, don't voice your disagreement or interfere. This could escalate the situation.*

Once law enforcement has been dispatched and officers arrive on the scene, you don't control the situation — they are in charge.

If a Crime Has Occurred: Understanding What Law Enforcement Can and Cannot Do

Having a mental illness or experiencing a mental health crisis is not a crime. However, if a crime has occurred, law enforcement officers have discretion in deciding how to proceed once they arrive. Law enforcement officers will evaluate the circumstances to decide whether to issue a warning, make an arrest, or refer the individual in crisis for evaluation and treatment. If you are present, you can request and encourage the officers to view the situation as a mental health crisis when they are on the scene. Be clear about what you want to happen without disrespecting the officer's authority. If you know that your community has a Crisis Intervention Team (CIT), co-responder team, or mobile crisis response team, you can also reiterate your request for that team to be contacted.

Remember, once law enforcement officers arrive, you will not have control of the situation — they are in charge. Officers will determine if a crime may have occurred, and they have the authority to make an arrest and take a person into custody.

Below are some common outcomes of police involvement:

1. **De-escalation.** In some communities, even if a crime has occurred, law enforcement may decide not to make an arrest if the alleged criminal violation is minor. For example, if a threat was made by the person in crisis but the officers have de-escalated the crisis to the point where they can provide referrals to mental health treatment, law enforcement may leave the scene without taking formal action. Whether the police let the person go with a warning at this point will likely depend on whether police have responded multiple times to mental health crises, how threatening the person seems to be, what training the officers have received, and what community supports the person has in place.

2. **Citation.** In some jurisdictions, law enforcement officers have the option to issue a citation, which is similar to a traffic ticket. In this scenario, no arrest is made, but the individual will be required to appear in court at a later date. Citations are generally only issued for low-level, non-violent misdemeanor crimes. It is more likely that a citation will be issued if the individual has adequate identification, has a place to stay, and is not a flight risk. Make sure to hold on to the citation given to you or your loved one. It will describe the charge and list the court hearing date and location. If the individual does not show up at the hearing, an arrest warrant will be issued. For more information see the “Warrants” section of this guide.
3. **Custody.** If someone’s behavior meets the criteria for an emergency evaluation, law enforcement has the authority to take someone into custody and transport them to an emergency department, general hospital, or community mental health facility for an evaluation. Being taken into custody for emergency evaluation is different than being arrested because the person is not being charged with a crime. Most states allow someone to be taken into custody for up to 24 to 72 hours for an evaluation, which can be extended if a petition for civil commitment is filed. If someone does not meet the requirements for commitment to mental health treatment, they will be released back into the community. See “Navigating a Mental Health Crisis” for more information on emergency evaluations.
4. **Arrest.** Law enforcement will make an arrest if they believe it is warranted. It is important to note that in some jurisdictions, laws require law enforcement to make an arrest for certain types of crimes. Officers are more likely to make an arrest if the individual is alleged to have committed a crime involving violence or if the alleged crime qualifies as a felony. Once law enforcement has placed someone under arrest, they will take them to a local jail.

Additional Resources and Support

- **Warmlines.** Peer-run phone lines that offer callers emotional support and are staffed by volunteers who are in recovery themselves. Contact these services before a crisis happens to get support and learn about local mental health resources.
- **CIT International.** The leading national organization promoting best practices in crisis intervention team (CIT) programs. The organization offers resources and information about CIT and how to bring these programs to a community.
- **The Right Response.** This directory links to mobile crisis response teams in states across the country.

WHAT TO DO AFTER AN ARREST

An arrest occurs when a law enforcement officer takes a person into custody for the purpose of charging them with a crime. However, just because a law enforcement officer picks up or takes someone with a mental illness into custody, it does not necessarily mean that they are under arrest. Law enforcement can take people in a mental health crisis into custody to transport them to a hospital or mental health facility involuntarily for an evaluation.

For law enforcement to make an arrest, their decision needs to be supported by probable cause. This means that the officer needs to:

1. Believe a crime has been committed, and
2. Suspect the person to be arrested has committed that crime.

An individual may also be arrested as a result of a warrant because of:

1. An investigation
2. An outstanding warrant related to a prior offense
3. A violation of a judge's order
4. A failure to appear in court
5. A failure to pay a fine

See the "Warrants" section of this guide for more information.

Just because a law enforcement officer picks up or takes someone with mental illness into custody, it does not necessarily mean that they are under arrest.

During an Arrest

During an arrest, do not resist or interfere with law enforcement in any way. Resisting arrest can result in additional, more serious charges and an escalation of the situation. You can be most helpful by remaining calm and advising your loved one to be calm as well. You, your loved one, or your lawyer can address any issues that arise during the arrest at a later time. If the arrest is made, the individual will be placed in handcuffs and transported to the police station in the back of a police car. This may be extremely upsetting for you to witness and traumatic for your loved one to experience.

Once the arrest has been made and the situation is under control, most officers are willing to hear about the unique needs of the person being arrested. If your loved one is arrested, be prepared to advocate for them to access any medication or treatment they might need while incarcerated. For more information on advocating for treatment in correctional settings, see the "Incarceration and Care in Confinement" section of this guide.

Locating an Individual After Arrest

If you are present when an arrest is made, the law enforcement officers have the option to tell you where they are taking your loved one. However, if the only information you have is that the person was or may have been arrested, finding them can be difficult.

Similar to what we see in the movies and on TV, when someone is arrested, they will have an opportunity to make a phone call. However, it may take several hours before your loved one has the opportunity to make that phone call. You will only be notified if your loved one has identified you as a point of contact and provided consent. They also may not be able to retain possession of their cellphone once in custody. For this reason, if your loved one has a history of involvement with law enforcement and arrests, or you believe crisis symptoms might lead to an arrest, it is a good idea for them to carry a piece of paper with the phone numbers of their case managers, family members, and/or advocates who can help them in these situations.

Once arrested, people are often booked into the jail of the city or county where they were arrested. Booking is the process of fingerprinting a person who has been arrested, photographing them, and registering their information with the jail. After they have been booked, the person who has been arrested will be placed into a holding cell at the facility where they were booked. If you don't know where your loved one was taken after arrest, the local county jail is usually the best place to start. All phone numbers and addresses for jails are accessible online. People are often registered according to their name and date of birth, and many county jails now have online databases of people in their custody that you can check.

If your loved one is not at your local jail, you can call nearby hospitals. It is possible that even though they are under arrest, the officer determined that they still needed a mental health evaluation. If this is the case, they will most likely be transferred to the nearby jail following an assessment and medical clearance.

Should You Disclose Mental Illness?

Once booked into jail, it may be important for you to tell law enforcement or the jail that your loved one has a mental illness. This can help get your loved one access to treatment sooner. However, there are pros and cons to disclosing this information. Before you decide to share your loved one's psychiatric history with the facility where they have been booked, there are a few things to consider.

- **Law enforcement might have limited knowledge of mental illness.** While many law enforcement agencies and jails have been educated about mental illness and have policies in place to support people with mental illness, there are still professionals in the criminal justice system who consider mental illness to be a safety risk that may result in them being treated as a threat instead of a person who needs health care and support. A lack of knowledge may cause complications for your loved one accessing immediate care and possibly result in them being placed in segregation (see the "[Incarceration and Care in Confinement](#)" section of this guide). Your [local NAMI](#) might be able to provide additional information about training for local law enforcement or jail staff.
- **Seeking advice from a defense attorney.** If your loved one already has a lawyer, you should discuss with them whether you should disclose your loved one's psychiatric history to law enforcement. [Attorneys](#) often have knowledge about facility policies related to people with mental illness or whether a law enforcement agency has training in working with people who have a mental illness. An attorney can also advocate with a jail to ensure their client is receiving appropriate mental health treatment.

If your loved one does not yet have an attorney, you can reach out to your [local NAMI](#), who may have information about what you can expect.

- **Consider if there is imminent risk of suicide.** If you believe that there is an imminent risk of suicide, it will be important to alert the facility so they can help your loved one. Suicide is the second leading cause of deaths in jails and usually occurs within the first 48 hours of [incarceration](#).

If you decide that disclosing information about your loved one's mental illness is in their best interest, you can and should advocate with the staff at the facility to provide accommodations for your loved one's mental illness. For more information about mental health treatment in incarceration settings and ways to advocate with facilities, please see the "[Incarceration and Care in Confinement](#)" section of this guide.

Interrogation

Interrogation is the formal questioning by law enforcement of someone suspected of a crime. Law enforcement might informally question someone before they are arrested, but an interrogation happens after someone has been taken into custody. If your loved one has been arrested, it is safe to assume that they will be questioned by law enforcement. Before officers can question someone who is under arrest – and not free to leave – they must read that person their Miranda rights, which protect a person’s Fifth Amendment right to not incriminate oneself and their Sixth Amendment right to legal counsel.

These are the Miranda rights:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in the court of law.
3. You have the right to an attorney.
4. If you cannot afford an attorney, one will be provided for you.

Encourage your loved one to ask for a lawyer. The United States Constitution requires that as soon as the person being questioned asks for a lawyer, the police must cease questioning until the person’s attorney is present. Serious mental illness can cause significant issues in a criminal case. People with serious mental illness are more likely to make false confessions as a result of interrogation methods used in more serious cases, like capital crimes such as murder or acts of terrorism.

It is critical to get an attorney for a criminal suspect or defendant with mental illness as soon as possible. Without an attorney present, law enforcement may extract a confession from the person being questioned without their full knowledge and consent. Questions about whether the defendant has been properly notified of their Miranda rights most often arise when the defendant has given law enforcement a confession during an interrogation without a lawyer present. The defendant can waive their right to have their attorney present during questioning as long as, in doing so, the person is “knowing and intelligent.”

With respect to people with mental illness, the reason this is important is that a confession given during an interrogation is valid, even if the person questioned has a mental illness and did not give the confession from their free will. Evidence of a mental illness might be introduced at a later trial to discredit such a confession, but it still may not fully remove the impact of a confession.

Simply having a mental illness does not impact whether someone is considered "knowing and intelligent."

Decision to File Charges

The decision to file charges generally comes after someone has been arrested and booked. Depending on the jurisdiction, law enforcement will share the information, including the arresting officer’s report, with the prosecutor’s office. Often filing charges is a joint decision between law enforcement and the prosecutor’s office, and the decision is made before the first court appearance.

Several factors will play into the decision to prosecute. These can include, but are not limited to, the:

- Amount of evidence that supports the prosecutor’s case
- Importance of prosecuting the crime
- Person’s prior criminal history and frequency of contact with law enforcement and the justice system
- Best interest of the person who has been arrested

- Interest of prosecution to the public's safety
- Likelihood that the person will get needed psychiatric treatment through the criminal justice system

As a cautionary note, family members should not presume that the prosecutor will be sympathetic to their loved one's case just because it involves mental illness. Prosecutors are responsible for enforcing the law and representing the interests of the community they serve. Work with your loved one's defense attorney to determine if it is helpful to inform the prosecution about your loved one's mental illness and the impact of symptoms on their behavior. See the "[Working With Attorneys](#)" section of this guide to learn more about the roles and responsibilities of the attorneys involved in the justice system.

There are two broad categories of criminal charges that can impact sentencing, diversion options, and life opportunities such as employment.

Felony

- Considered a more serious crime (ex. murder, robbery, aggravated assault, drug trafficking).
- If convicted, often results in a longer prison sentence, higher fines, and more long-term consequences.
- Usually go through a more extensive legal process that may involve a trial.

Misdemeanor

- Considered a less serious crime (ex. vandalism, driving under the influence, public disturbances).
- If convicted, can result in a jail sentence up to one year, some smaller fines, or penalties.
- Greater opportunities for diversion to mental health court or other treatment diversion programs.

