The criminal justice system is getting a front-end makeover.

BY AMBER WIDGERY

State