When the crime is considered a felony, charges will likely be filed. A felony is a more severe crime and often has an element of risk to public safety. It is unlikely that someone who has committed a felony will be released on bond. See the "[Navigating the Courts and the Criminal Process](#)" section of this guide for more information. Through the criminal process, some cases can be reduced to lesser felonies or misdemeanors, which can lead to jail diversion opportunities. However, this cannot happen until a later point in the criminal process.

Work with your loved one's defense attorney to determine if it is helpful to inform the prosecution about your loved one's mental illness and the impact of symptoms on their behavior.

UNDERSTANDING MENTAL HEALTH DIVERSION OPTIONS

“Diversion” is a term that refers to moving people away from the criminal justice system and offering alternatives to arrest, prosecution, and incarceration that connect people to mental health services. In most jurisdictions, diversion opportunities are reserved for non-violent misdemeanors and minor felonies. Diversion can be an important opportunity for people with mental illness to avoid the negative outcomes of involvement in the traditional criminal justice system.

More and more communities are building out opportunities to divert pre-arrest, post-arrest, or before a trial. Unfortunately, diversion is not an option for everyone, and diversion programs are not available in every community.

Diversion most often occurs at one of four different points:

1. **Pre-police Encounter Diversion.** Before or during a mental health crisis, decisions to defer to mental health professionals are a form of diversion. Dialing 988 or connecting with mental health services instead of 911 can avoid involving law enforcement and risking a situation escalating to where it might result in arrest or further criminal justice involvement. See the “Mental Health Emergencies and the Criminal Justice System” section of this guide, or NAMI’s “Navigating a Mental Health Crisis,” for more information.
2. **Pre-arrest Diversion.** When someone has contact with the police during a crisis or for a criminal violation, the police have discretion to transfer that person directly to the mental health system without ever making an arrest. See the “Mental Health Emergencies and the Criminal Justice System” section of this guide, or “Navigating a Mental Health Crisis,” for more information.
3. **Pre-charge Diversion.** After someone has been arrested, the prosecutor and law enforcement have the power to divert someone with mental illness into community-based services instead of charging them with a crime. These types of diversion programs are also referred to as “prosecutor-led interventions.”
4. **Pretrial Diversion.** The final opportunity for diversion occurs in court, after a person has been charged but before their case has gone to trial. Prosecutors, judges, and defense attorneys might raise this possibility if the facts of someone’s case fit eligibility requirements for problem-solving courts, also called specialty or treatment courts, such as mental health, veterans, or drug courts. These courts focus on engaging a person in treatment rather than traditional criminal punishments.

Diversion that takes place before a trial allows someone to avoid the remaining criminal process, including a criminal conviction. This is particularly important for people with mental illness, because their symptoms may impact their actions. Most importantly, diversion enables people with mental illness to receive treatment in an appropriate setting instead of spending time in jail.

Under the terms of a pre-charge or pretrial diversion, the prosecution will likely drop charges in the case of mental illness on the condition that the person undergoes voluntary treatment – in some cases, supervised by the court. If the person fails to follow through on the agreed-upon treatment, the prosecutor’s office can have that person re-arrested and refile the charges.

How Is Diversion Different Than Probation or a Suspended Sentence?

For [probation](#) or a suspended [sentence](#), a conviction is entered either by [guilty plea](#) or by [verdict](#) at trial and will become a part of someone's criminal record. If someone is given a suspended sentence, the judge sets a sentence that includes jail time but allows the person to avoid going to jail as long as they meet certain requirements set by the court. In the case of probation, the person convicted of a crime can serve their sentence outside of jail or [prison](#) but must follow certain conditions. In both instances, someone risks being incarcerated or facing additional charges if they violate the terms of their suspended sentence or probation. They also will have a criminal record which can have implications for housing, employment, or other public programs. For more information on probation, see the "[Probation and Parole](#)" section of this guide.

In practice, diversion options are most often available in the case of non-violent or misdemeanor crimes. As the crime becomes more serious, prosecutors and law enforcement will be less willing to accept diversion as an option. However, diversion programs have become more appealing to criminal justice professionals as a way to prevent overcrowding of jails and reducing caseloads.

If you or your loved one is concerned about possible involvement with the criminal justice system, it is advisable to familiarize yourself with diversion programs and opportunities in your community. [Contact your NAMI State Organization or Affiliate](#) to find out about diversion programs in your area that help people with mental illness. You can also use the [National Treatment Court Locator maps](#) to determine what type of resources are available in your state.

Prosecutors and defense lawyers may not be familiar with jail diversion, even if there is a program in your community. You should be prepared to present the defense lawyer with information concerning diversion opportunities in your community, including the names and phone numbers of program administrators. In some cases, you may want to reach out to the program to determine if it would be a good fit for your loved one.

WORKING WITH ATTORNEYS

Attorneys play a key role in courtrooms and criminal cases. You might notice that there are multiple attorneys in a courtroom, and each has a role to play. Understanding who they are, the rules that guide their work, and their role in the criminal court process will help you navigate the criminal justice system. Additionally, it's important to understand the differences between the types of attorneys and how to leverage them as a resource to advocate on behalf of someone with mental illness involved in the criminal justice system.

All attorneys work under a set of rules guided by the law, as well as ethical rules of conduct set by their profession. An attorney's primary obligation is to the people they represent — the prosecutor represents the government, and the defense attorney represents the person being charged with a crime. Keep this in mind, as it will help explain how they might choose to interact with family members or other support people. While it might be helpful to work with family or other support people, attorneys have no obligation to speak with either. If a defense attorney's client has not given them permission to speak to family, they will not be able to share any information. See the section below on "Working with an Attorney as a Family Member" to better understand the defense attorney's responsibilities and to learn tips for advocating with them.

The Difference Between Prosecutors and Defense Attorneys

There are two main lawyers in a criminal case: the prosecuting attorney (or prosecutor) and the defense attorney.

Prosecutor	Defense Attorney <i>(Either a <u>public defender</u> or <u>private defense attorney</u>; see below for more info)</i>
Represents the government (i.e. state, county, or city)	Represents the person being prosecuted (i.e. accused of a crime)
Responsible for enforcing laws of <u>jurisdiction</u> (i.e. state, county, or city) and protecting public safety	Responsible for working with client to defend against criminal charges and advocate on behalf of client with the court
May have authority to support dismissing cases for minor <u>offenses</u> or some cases involving first-time offenders	Can negotiate with prosecutor and present information to the court about someone's mental health history
Is involved in assessing someone's eligibility for diversion programs such as mental health courts; see the " <u>Understanding Mental Health Diversion Options</u> " section for more information about diversion	If a client is found guilty, can provide the court with relevant information to justify reduced <u>sentences</u> or diversion to mental health services

Public Defenders Versus Private Defense Attorneys

There are two types of defense attorneys — public defenders and private defense attorneys. A public defender is someone the government appoints and pays to represent a person facing criminal charges who is unable to afford their own attorney. In many communities there are organizations or agencies that provide this free legal service. In areas that do not provide a public-defender service, the state will appoint and pay for a private attorney for any criminal defendant who meets the qualifications for a state-provided legal defense.

Public defenders exist because the United States Constitution guarantees the right to legal representation to anyone facing criminal charges. However, there are nuances to this right. For example, in non-felony cases, state courts are only required to appoint an attorney at no cost if it is a misdemeanor case that carries the possibility of a substantial jail or prison sentence. To better understand the difference between felony and misdemeanor charges, see the “What To Do After an Arrest” section of this guide.

What If I Cannot Afford an Attorney? Finding Free, Pro Bono, and Reduced-Fee Legal Services

Hiring a private defense attorney can be expensive. Even if someone is not eligible for a public defender, they still may not be able to afford an attorney. Public defenders are not the only free legal resources available. Some non-profit organizations and private attorneys may be able to take a case at a free or reduced rate if someone is considered indigent.

“Indigent” is a term used in the courts and legal field to refer to someone who is financially unable to pay for their own lawyer. In cities and more densely populated areas, there are usually organizations that will take on cases for free or at a reduced rate. There are also listings of private attorneys who will take cases on a pro bono basis, meaning the lawyer provides their services for free. Many lawyers — including ones who can charge a high hourly rate — take a few pro bono cases each year, and some lawyers will take cases on a reduced-fee basis if the defendant’s story is compelling.

Where to look? There are many places to begin looking for free or reduced-fee legal services. You can start searching for non-profit legal organizations in your community by using [FindLegalHelp.org](https://www.findlegalhelp.org/), a service operated by the American Bar Association. The [National Association of Criminal Defense Lawyers](https://www.nacdl.org/), as well as local associations of criminal defense lawyers, publish lists of member attorneys, some of whom take pro bono and reduced-fee cases. Your [local NAMI](https://www.nami.org/) may also have information about local attorneys familiar with representing people with mental illness.

Private defense attorneys are lawyers hired directly to represent someone and are paid by their client rather than by the government. People who are able to afford a defense attorney will be required by the court to do so. While the person being charged with a crime should ideally hire their own attorney, if symptoms of a mental illness present a barrier, it might fall to the family to find and hire a private attorney.

Here are some areas of expertise to look for when searching for and hiring an attorney:

- An attorney who specializes in criminal defense.
- An attorney who has represented other clients with mental illness.
- An attorney who is familiar with mental health treatment facilities and how to access available services
- An attorney who responds favorably to your questions (see suggested questions in “What Questions Should I Ask Before Hiring an Attorney?”).

The American Bar Association offers [state-specific lists](#) of state bar associations and tools that can help you find qualified lawyers in your area.

What Questions Should I Ask Before Hiring an Attorney?

Before hiring an attorney, it is important to know if they have the skills and knowledge to represent your loved one, especially when mental illness is a factor. Below are some questions to ask the attorney — and yourself — before hiring them.

Questions for the attorney:

- Do you have any experience working on cases involving mental illness or representing clients with a mental illness?
- Do you have experience representing people facing similar charges, and what were the outcomes of those cases?
- Do you have experience or knowledge of mental health diversion programs in our community?
- Are you familiar with mental health treatment facilities in our community?
- Can I speak to some of your previous clients? Or do you have any letters of reference?

Questions to ask yourself:

- Does the lawyer seem interested in this particular case?
- Does the lawyer seem friendly and easy to communicate with?
- Does my family member feel comfortable with the lawyer?
- Does the lawyer show compassion for and understanding of my loved one’s case and mental illness?
- Does the lawyer seem trustworthy and convincing?

For additional information and ideas for what to ask when hiring an attorney, read this [American Bar Association resource](#).

Working With an Attorney as a Family Member

An attorney's primary responsibility is to serve their client, regardless of who is paying for their services. Therefore, even if you pay for your loved one's attorney, they have no obligation to share any information with you or respond to your requests. Their only obligation is to their client (your loved one). However, establishing and maintaining a good working relationship with the defense attorney is a good idea so you can stay informed, when possible and appropriate, and share information that might be helpful to the case. When you are working with your loved one's defense attorney, keep these tips in mind:

1. **Be a helpful resource.** You have an immense amount of knowledge about your loved one's mental health history and who they are. As soon as possible, reach out to your loved one's attorney to introduce yourself. Be a reliable source of information for the defense attorney so that you can share relevant information that could help their case. It is unlikely that your loved one's psychiatric history has been shared with their attorney, and even if they are aware of their client's mental illness, it's unlikely they would have the time to reach out to providers for background information.
2. **Their time is limited.** If your loved one is represented by a public defender or attorney from a non-profit organization, they often have very large caseloads and do not have the time to give a great deal of personal attention to every case. This does not mean that they are not a good lawyer or that they don't care about the case, but when talking to them, keep in mind that there are many demands on their time – be succinct, direct, and use their time wisely.
3. **Appeal to their compassion.** Most attorneys who become public defenders do so because they truly care about helping people. Appeal to this compassion by being persistent and insistent, while also remaining polite and demonstrating your concern for the case.

Unfortunately, it is unlikely that the defense attorney will be proactive in reaching out to you to provide updates about the case or your loved one's situation. It may fall to you to maintain semi-regular contact with them at key times, like a day or two before your loved one's court date. Remember, depending on whether the defense attorney has been given permission, they may have limited information to share with you. Your loved one has the option to give permission for their attorney to speak with you regarding confidential matters. The best way to obtain this permission is by having a signed release of information or providing verbal permission.

If your loved one has not given their lawyer permission to share information with you, that does not prevent you from providing relevant information to their attorney to assist with the case. You do not need to tell your loved one's whole story, but you do have relevant information to share. Consider providing the following information in writing:

- Information about their mental illness, recent hospitalizations, medication, and treatment
- Contact information for their psychiatrist and mental health case manager
- A list of people who witnessed the events that led to the criminal charge
- Brief information about what stressors might have been happening in your loved one's life at the time of the offense
- Information about their criminal history, if applicable
- Support systems and help available in the community if the courts were to release them from jail

Changing Attorneys

No matter how unhappy family members are with an appointed attorney, they *cannot* fire the attorney. 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 cannot talk to loved ones. If the defendant makes choices that are not aligned with what you believe to be your loved one’s best interest – for example, turning down a plea offer or refusing to engage in mental health treatment as part of a court agreement — the defense attorney must obey their client’s wishes.

• • • • •
• **The only person**
• **who may request**
• **a different**
• **attorney is the**
• **defendant.**
• • • • •

If the defendant is unhappy with an appointed attorney, they can request to “relieve” the attorney from the case and appoint a new attorney. The defendant must tell their attorney they want to do this, and the attorney will then tell the judge on the next court date. Judges, however, rarely grant a request to assign a new attorney. A judge may deny a request because they feel the attorney is competent or that it would take a new attorney too long to become familiar with the case. If the defendant has already made the same request and did receive a new attorney, the judge may deny a second request and deem it unreasonable. An attorney may also request to be relieved from representing a particular client, but this is rare.

Additional Resources and Support

- **“Victims, Witnesses and Defendants with Mental Illness or Intellectual and Developmental Disabilities.”** Developed by NAMI, The Arc of the United States, and Prosecutors’ Center for Excellence, with support from the Bureau of Justice Assistance, this guide aims to increase understanding about mental illness among prosecutors and the impact of the Americans with Disabilities Act and other factors to help resolve cases.
- **“The Right to An Attorney: Theory vs. Practice.”** Published by the Brennan Center for Justice, this resource provides additional information about the Sixth Amendment right to an attorney and how it is effectuated in state courts.
- **“Criminal Justice Standards: Defense Function.”** Published by the American Bar Association, this resource outlines ethical and professional standards for attorneys working in criminal defense.

NAVIGATING THE COURTS AND THE CRIMINAL PROCESS

Courts and the criminal process are governed by a strict set of rules. These rules guide the court process, helping to keep key court professionals unbiased and supporting defendants' rights to due process. These rules also guide how you can advocate for your loved one.

The Role of Families and Loved Ones in the Courts

As you prepare to support your loved one during their trial, it is important to understand the role you will play in court. While certainly important, family members and other loved ones there to support the person being prosecuted do not have a formal or “standing” role in the courtroom. “Standing” means that you are party to the case in front of the court and have a formal relationship to the court proceeding under law. Under the rules of court procedure, standing often dictates who can speak in court, who can share information with the judge and attorneys, and who the judge and attorneys will speak to throughout the course of the case.

Who Is in the Courtroom?

Courtroom staff help ensure that court proceedings run smoothly. Below is a list of some of the professionals you might encounter.

Bailiff or Sheriff's Deputy. A law enforcement official who may act as an intermediary between the judge and attorneys. Their primary purpose is courtroom security.

Clerk of the Court (or Clerk). An officer of the court who maintains case files, makes docket entries into the electronic court records system, and generally serves as the administrative arm of the court.

Court Reporter. Sometimes referred to as a stenographer, their job is to document an accurate record of everything that is said in the courtroom.

Probation Officer. Law enforcement officer who investigates, reports on, and oversees individuals who are on parole or probation. Some courthouses have probation offices onsite, but in others, probation staff will be present on specific days to present their report to the courts.

Pretrial Staff or Social Workers. Many courthouses have social workers who work with the court to do evaluations, refer people to services, and help with court supervision. You may also encounter social workers and other case workers from local nonprofits who partner with the courts in diversion programming.

The prosecuting attorney or judge most likely will not acknowledge or talk to family members. Your loved one's attorney should be the only one speaking directly with the prosecutor and the judge. Information you think will be helpful to the case may be harmful if shared without the consent and instruction of your loved one's attorney. In the unlikely event that you have the opportunity to address the judge in court, you should do so in coordination with the defense attorney.

Competence to Stand Trial

In the U.S., every person facing criminal charges has the constitutional right to a fair trial. The 1960 U.S. Supreme Court Case, *Dusky v. United States*, recognized that part of this right includes being competent to stand trial (CST), meaning that a defendant must be able to understand the charges brought against them and be able to participate in their own defense. Therefore, a judge has an obligation under the U.S. Constitution to determine if someone is competent to stand trial. If someone is exhibiting symptoms of a mental illness that appear to interfere with their ability to engage in court proceedings, a judge may raise concern about their competency to stand trial.

The defense attorney may also raise the issue of competency as part of their strategy to introduce mental illness into the case and get their client connected to mental health services that can help restore competency. While less likely, some prosecuting attorneys may also raise issues of competency or may not object to a competency evaluation out of concern for fairness in the criminal process.

Competency to stand trial can be raised at any point during court proceedings, even in the middle of a criminal trial. Once someone brings up the issue of competency (usually the judge or the defense attorney), a judge will consider the issue and can order a competency evaluation before the criminal case proceeds. A judge is the only person who can order an official competency evaluation.

Competency Evaluation and Restoration

Once a competency evaluation has been ordered, the criminal case will be put on hold. In most jurisdictions, a competency evaluation is performed by a mental health professional, and in some states, more than one professional must conduct an evaluation. The evaluators are selected by the court, and the evaluation will help inform the judge's decision on whether the defendant is competent to proceed with the case.

If someone is determined incompetent to stand trial, they will start a process called "competency restoration." For people with serious mental illness, this often requires admission to a psychiatric hospital.

Some states have laws that require a competency evaluation to take place within a certain amount of time. For example, a competency evaluation must take place within 90 days in Georgia, within 60 days in Arkansas, and within 15 days in Connecticut. This is to prevent lengthy delays in criminal cases. Unfortunately, many states' competency restoration systems are overwhelmed and face significant backlogs, with some defendants waiting weeks or months for assessment and restoration services to become available. In most jurisdictions, someone will remain incarcerated while waiting for these competency restoration services. While far less common, some communities allow for community-based competency restoration to be provided for some people who do not need hospital-level care – allowing them to receive competency restoration services while living in the community rather than in an institutional setting like a jail or hospital.

If your loved one is being held in jail awaiting competency restoration, you can advocate with the jail to ensure your loved one receives the care they need while they wait to be transferred to a hospital. See the "Incarceration and Care in Confinement" section of this guide for more information about advocating with jails and prisons on behalf of your loved one.

The goal of competency restoration is stabilizing someone for trial, not long term recovery.

If the court determines that someone has been restored to competency, the criminal case will proceed. If the court determines that they will not regain competency — or if they do not regain competency in a reasonable period of time — they may be released back into the community and the charges may be dropped. In some instances, [civil commitment](#) proceedings can be initiated for someone determined incompetent to stand trial. This can be initiated by a government attorney or the family of that person.

To learn more about civil commitment proceedings and involuntary commitment, contact a lawyer in your state who can advise about state laws and options. You can identify an attorney in your area through a similar search described in the “[Working With Attorneys](#)” section of this guide.

First Appearance in Court

The first [appearance](#) in court can be very confusing – and sometimes traumatic – for individuals with mental illness and their family members.

Someone who has been arrested has the right to be brought before a judge without “unnecessary delay.” There is a wide range for what constitutes an “unnecessary delay,” and it can be anywhere from a few hours on a weekday to two or more days on the weekend. The length of time between the arrest and the first appearance often depends on how well the criminal court in a particular locality is staffed, as well as on the day and time of week of the arrest. However, it is unlikely that it will be longer than three days after arrest.

If someone was issued a citation instead of being arrested, their first court appearance could take place several weeks after the incident.

During the first appearance in court, the judge makes certain that the police have arrested the right person and informs the defendant of their rights under the law. Most important, the judge may advise the defendant not to speak to anyone involved in the court process until they have spoken with a lawyer. At the first appearance, the judge will appoint an attorney if the defendant is entitled to one and cannot afford one. Please see the “[Working With Attorneys](#)” section of this guide to learn more about when you or your loved one might be entitled to a free defense lawyer or how to find a criminal defense attorney.

If the defendant is incarcerated during this appearance, and [bail](#) has not been determined, the judge will either set bail or schedule a [bail hearing](#).

Understanding Bail

Bail (sometimes called “bond”) is the mechanism through which a person charged with a crime is allowed to remain out of jail while their case is pending. Bail is a substitute for pretrial detention and is collateral that the court holds to guarantee that a person who is charged with a crime will appear for the trial.

In most criminal cases, when someone has been arrested and incarcerated, bail will be set, and the person charged with the crime is given an opportunity to pay bail, be released from jail, and stay in the community until the conclusion of the criminal case. If they do not pay bail, they will remain incarcerated. In a few cases, however, bail will not be available, especially if the person was charged with certain violent crimes or if the judge determines bail is not an effective guarantee the defendant will return to court.

You may be able to help your loved one get released or be given a lower bail if you can show that they have a place to stay, support in and connections to the community, and access to treatment. These factors help indicate that your loved one will return to court. Talk to the defense attorney about how you can help. It can take a while for a case to go to trial, so trying to get your loved one released can be very important in getting them connected to treatment services and support in the community while their case progresses.

Several states have undergone efforts to reform the cash bail system. If you live in one of these jurisdictions, bail will not be set, and depending on the crime, the defendant's release will be determined based on other factors such as community supports available to the individual.

Bail Hearing or Review

What: A bail hearing is the court process for determining whether someone can be released from jail before and during a criminal trial. It is important to have a lawyer during a bail hearing.

When: A bail hearing is often done during the first court appearance but may also be scheduled to occur at a later date.

How: The defense attorney should make the decision whether to raise the issue of mental illness at the bail hearing. If they do, it is important to have an advocate who can explain to the court the extenuating circumstance involved with mental illness and the importance for someone with a mental illness to receive treatment outside of jail while awaiting trial. There has been significant work to educate judges and other court officials about mental illness, but the defense attorney will know specifically whether the judge making the bail determination is sensitive to issues relating to mental illness. The seriousness of the crime is likely to have the greatest influence on the judge and the amount of bail they set.

Paying Bail

Bail can usually be paid (also referred to as being "posted") at the courthouse during business hours or at the jail at any time. You can contact the clerk of the court in your jurisdiction to learn more about where you can post bail once it has been set. Most often, people post bail in the form of cash, but you can also post bail using:

- Property, such as a home or land, provided that the amount of equity in the property meets or exceeds the bail amount
- Intangible property, such as bank books, certificates of deposit, letters of credit, and stock certificates
- Credit or debit card payments, along with some form of identification
- Purchase of a bond from a bail bondsperson

After criminal proceedings have concluded, if the defendant continuously returned to court, the court will release any property holds or will return the bail amount to whomever paid.

What Is a Bail Bond Service?

A bail bond service can be hired to pay a bail bond for someone charged with a crime who does not have the money necessary to post the entire bail amount. There is often a significant, non-refundable fee for their service. For example, some will charge a fee of 10% of the total bail amount. Furthermore, if the defendant misses a court hearing (sometimes called "skipping bail"), the court may keep the full amount of bail paid. At this point the bail bond service may attempt to recover any financial loss they have incurred, meaning that the person who signed the agreement with the bail bond service will have to immediately pay the amount borrowed in full or hand over any collateral pledged in the agreement. Using a bail bond service can come with significant financial risks, and it is important to consider these risks before you engage with this type of service.

Mental Health and Drug Courts

Many jurisdictions have established specialty courts, also known as problem-solving courts, which are specialized dockets within the criminal justice system. These courts work to address underlying issues that have contributed to someone’s arrest, such as mental illness or a substance use disorder. Judges, prosecutors, defense attorneys, mental health providers, and community partners collaborate to provide treatment in the community as an alternative to being charged and possibly convicted of a criminal offense that could result in incarceration. Individuals who participate in a mental health or drug court do so with the agreement that, if they complete the program, the charges against them are dropped. If the crime is related to mental illness or a substance use disorder, accessing a mental health or drug court can be a good option for avoiding incarceration or prosecution.

You can find out if your community has specialty courts by contacting your local courthouse or by searching the National Treatment Court Resource Center. This list is not comprehensive, so it’s a good idea to check your county’s website or call the court where the case is being heard. You can also reach out to your local NAMI for information about specialty courts in your area. If there is a mental health court in your community, you can work with your loved one’s attorney to advocate to the courts for participation in the program. The judge, prosecutor, and defense all need to be in agreement in order for someone to access these programs.

Plea Bargaining

Most criminal cases are settled through a plea bargain rather than a formal trial. This involves negotiations between the prosecution and defense to reach an agreement about the disposition — or result — of the case. A plea bargain can take place at any point in a criminal case, even before charges have been filed. For someone with mental illness who is charged with a crime, a plea bargain may achieve the goals of avoiding incarceration and getting connected to care. A plea agreement may include specific requirements, such as confinement or participation in a treatment or recovery program.

What Is a No Contact Order?

In some cases, the judge may issue a “no contact order.” A no contact order is a court order mandating that a defendant have no contact with a particular person or place (like a particular business or address). No contact orders are often issued when a defendant is charged with harming another person. If a no contact order is issued to your loved one, stress the importance of following the court order and support them in complying with the order. If your loved one violates the order, they risk serious consequences like arrest or additional criminal charges. Though you or your loved one may disagree with the order, you should not ignore it.

Going to Trial

If the prosecution and defense cannot reach an agreement on a plea bargain, the case will go to trial. During the trial, both the prosecution and the defense tell their side of the events leading to the criminal charges. A trial is a very technical exercise that involves extremely detailed rules, which are enforced by the judge, about what can be said or shown. Depending on the severity of the charges, trials can be long processes with a lot of waiting time. If your loved one’s case goes to trial, make sure you have the support you need to make it through what can be an overwhelming process.

There are two different types of trials:

- **Bench Trial.** In a bench trial, the judge alone hears the facts of the case and determines the outcome. Bench trials are common in misdemeanor cases.
- **Jury Trial.** A jury trial is usually held before six to twelve people from the local community who are chosen as jurors. The jurors hear the facts of the case and make a determination of guilt or innocence. A jury can also recommend a sentence to the judge. In a felony case, the person charged has a right to a jury trial. If the defendant waives this right, the case is then tried before a judge. The right to a jury trial does not arise in most cases unless the potential period of incarceration upon a conviction exceeds six months.

Whether someone testifies at the trial is generally decided by the defendant’s lawyer in conjunction with the wishes of the defendant. The person being charged with the crime is not required to testify at the trial, and a great number of people do not testify in their own trials.

In most states, a trial verdict must be unanimous. If a verdict is reached, double jeopardy attaches, which means that the defendant can never again be tried for the same offense. If the jury cannot reach a unanimous verdict (referred to as a “hung jury”), the case is dismissed, but the prosecution can choose to retry the case before a new jury.

What Can I Do? Providing Support During Trial

While awaiting trial, one of the most important things you can do is continue your support for your loved one. If they are not out on bail, try to visit them in jail or call them regularly. Depending on the availability of everyone in their support system, it can be helpful to make a chart to outline who is going to visit and when. Staying positive while incarcerated can be difficult, but having friends and family members to talk to can help your loved one remember that they are not alone. Additionally, attend as much of the trial process as you can. Trials can seem scary, especially for someone going through one. Familiar faces can help ease some of that fear.

During the trial, stay quiet and be respectful toward the courtroom professionals. Interrupting a trial can result in your removal from the court or more serious legal actions. Depending on the circumstances, you may be called as a witness. If this is the case, your loved one’s lawyer will walk you through exactly what they need from you. If you are testifying as a witness in the case, the defense attorney may request and emphasize that you not speak to anyone else in the courtroom.

Mental Illness as Part of the Defense

Another way mental illness might be addressed in court is part of a strategy by the defense attorney to secure the best outcome for their client. There are two outcomes of a criminal case that specifically focus on mental illness. It is important to note that they are rarely used in criminal defense, and when they are used, they are not often successful. They are included in this guide to give families a comprehensive overview of mental illness in criminal cases. *(Note: terms in quotation marks within this section are legal terms, not NAMI’s preferred language.)*

1. **“Not Guilty by Reason of Insanity (NGRI),”** more commonly known as the “insanity defense,” is an affirmative defense to most criminal charges. It means that the defendant lacked sufficient capacity to appreciate the criminality of their acts, or to conform their actions to the requirements of law because of a “mental disease or defect.” In other words, although the person did in fact commit the acts for which they are charged with a crime, they are not guilty of a crime because of their mental state.

Several states have eliminated “not guilty by reason of insanity” in their state criminal statutes. Of the states that still have the insanity defense, each has adopted its own version involving different considerations or elements that need to be met for someone to be successful with this defense. In most cases, it is used only in cases of serious and violent felonies. In some states, once the insanity defense is raised, the prosecution must prove that the defendant was “sane” at the time of the criminal acts. In other states, the burden is on the defense to show that the defendant was “insane” at the time of the acts. The decision on whether to use the insanity defense requires careful evaluation and usually must be made by an attorney.

In most states, if the defendant is found “not guilty by reason of insanity,” they will be committed to a forensic facility (a hospital or section of a hospital designated for people involved with the criminal courts) until they have “regained their sanity” or are no longer dangerous, whichever occurs sooner. In some states, commitment to the forensic facility is indefinite. Another possibility is that the maximum commitment length could exceed what would have been the maximum incarceration length for the crime.

2. **“Guilty but Mentally Ill”** is a possible outcome of a criminal case as an alternative to the traditional verdicts of guilty or not guilty. Unlike the insanity defense, defendants found “guilty but mentally ill” are held criminally responsible for their actions, and the same punishments for a guilty verdict can be applied. Since a verdict of “guilty but mentally ill” reflects recognition of a mental illness, individuals convicted on that basis will usually have access to treatment for their mental illness during their sentence of incarceration. However, they will likely receive treatment in a prison setting instead of a forensic hospital. A downside of this type of outcome is that it can make it difficult to be considered for parole in the future.

Both of these outcomes should be distinguished from competence to stand trial. “Not guilty by reason of insanity” and “guilty but mentally ill” are possible outcomes of a criminal case that focus on the state of the person at the time the crime was committed. Competency to stand trial focuses on the current state of the person facing criminal charges – and not necessarily their mental state at the time of the crime – and is needed for a criminal case to proceed.

Sentencing

Sentencing happens after someone pleads guilty or receives a guilty verdict after a trial. A few states allow juries to recommend sentencing to a judge. However, in most states, the sentencing is done by a judge alone. Generally, the judge will have the option of imposing probation or incarceration. Depending on the laws of the state, there may be a minimum incarceration sentence attached to the crime, or someone may not be eligible for probation because of the convicted crime.

- **Probation** is a sentence that does not include serving time in jail or prison but requires the person convicted to adhere to certain terms and conditions set by the court. This can include remaining free from additional interactions with law enforcement, participating in educational programming, engaging in mental health or substance use treatment, remaining employed, abiding by a curfew, or

not leaving the jurisdiction. A probation officer oversees the individual's progress in the community, and the individual on probation must follow the direction of the probation officer. If your loved one is sentenced to probation, it is important that they abide by the conditions of their probation. If they do not, they risk arrest and incarceration. For more information on probation, please see the "Probation and Parole" section of this guide.

- **Incarceration** occurs when the person convicted is sentenced to serve time in jail or prison. The judge determines the length of the sentence. In some states, laws may restrict the judge's discretion to set sentences, and the judge may be required to set a specific sentence for a particular crime. Where the judge does have discretion over the sentence, the sentence assigned will be influenced by the pre-sentence report compiled by a probation officer.

What Can I Do? Helping Inform the Pre-Sentencing Report

The family of a person with mental illness should get involved, with the approval of their loved one's defense attorney, with the creation of the pre-sentence report. These reports are usually only completed in felony cases, and they provide relevant details about the person being sentenced, such as criminal record, family life, community support, and employment history. If the attorney feels that their client's mental illness may have a positive impact on the sentencing, the family should seek out the probation officer preparing the report and provide them with information about their loved one's mental illness and treatment needs. The prosecution and the defense may also provide information at the sentencing hearing that they feel is relevant to the determination of the sentence.

In misdemeanor cases, the judge will likely set a sentence at the same hearing as the trial. This means that there is no pre-sentence report compiled as there is in a felony case. If the family of the person being sentenced wants to make a statement concerning the sentence, it will have to be made immediately after the judge makes their ruling. The family should speak with the defense attorney before a verdict is reached so that the attorney can be prepared to ask the judge to hear from the family concerning sentencing.

Please see the "Incarceration and Care in Confinement" section of this guide to learn more about advocating for your loved one while they are incarcerated.

Additional Resources and Support

- **"Foundation Work for Exploring Incompetence to Stand Trial Evaluations and Competence Restoration for People with Serious Mental Illness/Serious Emotional Disturbance."**
Developed by the Substance Abuse and Mental Health Services Administration (SAMHSA), this publication provides an overview of competence to stand trial, incompetence to stand trial, and competence restoration for adults and youth in the criminal justice and juvenile justice systems.

INCARCERATION AND CARE IN CONFINEMENT

Jails and prisons in the U.S. face significant challenges in addressing the needs of people with mental illness who are incarcerated. Facilities are not therapeutic environments and can often exacerbate symptoms. Every person in jail or prison has a constitutional right to receive adequate medical care, including people with mental illness. However, there are limitations to this right, and many jails and prisons are not built, financed, or structured to provide adequate mental health services. Tragically, only three in five people (63%) with a history of mental illness receive mental health treatment while incarcerated in state and federal prisons, and less than half of people (45%) with a history of mental illness receive mental health treatment while held in local jails.

Jails Versus Prisons

While many believe that the terms “jail” and “prison” are interchangeable, there are notable differences.

- **Jails** are local facilities run by the county sheriff or the city, depending on the community. People who are incarcerated in jail are often awaiting a trial or serving a sentence of one year or less.
- **Prisons** are institutional facilities run by the state or federal government, and people who are incarcerated in these facilities are usually serving a sentence of a year or more. People who have been found guilty of breaking a state law are usually sent to a state prison where the offense occurred. People who have violated federal laws are typically sent to a federal prison, which may be located outside of their home state. Within both state and federal prison systems, there are differences in the security level, which is based on the types of crimes the people incarcerated have committed. There are also prisons operated by private corporations through contracts with state or federal governments.

Mental Health Services and Medications in Incarcerated Settings

Despite constitutional rights and court mandates, there are significant challenges to accessing adequate mental health care in incarcerated settings. Jails and prisons are structured for punishment, deterrence, and rehabilitation for people who have committed crimes. Because of this structured setting, people with serious mental illness often face challenges to navigating life in a jail or prison. Symptoms of mental illness sometimes cause people to violate facility rules, which can result in consequences such as solitary confinement or activity restrictions, which can further exacerbate symptoms. While some people’s symptoms can lead to disruptive behavior and put them at risk for consequences, others may withdraw and “suffer silently.” In the often-chaotic setting of jails and prisons, even serious medical needs can go undetected and untreated.

If a person enters incarceration without a mental illness diagnosis, it will likely be challenging to access care inside the facility. This is especially true in smaller facilities, which may not have psychiatrists or other professionals on staff who are trained to diagnose and/or treat mental illness and make judgments about serious medical needs.

While individuals have a right to treatment while incarcerated, that right has limitations. This right only guarantees enough treatment to alleviate acute symptoms of mental illness. Therefore, this right may not extend to the treatment necessary to prevent someone’s symptoms from becoming worse. Also, it may not extend to rehabilitative services (such as therapy or case management) during incarceration

or to preparations for the inmate's transition back into the community. Additionally, jail and prison administrators have to act with "deliberate indifference" before it can be considered a violation of someone's constitutional rights.

Despite the complex history around the treatment of people with mental illness who are incarcerated, some jails and prisons have begun to understand that providing treatment can be beneficial to their facilities, not just to the people receiving treatment. Research shows that providing access to mental health care in corrections improves facility safety and increases workplace well-being for correctional officers. Additionally, reform efforts at the state and federal level have recently improved access to mental health treatment for some people who are incarcerated.

Communicating With Jail or Prison Staff

It is important for family members to work with the staff or administrators of the jail or prison where their loved one is incarcerated. Your advocacy can be an effective way of helping get your loved one access to the services and support they need.

As soon as possible, inform staff about your loved one's history of mental illness and their specific treatment requirements, including medication. Wardens (prison), sheriffs (jail), or medical staff (jail or prison) are all people you can contact to share this information. Depending on the facility, mental health or medical staff that can treat mental illness may only be on site to deliver services on certain days, but other facility staff can provide information to the right personnel. It can also be helpful to ask your loved one's psychiatrist or other mental health providers to contact the facility with medical details about the person who is incarcerated.

Does HIPAA Apply?

The Health Information Portability and Accountability Act (HIPAA) is the federal law that protects information about someone's health and medical records from being shared without that person's consent. In the criminal justice system, there is often a lot of confusion about HIPAA and whether it limits your ability to share health information about your loved one. HIPAA applies only to organizations and people defined as "covered entities," and you are not considered a "covered entity" under the law. A "covered entity" would be a hospital, a doctor, or a pharmacy — or similar entity handling protected health information.

As a result, it is not a violation of HIPAA for you to share information about your loved one's mental health history with the jail or prison. It is also not a violation of the law for the jail or prison to accept this information from you. The law would only prohibit jail or prison medical staff from sharing information with you if there is not a release from your loved one to share this information or if you are not their legal guardian. Likewise, your loved one's psychiatrist or other health care providers would only be able to share information about your loved one with jail or prison staff if there is a release from your loved one or if you are your loved one's legal guardian.

For more information about HIPAA, please visit the [U.S. Department of Health and Human Services website](#).

Depending on the facility, you may want to call or check if there is an email address to provide information about your loved one's mental health needs. Since jails and prisons are often incredibly busy, both calling and sending an email will increase the chances that the information is delivered to the correct staff at the facility. Important information you should share when reaching out includes:

1. Your loved one's full name and date of birth.
2. Information about a diagnosis, mental health history, or symptoms.
3. The names of any medications they are or were taking, as well as medications that have caused adverse reactions.
4. Contact information for their most recent doctor, psychiatrist, social worker, or other community professional who prescribes their medication or participates in their care.
5. History of self-harm or suicide attempts. If you think your loved one is at imminent risk of self-harm or suicide, inform the jail staff so they can take appropriate measures to ensure your loved one's safety.

It is common policy in many jails not to accept prescription medications from outside the facility. However, in the interest of maintaining continuity of care for people with mental illness, some jails have changed their policies and will allow a community pharmacy or provider to send a prescription to the facility. Reach out to facility staff as soon as possible to learn about their policies and whether it is possible for them to work with your loved one's provider. It is also important to note that certain medications are tightly controlled by the government because of the risk of abuse or addiction. These controlled medications might not be allowed in the facility where your loved one is incarcerated. The prescribing provider and facility staff will work to determine a solution that will allow your loved one to access the medication they need while incarcerated.

If you decide to call the facility, use this script to help prepare yourself to communicate the necessary information.



Example Phone Script

"I'm not asking 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) _____ (times per day).

Their doctor, _____ (doctor's name), can be contacted at this number:
_____ (doctor's phone number).

They _____ (do/do not) 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?"

Some facilities have forms that can be completed to inform staff of medical needs for anyone who is incarcerated at their facility. If one is not available, you can use the following to help communicate your loved one's mental health needs in writing.

EXAMPLE INMATE MEDICATION INFORMATION FORM

INMATE INFORMATION

FULL LEGAL NAME OF INMATE: _____

STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

DOB: _____ BOOKING #: _____ JAIL LOCATION: _____

FAMILY CONTACT INFORMATION

FAMILY CONTACT NAME: _____ RELATIONSHIP: _____

STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

DAYTIME PHONE: _____ EVENING PHONE: _____

CONTACT SIGNATURE: x _____

PSYCHIATRIST/TREATMENT FACILITY INFORMATION

PSYCHIATRIST/LAST TREATMENT FACILITY: _____

DATE LAST TREATED: _____ STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE: _____ FAX: _____

MEDICAL INFORMATION

DIAGNOSIS: _____

DAYTIME MEDICATIONS: _____

NIGHTTIME MEDICATIONS: _____

PRIOR ADVERSE MEDICATION EFFECTS (i.e. side effects, allergies, poor efficacy): _____

IS SUICIDE A CONCERN? NO ___ YES ___ IF YES, WHY? _____

OTHER MEDICAL CONCERNS: _____

MEDICAL DOCTOR

NAME: _____ OFFICE PHONE: _____

STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

Release of Information

If possible, work with jail (or prison) staff to obtain a release of information form for your loved one. This will allow the jail to give you information related to their care if you are not a legal guardian. Keep in mind that your loved one has the right to refuse signing the release, but if you can, try explaining why it's helpful for you to access this information. If they do not agree to sign the release of information, the jail's mental health and medical staff will not be allowed to share information with you. However, you are always allowed to provide any pertinent information to them.

Often jails and prisons will require that a request for release of health information be made in writing. Many facilities and state departments of corrections have their own forms that you can use to submit a request. Many of these forms include the following information:

- Name of the person who is incarcerated
- Date of birth for the person who is incarcerated
- Facility identification number
- Name and address of the person(s) who can receive the information
- Purpose for the release of information
- Dates of authorized release, with release expiration date
- Authorization signature

Check the website of the facility where your loved one is incarcerated to see if they have a form available online for you to fill out and send to your loved one to sign. You can also call the facility to request one be sent to you.

Supporting Your Loved One While They Are Incarcerated

Maintaining a connection with your loved one while they are incarcerated can help them immensely. Not only will it support them during an incredibly difficult time, but it can also be central to their recovery. When and how you are able to stay connected to your loved one will depend on the type of facility in which they are incarcerated and that facility's policies.

The following are a few of the most common ways to stay in touch with your loved one while they are incarcerated.

- **Mail** can be sent to people who are incarcerated in jails and prisons. However, there are often restrictions on what you can send. Make sure to learn about any mail restrictions for the facility where your loved one is incarcerated. Restrictions can include weight of the mail, types of photographs, and packaging or types of items included. All mail is typically screened.
- **Email** is typically not something people who are incarcerated are able to access. However, in some state and federal facilities, people who are incarcerated have access to prison-specific systems. Check to see if email is an option at the facility where your loved one is incarcerated. There will likely be restrictions, and communications will be subject to screening and delivery rules, similar to physical mail.
- **Visiting** is possible, but it will require preparation. There are many strictly enforced rules for in-person and virtual visits in both jails and prisons – including limits to the days and times when visits can take place. Check with the facility to learn the rules for visits.

Prepare thoughtfully for your visit to make the most of the time. Follow the facility’s visiting rules, such as where to sit, how you can touch your loved one, whether you can bring children, and what you can wear. You are not allowed to bring “contraband” into the facility, and although this may sound like dangerous items, the list often includes things like chewing gum, watches, and cell phones. Check with the facility before your visit and closely abide by the guidance you receive. You may be provided with a locker to put your possessions in when you enter the visiting room.

The staff at the visiting room have full discretion to decide what is inappropriate behavior and what violates a rule. If you violate a rule, even accidentally or unknowingly, your visit may end prematurely, and you may face restrictions on future visits.

Administrative and Disciplinary Segregation (Solitary Confinement)

In the context of jails and prisons, “segregation” is a term that refers to when an individual is separated from the general population and placed in restrictive housing. Segregation often means spending most of the day alone in a small room and losing certain privileges like phone calls and visits. Segregation is more commonly called solitary confinement, but in correctional settings, there are more technical terms for its use:

- **Administrative Segregation** indicates when a person is placed in segregation for administrative purposes, meaning that they are considered a danger to themselves or others. In many instances, this will be used if someone is determined to demonstrate a risk of suicide.
- **Disciplinary Segregation** is when a person is placed in segregation as a punishment when a rule has been broken.

As a best practice, if someone is placed in a restrictive setting, the facility should conduct a mental health screening within 24 hours and follow up on any symptoms of mental illness. Staff should also perform regular wellness checks in the restrictive setting to determine if the individual’s symptoms are being exacerbated by the isolated setting. Despite existing models for reform and best practices for how to separate a person when necessary, many jails and prisons continue to use isolation in a way that is harmful and that may have longer term psychiatric impact.

What Is Solitary Confinement?

Solitary confinement is the placement of individuals in locked, highly restrictive, and isolated cells or similar areas of confinement with limited or no human contact and few, if any, rehabilitative services. While many facilities use the terms “administrative segregation” and “disciplinary segregation,” it is often still solitary confinement in practice. Placement in solitary confinement frequently lasts for weeks, months, or even years at a time. It’s well documented that the long-term effect of solitary confinement is devastating. Solitary confinement can cause mental illness for people who may not have had a mental health condition prior to being placed in solitary confinement. For individuals who have a mental illness, solitary confinement can worsen symptoms of their mental health condition and leave them unable to function in correctional facilities and unprepared to successfully re-enter communities after their release.

If you find out that your loved one has been placed in solitary confinement, there are several things you can do to advocate for their health and well-being.

1. **Contact the facility.** Reach out to the facility and inquire about your loved one's well-being and whether they are continuing to receive mental health treatment while in segregation. You can also inquire about the reason your loved one has been placed in segregation, how much "out of cell time" they are receiving, and whether there is a plan for them to be moved back into general population.
2. **Learn about the facility's policy.** During your call, ask about the facility's policies regarding segregation. Are people in segregation allowed to receive mail and other items from family? Are phone calls permitted? Can family still visit, and if so, when? Remaining in regular contact can be an excellent source of support during what will be a very difficult experience.
3. **Document your conversations.** Make sure to keep written records about your conversation, including the name of the person you spoke with, their title, the date and time of your conversation, and what specifically was shared.
4. **Contact legal and advocacy support.** Reach out to your loved one's attorney. The attorney might be able to advocate on your loved one's behalf to ensure they are getting the care they need.

There are many state and local organizations that are working to end solitary confinement and support the individuals and families going through this experience. In addition to connecting with your local NAMI, organizations like the [American Civil Liberties Union \(ACLU\)](#) and the [National Disability Rights Network \(NDRN\)](#) have local affiliates that are resourced to advocate on behalf of people who are in segregation.

5. **Be patient and get support.** Advocating for someone who has been placed in segregation can be a long process and often requires persistence. You can reach out to your [local NAMI affiliate](#) for support during this time. They might be able to connect you to others who have been through a similar experience.

Reporting and Stopping Abuse

Unfortunately, people who are incarcerated can sometimes be subjected to abuse by the facility staff or other people who are incarcerated with them. If you suspect your family member is being mistreated in jail or prison, start by contacting their attorney. The attorney can ask questions and advocate on behalf of your loved one. You can also contact your [state's protection and advocacy agency](#) through the National Disability Rights Network (NDRN). They have the legal authority to investigate possible abuse in correctional settings and will advocate on behalf of people with disabilities who are incarcerated, including people with mental illness. You can also contact your state's affiliate of the [American Civil Liberties Union \(ACLU\)](#), which often engages in advocacy to improve conditions and stop abuse in jails and prisons within their state.

PROBATION AND PAROLE

Probation and parole are types of community supervision for people involved in the criminal justice system. While they have some similarities, there are distinct differences based on when they are used and the conditions attached to each.

Probation (previously discussed in the “Navigating the Courts and Criminal Process” section) is a sentence that does not include serving time in jail or prison but requires someone to adhere to certain terms and conditions set by the court to remain out of jail or prison. **Parole** is the conditional release granted after serving a full or partial sentence in jail or prison. Parole is granted following a hearing or review of your case by a parole board. People on either probation or parole must report to their probation/parole officer and comply with all conditions set forth by the court and Probation/Parole Board (sometimes called a “Commission”).

Probation and Parole Conditions

People on both probation and parole are required to have regular meetings with their assigned probation or parole officer. Officers may conduct meetings with people under their supervision in the probation or parole offices, in the person’s home, at job sites, and at other locations in the community. An officer may also meet with family members, victims, mental health service providers, therapists, law enforcement and other criminal justice professionals, employers, and members of the community to determine whether the person under their supervision is complying with the conditions of their release. The probation/parole officer will also work with someone to meet the requirements of their probation/parole, which may include referrals to treatment, mental health service providers, or potential employers.

In addition to reporting to probation and parole officers, some common conditions of probation or parole include:

- Remaining crime-free
- Maintaining employment
- Not possessing weapons
- Not using or possessing illegal drugs
- Not misusing alcohol or prescription drugs
- Consistently participating in substance use treatment
- Receiving mental health counseling
- Taking prescribed medication as directed
- Respecting “no contact” orders that direct the individual to stay away from a person or place
- Paying a fine or fee
- Keeping the probation/parole officer informed of their current home address

Additionally, other conditions the court could impose include electronically monitored curfew or home detention, sex offender registration, submitting to regular drug testing, and computer use restrictions. These additional restrictions are often tied to specific convictions.

What Can I Do? Supporting People on Probation or Parole

Providing support to someone on probation or parole can be important to their success. As noted, probation and parole both come with a lot of requirements, so you can work with your loved one to help them keep track of appointments and work towards complying with the conditions of their release. Remind them of the support services and resources that are available to help them succeed.

Probation and parole officers are often overworked and usually welcome learning of any concerns that allow them to intervene early and avoid issuing a violation. With your loved one (or with their consent), call the probation or parole officer to introduce yourself. If calling without your loved one, make sure you have all the information you would need to identify the person you are calling about, including name and date of birth. Probation and parole officers have multiple clients, so they may not immediately recognize the name of the person you are calling about. Explain your involvement and offer assistance as a member of the person's support network. If the probation or parole officer is interested in hearing from you, your loved one may need to sign release or disclosure forms.

Probation and Parole Violations

When someone does not meet the conditions of their probation or parole, there can be consequences. Probation and parole officers can issue a warrant (either directly or through a judge) if a person under their supervision fails to report or comply with probation or parole conditions. Failure to take prescribed medications or attend required treatment and therapy sessions can be seen as a violation depending on the terms of the probation or parole.

If a warrant is issued as the result of a probation violation, and the individual is arrested, they will appear before the same judge who imposed their sentence. The judge will decide whether to continue probation or sentence the individual to incarceration. If an individual on parole violates any condition of release, the parole officer can notify the Parole Board, request a hearing, and they can be sent back to prison to complete their sentence.

If your loved one believes that they have violated their probation or parole and that a warrant may have been issued as a result, call the probation or parole officer to confirm. If a warrant hasn't been issued, try to prevent its issuance by working with the officer to explain the situation and identify ways to stay in compliance with the terms of probation or parole. Even if a warrant has been issued, advocate with the officer to resolve the issue without taking your loved one into custody. Often, having an advocate can help avoid any jail time.

WARRANTS

Warrants are legal documents written by a judge giving law enforcement permission to take specific action, like arresting someone or conducting a search. There are several different types of warrants that are issued for different purposes, but generally they are issued as a result of someone being accused of committing a criminal offense, violating a judge's order, or violating a condition of probation or parole.

Examples of violations that may result in a warrant being issued include failure to:

- Appear on a scheduled court date
- Pay a fine
- Complete community service ordered by the court
- Complete or comply with treatment ordered by the judge
- Follow a condition set by the judge for release from jail

As mentioned in "Probation and Parole," if you believe a warrant has been issued for violating probation or parole conditions, contact the probation and parole officer to confirm if there is a warrant and try to work with them on how to resolve the issue. Another way to find out if there is an outstanding warrant is to call the court where someone's criminal case is being heard or where they were sentenced. You should not need to disclose the defendant's whereabouts. If asked, explain that the defendant plans to deal with the warrant and ask for information about when and where to appear. If the court does not track warrants, the county sheriff's office or city police department should be able to help you determine if a warrant was issued.

Before responding to the warrant, be sure to contact a criminal defense attorney. An attorney can help you navigate the legal process and may be able to resolve the warrant without an arrest.

If your loved one has to go to court, and if you have the option of going to court with your loved one, show up early and explain to the court officers that you want to respond to a warrant. You will be directed to a specific courtroom. When you arrive, if you have not arranged a defense attorney, you should ask a court officer or clerk for the public defender. Be prepared for a long wait, and make sure you have enough time, as addressing a warrant can take all day. Your presence as an advocate can make all the difference — the difference between being sent to jail and staying in the community.

Your presence as an advocate can make all the difference — often the difference between being sent to jail and staying in the community.

The outcome of responding to a warrant depends on a variety of factors. The judge may show leniency if the defendant shows responsibility or provides a persuasive excuse. For example, a judge may be willing to work to resolve the situation if the defendant was in a psychiatric hospital or a mental health provider is able to verify that the defendant's mental illness interfered with their ability to respond — and if the individual commits to a treatment plan. In these circumstances, it is helpful to bring a letter from your loved one's treatment provider or case manager or a record of their treatment or hospitalization.

COMING HOME (COMMUNITY RE-ENTRY)

Re-entry refers to the period of time after a person leaves incarceration and returns to their community. Of people who are incarcerated, 95% will one day be released and will likely face a variety of challenges as they return home. Re-entry is challenging for all individuals, but people with mental illness and substance use disorders (SUD) face increased vulnerability and risk. Nationally, about 80% of individuals released from prison in the U.S. each year have a chronic medical, substance use, or psychiatric condition. Due to the lack of timely access to critical services and support for their health or mental health condition upon release, these individuals are at a higher risk of repeated incarceration.

Taking Steps Before Release

Successful re-entry begins in the weeks and months *before* release. Gaining access to housing, social support services (food, employment, education), and community support (family, friends, social networks) are all critical for successful reintegration into the community. Securing access to mental and physical health care is equally important.

An individual may need to re-apply for any public benefits such as food stamps, public housing, or Medicaid that they received before incarceration. Some states will let you start your applications for Medicaid, public housing, disability benefits, and Supplemental Nutrition Assistance Program (SNAP) benefits before release. More recently, there are states that are taking steps to connect people who are returning from incarceration with their Medicaid benefits. Ask the jail or prison staff or administrators if there is a pre-release program that can help with applications, or if they offer other information and resources about re-entry. If not, a trusted family member or friend may be able to help with getting the necessary documents to start applications.

NAMI affiliates across the country can provide information and resource referrals to help you access mental health services, treatment, and support after you return to the community. NAMI also offers support groups and education programs for people living with mental illness and their families. In particular, support groups might be a good option for someone re-entering the community to connect with others who have had similar experiences.

Identification

Having identification is important for someone returning from incarceration. You must have identification (ID) to apply for most government benefits and for many jobs. Family members may be able to compile documents to help apply for a state ID. Depending on the facility where your loved one is incarcerated, the facility staff may support them in obtaining an ID prior to re-entry. Some common documents you may need to locate or obtain a duplicate of include:

- **Birth Certificate.** You often need a copy of your birth certificate to apply for other forms of ID. If you need a copy of your birth certificate, contact the vital records agency in the state where you were born.

- **Social Security Card.** A Social Security card can be obtained from the [U.S. Social Security Administration](#) with valid proof of legal U.S. citizenship or immigration status, age, and identity.
- **Driver's License or Identification (ID) Card.** Contact your [state DMV](#) to find out what types of ID they issue and what documents you need to present before getting a new ID.

For general help and information, visit [USA.gov](#) or your county or state website for information about obtaining identification after incarceration.

Health Care and Treatment Access

One of the most important concerns for many people with mental illness returning from incarceration is maintaining recovery and mental health treatment, including the use of prescription medications. To help with this, some [jurisdictions](#) will provide people returning from incarceration with a small supply of medications upon release. Check with the facility where your loved one is incarcerated or the [state department of corrections](#) about their policies for medication access upon release.

For continued care and treatment, health insurance is critical for anyone re-entering the community. Low-cost coverage options might be available through Medicaid or Medicare, depending on the individual's eligibility for those programs, or through private insurers on the health care marketplace. You can apply for coverage and assess your eligibility for subsidies at [HealthCare.gov](#).

If you or your loved one cannot afford prescription medications, there might be programs to help. Many states have programs that provide financial assistance to certain populations to help pay for prescriptions, called State Pharmaceutical Assistance Programs. Additionally, many drug companies have programs that reduce or eliminate the cost of their medication. Each state or drug company has its own eligibility rules and application. Usually, you will need to fill out an application with the help of a doctor. You may also be able to find prescription discounts and information on patient assistance programs by searching [RxAssist](#) - the most current and comprehensive directory of Patient Assistance Programs.

You can also find mental health treatment options at [SAMHSA's FindTreatment.gov](#) or by calling 800-662-HELP (4357) for a referral. There might be facilities in your community that offer low- or no-cost health care. You can [find a community health care center](#) online or by calling 888-275-4772. Certified Community Behavioral Health Clinics (CCBHC) are specially designated clinics that provide a comprehensive range of mental health and substance use services, despite someone's ability to pay. You can find locations on the National Council for Mental Wellbeing's [CCBHC Locator Map](#).

If you need additional support or connections to care, connect with your [local NAMI affiliate](#) to learn more about opportunities in your community for maintaining treatment during re-entry.

Income Support

There are several government programs that provide income support to people who meet certain eligibility standards. Eligibility depends on income, work history, disability, and child support needs.

- **Social Security Programs.** A severe mental health condition may prevent some individuals from getting or maintaining regular employment. Two main programs, run through the U.S. Social Security Administration, provide needed financial assistance for basic living expenses, such as food, housing, and health care. Both programs help ensure a minimum income for people with disabling mental illness:

- **Supplemental Security Income (SSI).** This federal program pays cash benefits to people who have limited resources and income and are 65 or older, blind, or have a disability.
- **Social Security Disability Insurance (SSDI).** This federal program provides cash benefits to people who have been determined to have a disability, have worked a certain amount of time (or had a parent or spouse who worked a certain amount of time), and paid taxes to Federal Insurance Contributions Act (FICA).

Applying and qualifying for these programs can be challenging. For more information, you can view NAMI's resources on [how to apply for SSI and SSDI](#) . You can also call 800-772-1213 or visit your [local Social Security office](#) for more information.

- **Temporary Assistance for Needy Families (TANF).** TANF provides financial support to certain families with children experiencing poverty. In addition to direct assistance, TANF provides other supportive services such as job training or counseling. Search online for the [state agency that manages TANF](#) for more information on how to apply and restrictions that might exist, including limits on how long you can receive TANF benefits. Federal law does not allow people convicted of certain crimes, such as crimes related to drug possession or trafficking, to receive TANF benefits. However, some states still provide other benefits to people in these circumstances.

Food Assistance

Supplemental Nutrition Assistance Program (SNAP), commonly called “food stamps,” is a program to help people who are low-income pay for food. Contact your local [SNAP office](#) for more information about benefits and how to apply. Federal law does not allow people convicted of certain crimes to receive SNAP. However, some states still provide benefits to people in these circumstances.

Additionally, local food pantries provide food for those in need. To speak to someone to find food resources in your community, call the United States Department of Agriculture (USDA) National Hunger Hotline at 866-3-HUNGRY (866-348-6479) for English-language assistance or 877-8-HAMBRE (877-842-6273) for Spanish-language support. [Feeding America](#) or [Homeless Shelter Directory](#) websites also offer resources on finding food and nutrition support near you.

Veterans' Benefits

People who have served in the military or National Guard may be eligible for additional help from the U.S. Department of Veterans Affairs (VA). The VA can help eligible veterans access programs to help with income support, health care, education, housing, and other necessities. The agency also provides specific assistance for veterans leaving incarceration to help prevent homelessness.

There are lots of resources available to support veterans getting connected to VA services. Information and help is available at [VA.gov](#) or through the VA benefits line at 800-271-1000 or the VA health care benefits line at 877-222-8387. If you or your loved one is already enrolled in services with the VA, you can access a variety of supports and information through [My HealtheVet](#). This online portal helps manage personal health records, refill prescriptions, and provide information regarding health benefits for individuals enrolled in services with the VA.

What Can I Do? Mental Health Crisis During Re-entry

Re-entry can be a heightened time of stress, isolation, and hardship. For people with mental illness and/or a substance use disorder (SUD), there is increased vulnerability and risk during this period. Because of insufficient access to timely, critical services and support for health or mental health, people who are returning to the community after incarceration are often at heightened risk of repeated incarceration, suicide, and overdose.

It's important to plan for the possibility of a mental health crisis during a period of re-entry. See the section of this guide titled "[Mental Health Emergencies and the Criminal Justice System](#)" or NAMI's "[Navigating a Mental Health Crisis](#)" for additional support and information. You can reach the 988 Suicide and Crisis Lifeline, 24 hours a day, seven days a week, by calling or texting 988 or chatting via the [988 Lifeline's website](#). The 988 Lifeline has specially trained counselors for veterans and Spanish speakers and includes accommodations for people who are Deaf and Hard of Hearing.

Housing

Finding a place to live is an important but often challenging step toward successful re-entry. Housing programs can be difficult to navigate, and for someone returning from incarceration, there are many additional barriers to overcome. A person's release from incarceration may include conditions to find housing within a specific period after release, and some people may be further required to live in a halfway house or within the jurisdiction where they were convicted.

There are many resources to help identify options for housing in the community. Start by contacting local churches, faith organizations, non-profits, and local government agencies that support formerly incarcerated people. Many will have information and may even operate programs that help people connect with housing. Below are some common housing programs and options for people who are returning to the community from incarceration. While not exhaustive, these resources can serve as a starting point.

- **Public Housing.** Public housing helps families afford housing and avoid homelessness or other kinds of housing instability. Run by the [Public Housing Authorities \(PHA\)](#) and supported by funding through the U.S. Department of Housing and Urban Development (HUD), these programs are meant to serve the most vulnerable people who could not otherwise afford housing on their own. There are restrictions on public housing that can make it difficult for people who have been involved in the justice system to access this program. For example, people convicted of certain crimes are barred from living in public housing.

Some states operate public housing in addition to the PHA. Contact your [state housing agency](#) to find out about additional options in your area. These programs have limited resources, so be prepared to encounter long or closed waiting lists.

- **Permanent Supportive Housing.** This is a type of public housing that includes services and supports such as case management, support groups, and on-site health services. The Supportive Housing for People with Disabilities Program is funded by HUD and is often referred to as Section 811 Housing.

For more information about supportive housing, visit the [Corporation for Supportive Housing's website](#).

- **Transitional Housing.** [Transitional housing](#) provides temporary housing and supportive services, offering interim stability with the goal to successfully move to and maintain permanent housing. For people returning from incarceration, transitional housing is usually referred to as halfway houses or [residential re-entry centers](#). These programs are run by state governments and provide greater structure, stability, and services than some other types of living arrangements.

Programs vary widely across the states, and people may need a referral from corrections staff to be eligible. A person may also be required to live in transitional housing immediately following release, as a condition of [probation](#). Contact your [state's department of corrections](#) about transitional housing.

- **Private Housing.** Temporarily staying with family or friends may be a good option for some people leaving incarceration. However, it can also be difficult for you or your family. Justice system involvement can strain family relationships, and having an additional person living in the home can add additional costs or add additional pressure on the relationship. Depending on the type of [conviction](#), there might be conditions of release that might prohibit certain individuals from living with family. It is best to learn about any restrictions and talk through these issues before release.
- **Homeless Shelters.** If there is nowhere else to go following release, you can look for a homeless shelter in your area. You should call the shelter first to ensure that they have space. You may also be able to get more information by calling 211 or by visiting these websites:
 - [Homelessness Resource Center \(SAMHSA\)](#)
 - [Homeless Shelter Directory](#)

Employment

Employment is important for well-being, whether it provides a source of income, health insurance coverage, social connections, or sense of pride. For someone who has a mental illness, a variety of barriers can make finding and maintaining a job more difficult. For example, many people are concerned that disclosing their mental illness has a negative effect on hiring and career advancement. Symptoms of mental illness may also put certain kinds of jobs out of reach.

Having a history of involvement with the criminal justice system adds extra barriers to employment. People who are formerly incarcerated or have certain convictions may be subject to many laws and statutes that impact opportunities for basic employment. For example, people with certain [felony](#) convictions cannot be school bus drivers or nurses. Before starting your search, [research any laws in your state](#) that may limit employment for someone with a history of involvement with the justice system.

There are organizations that can help you connect your loved one to employment, assist in their search, help them apply for jobs, and assist with interview preparation, like learning how to answer the question, *“Have you ever been convicted of a felony?”* Many of these organizations will be specific to your state or local community, but a few national resources include:

- [Georgetown University Cawley Career Education Center](#)
- [American Job Center](#)
- [Jails to Jobs](#)

Below are a few additional things to consider when beginning an employment search following incarceration:

- **Listing Criminal Records on a Job Application.** In addition to traditional barriers people with mental illness face in finding employment, having arrest or criminal convictions can create added barriers. In many states, job applications will ask about criminal records and, in some instances, arrest records. If asked about your history of arrests or criminal convictions, you should tell your employer or potential employer the truth. There are state laws that prohibit employers from asking about certain types of criminal records, such as arrests that are no longer pending. You can find out about the laws in your state by contacting your state department of labor.
- **Using Supported Employment Programs.** Supported employment programs are an important resource for people with mental illness. Research shows that these programs can help people find competitive employment, put in more time on the job, and earn higher wages.
 - **Individual Placement and Support (IPS).** This supported employment model is designed to help individuals with mental illness find jobs in the competitive marketplace. IPS tailors employment services to match the person’s needs, talents, and preferences. IPS programs prioritize rapid job search and placement. The model calls for employment services to be integrated into the individual’s overall mental health treatment plan with an employment specialist working as a member of the treatment team.
 - **Supported Employment Through Assertive Community Treatment (ACT) or Forensic Assertive Community Treatment (FACT).** ACT and FACT are evidence-based programs designed for people with serious mental illness who are at particular risk for hospitalization, homelessness, criminal justice system involvement, and psychiatric crises. Using a multidisciplinary team approach, these programs provide comprehensive mental health services to individuals whenever and wherever needed. Both programs incorporate employment services directly into the treatment team and planning rather than referring individuals to outside organizations. ACT employment services focus on individual strengths and interests with no time limit on services.

There may also be additional resources through your state’s department of labor or other online resources. You can also contact your local NAMI to learn more about what resources might be available in your community.

How Can I Expunge or Seal a Criminal Record?

Having a record of criminal justice system involvement can create barriers to successful re-entry. Learning about expungement and sealing records will help you understand the options available for a fresh start in the community. Expungement removes arrests and convictions from a person’s criminal record entirely, so it is as if they never happened. Even a court or prosecutor cannot view a person’s expunged record. In contrast, sealing a criminal record removes a person’s criminal record from public view, but it can still be accessed through a court order. Whether records can be expunged or sealed will depend on the types of crimes committed and the laws in the state where they were committed. Currently the federal government does not have a process for expunging or sealing federal conviction records. Contact a local legal aid organization to learn more about expunging and sealing records.

Education

Education might be another step toward getting a job in your community whether it's working toward a high school diploma or re-training for a new career. Most states offer programs to help people finish high school or get General Educational Development (GED) certification. These programs vary by state, and you can find more information by contacting your [state department of education](#).

Attending college and earning a degree can open up even more job possibilities. There are programs available that can [help you pay for college](#). However, some convictions while on federal student aid will [delay your assistance or keep you from getting assistance](#) while on [parole](#).

As mentioned in the section on employment, certain types of convictions can limit which jobs a person can perform legally and can prevent people from working in their field of choice. Therefore, 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. Visit the [National Inventory of Collateral Consequences of Conviction](#) (NICCC) to search what kind of limits may be placed on a person with a conviction.

GLOSSARY OF TERMS AND PHRASES

The following is a list of common terms and phrases, and their definitions, that you may encounter while interacting with the criminal justice system. Remember that justice systems are localized, and this may extend to the language used. This is not intended to be a comprehensive list but a starting point to help you understand and navigate this system.

Acquittal: The finding of “not guilty” in criminal law.

Adjourn: To end or suspend court proceedings indefinitely or to another time.

Adjudication: A judgment or decision of a court or jury regarding a case.

Affidavit: A voluntary written or printed statement of facts made under oath.

Alternative Sanctions: Any settlement of a criminal case that does not result in acquittal, dismissal, or imprisonment. In the mental health context, this may include participation in a mental health court or court supervision/probation that involves active engagement in mental health care.

Appeal: A request made to a court to overturn a legal ruling, such as a criminal conviction, made by a lower court.

Appearance: The act of coming into court either in person or through an attorney.

Arraignment: The initial appearance before a judge in a criminal case. At an arraignment, the charges against the defendant are read, a lawyer is appointed if the defendant cannot afford one, and a plea of guilty or not guilty is entered.

Arrest: Occurs when a police officer takes a person into custody for the purpose of charging that person with a crime.

Arrest Warrant: A document issued by a judge or magistrate that authorizes the police to take someone accused of a crime into custody.

Attorney: Someone authorized to practice law; a lawyer. Also called attorney-at-law.

Bail: The money a defendant pays as a guarantee that they will show up in court at a later date, if released from custody. This money is returned if the defendant appears for their trial. If the defendant does not return, the court may keep the money.

Bailiff: A court official, usually a law enforcement officer or deputy sheriff, who acts as an intermediary between the judge and attorneys and whose primary role is court security.

Bail Bondsperson: A person who provides bail bonds for people charged with crimes who do not have the money necessary to post the entire amount of bail required by the court.

Bail Hearing: A court proceeding that determines if the individual is eligible for release or if bail should be set.

Bench Trial: A type of trial that does not involve a jury but is conducted by the judge who decides the outcome.

Bench Warrant: A document issued by a judge for the detainment or arrest of someone, usually as a result of them violating a court order.

Beyond a Reasonable Doubt: The legal burden of proof required to convict someone in a criminal case. This means that the prosecution must convince the judge or jury that there is no other reasonable explanation that can come from the evidence presented at trial.

Bond: An agreement and obligation to pay money if a defendant does not return to court.

Burden of Proof: In a court case, the responsibility of proving a point or fact. In a criminal case, the prosecution has the “burden of proof” to establish that a defendant has committed a crime.

Charge: A formal accusation of criminal activity.

Civil Commitment: The legal process by which someone is involuntarily admitted into a treatment facility or supervised outpatient treatment. This is done for various reasons, including mental illness, serious developmental disability, and/or substance abuse as defined by state statutes.

Clerk of the Court (or Clerk): An officer of the court who maintains or creates case files and generally serves as the administrative arm of the court.

Competence to Stand Trial (CST): The legal standard that requires someone to have the minimal ability to participate in their own criminal trial. If there is doubt that someone meets the legal standard of competence, the court will initiate a process for the defendant to be evaluated and restored to competency before moving forward with criminal proceedings.

Continuance: Postponing or delaying a legal proceeding to a later date.

Conviction: A finding of a criminal defendant’s guilt of a criminal charge.

Counsel: A legal adviser. A term used to refer to lawyers in a case.

Deliberate Indifference: A legal standard that means a corrections official acted in a way that they knowingly and disregarded the need for medical care that put someone who is incarcerated at excessive risk of harm. This standard must be met in order for a court to determine if someone’s constitutional rights were violated as a result of them not receiving medical care while incarcerated.

Defendant: An individual against whom a lawsuit is filed. In a criminal case, the person accused of the crime.

Defense Attorney: Also known as a “defense lawyer,” the lawyer representing a defendant in a lawsuit or criminal case. Attorneys representing a defendant in a criminal case are formally referred to as “criminal defense attorneys.” In both civil and criminal cases, a defense attorney represents the defendant in court.

Deposition: Testimony of someone taken under oath outside the courtroom, the transcript of which becomes a part of the court's record.

Detain: In criminal law, to hold someone in custody, normally for a temporary period of time.

Disposition: In a criminal case, it is the final judgment of the court in a criminal charge.

District Attorney: A public official who is appointed or elected to represent the state in criminal proceedings. A district attorney is also referred to as a “public prosecutor,” “state’s attorney,” “DA,” or “prosecuting attorney.”

Docket: A brief list of all proceedings, filings, and possibly deadlines in a case. A judge's docket is the official docket kept for a case by the court.

Due Process: The concept that laws and legal proceedings must be fair. The United States Constitution guarantees that the government cannot take away a person's basic rights to life, liberty, or property without due process of law, or without a fair procedure.

Evidence: Information presented in testimony or in documents that is used by the fact finder (judge or jury) to decide the case for one side or the other.

Expungement: The process of eliminating, destroying, or removing any record of an arrest, criminal charge, or conviction from public or official records.

Failure to Appear: A term used by the court to indicate a defendant has missed a court appearance.

Felony: A serious criminal offense. Usually, any offense punishable by death or imprisonment for a term exceeding one year.

Finding: Also known as “finding of fact,” the determination of a factual question contributing to a decision in a case. Depending on the circumstances, the finding can be made by a judge or a jury.

Grand Jury: A group of citizens convened in a criminal case to consider the prosecutor's evidence and determine whether probable cause exists to prosecute a suspect for a felony.

Hearing: A formal proceeding before a court. Generally less formal than a trial, the term usually refers to a brief court session that resolves a specific question before a full court trial takes place.

Hung Jury: A jury that is unable to reach a verdict by the required voting margin. A hung jury will often lead to a retrial of the case.

Incarceration: The detention of a person, often in a correctional facility. A term frequently used in reference to criminal sentences imposed by a court.

Indict: To formally charge someone with a crime.

Indigent: Needy or impoverished. A defendant in a criminal case who can demonstrate their indigence to the court may be assigned a court-appointed attorney at public expense.

Inmate: Any person incarcerated or detained in a prison or jail.

Insanity Defense/Not Guilty By Reason of Insanity: Refers to a defense that can be used in a criminal trial. In an insanity defense, the defendant admits to the action but asserts a lack of culpability based on mental illness at the time of the crime.

Interrogation: The formal questioning of a suspect, often by law enforcement or investigators. An interrogation can occur during a criminal investigation, an arrest, or after a suspect is in police custody.

Jail: A confinement facility most commonly managed by a state or local law enforcement agency, and which is used to hold people who are awaiting adjudication of criminal charges, who receive a sentence of confinement for one year or less as a result of criminal charges, or who have been sentenced and are awaiting transfer to a correctional facility.

Jurisdiction: The power or authority of a court to hear and try a case; the geographic area in which a court has power or the types of cases it has power to hear.

Jury: A group of people sworn to determine the facts in a case after hearing the evidence.

Jury Trial: Trial that allows a jury to make findings of fact and identify a verdict.

Miranda Warnings: Refers to the warnings that a police officer is required to give to someone they are detaining based on constitutional requirements, which include the right to a lawyer.

Misdemeanor: A criminal offense lesser than a felony and generally punishable by a fine or incarceration in jail for less than one year.

Mistrial: A fundamental error in a trial. When a mistrial is declared, the trial must start again with the selection of a new jury.

Offense: A legal term used to refer to conducts that violate and are punishable under criminal law. The terms “offense,” “criminal offense,” and “crime” are often used interchangeably.

Order: A decision issued by a court or authoritative body. This includes final and non-final orders issued by a court. Also known as “court order” or “judicial order.”

Parole: The conditional release of someone from incarceration before completing their full sentence. The condition of the release often includes someone being supervised by a public officer, called a “parole officer.”

Plaintiff: A person or business that files a formal complaint with the court in a civil case.

Plea: The defendant's statement that they are guilty or not guilty. The defendant's answer to the charges made in the indictment or information. A plea can be “guilty” or “not guilty.”

Plea Bargain: An agreement between the defense and prosecution where the defendant agrees to plead guilty to the charges against them.

Presentence Report: A report prepared by a court officer, summarizing for the court the background information needed to determine the appropriate sentence.

Prison: An institution under federal or state jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year, or a felony.

Probable Cause: Requirement that must be met before police make an arrest, conduct a search, or receive a warrant.

Probation: A court-imposed criminal sentence that, subject to stated conditions and restrictions, releases a convicted criminal defendant into the community instead of confining them to jail or prison.

Probation Officer: An official of the court appointed or sworn to investigate, report on, and supervise someone who is ordered to probation.

Pro Bono: Work done by a lawyer without compensation, for the public good.

Prosecutor: A trial lawyer representing the government in a criminal case and the interests of the state in civil matters. In criminal cases, the prosecutor has the responsibility of deciding who and when to prosecute.

Public Defender: Government lawyer who provides free legal defense services to someone determined to be “indigent” and is accused of a crime.

Rap Sheet: A slang term that refers to someone’s criminal record or history.

Released on One’s Own Recognizance: A court’s decision to allow someone charged with a crime to remain in the community, and not incarcerated, while awaiting trial and without posting bail. Based on a written promise by the defendant to appear in court when required to do so.

Restitution: In criminal cases, restitution is compensation a defendant is ordered to pay to a victim as part of a sentence or as a condition of probation.

Restraining Order: A court order prohibiting a person from taking a particular action, most commonly, requiring someone to stay away from another person. May also be referred to as a “protective order” or a “temporary restraining order.”

Retainer: A term sometimes used to describe the fee the client pays when he or she retains the attorney to act for them.

Sentence: The punishment ordered by a court for someone convicted of a crime.

Subpoena: An order requiring a person to appear to testify or produce evidence.

Suicide Watch: A set of policies and procedures used in correctional settings when someone who is incarcerated in the facility is believed to be at risk of suicide.

Testimony: Evidence presented orally in court by witnesses, under oath, during trials, or before grand juries.

Time Served: A term colloquially used by courts when imposing a sentence that is deemed to be completely satisfied by the defendant’s previous time spent in custody while awaiting sentencing.

Verdict: The decision of a trial jury or a judge that determines the guilt or innocence of a criminal defendant, or that determines the final outcome of a civil case.

Waiver of Jury: In federal and state courts, a right to a trial by jury can be waived. For criminal cases, a defendant can only waive a trial by jury after being warned of the consequences of waiving such a right. If the court and prosecutors agree, the defendant can waive the right in writing.

Warrant: A court authorization for law enforcement officers to conduct a search or make an arrest.

Witness: A person called upon by either side in a court case to give testimony before the court or jury.

Glossary source documents: Legal Information Institute at [Cornell School of Law](#) and American Bar Association’s [“Consumers’ Guide to Legal Help Legal Terms Glossary.”](#)

NAMI RESOURCES: YOU ARE NOT ALONE

We hope that the information in this guide was useful. Remember that you don't have to navigate the criminal justice system alone. There are more than 650 NAMI State Organizations and NAMI Affiliates across the country that offer an array of free support and education programs, and other resources to help you through this difficult time. [Find Your Local NAMI](#) through our affiliate locator on the NAMI website.

NAMI's HelpLine offers support and resources and is available Monday through Friday, 10 a.m. – 10 p.m. ET. Call 800-950-NAMI (6264), text "NAMI" to 62640, or email helpline@nami.org. Through the NAMI HelpLine (nami.org/help), you can find additional resources in the NAMI National HelpLine Resource Directory. Compiled by staff and frequently updated, this directory includes articles that provide detailed resources, support options, and information.

You can also find additional information and support through the following NAMI resources:

- **"Navigating a Mental Health Crisis."** This NAMI guide, written for those experiencing a mental health emergency, outlines what can contribute to a crisis, warning signs that a crisis is emerging, strategies to help de-escalate a crisis, available resources, and so much more.
- **NAMI Support Groups.** NAMI Support Groups are peer-led and offer participants an opportunity to share their experiences and gain support from other attendees.
- **"You Are Not Alone: The NAMI Guide to Navigating Mental Health."** Written by NAMI's Chief Medical Officer, Dr. Ken Duckworth, this comprehensive guide centers on the lived experiences of over 125 individuals from across the country whose first-person stories illustrate the diversity of mental health journeys.
- **"You Are Not Alone for Parents and Caregivers: The NAMI Guide to Navigating Your Child's Mental Health."** Written by NAMI's Associate Medical Director, Dr. Christine Crawford, and primarily intended for caregivers of youth in all capacities (including parents and other family members, educators, clinicians, and more), this book provides a holistic understanding of child and adolescent mental health, strategies for engaging with children and teens, and answers to common practical questions about how to best provide support.

Don't hesitate to reach out to friends, family, leaders in your faith community, groups you belong to, or your local NAMI. Whether they provide you with information, a friendly ear, or can accompany you to court, their support can energize your advocacy for yourself and your loved one. **Just remember, you are not alone.**



The **NAMI HelpLine** (nami.org/help) is a free peer support service that is available nationwide. Help seekers can receive information, resource referrals, and support from experienced and well-trained staff and volunteers. **Call 800-950-NAMI (6264), text “NAMI” to 62640, or email helpline@nami.org**, Monday through Friday from 10:00a.m. – 10:00 p.m. ET.

The **988 Suicide & Crisis Lifeline** is available if you or someone you know is having thoughts of suicide or experiencing a mental health crisis. **Call or text 988** to connect with a trained crisis counselor 24 hours a day, 7 days a week, or you can chat online at chat.988lifeline.org.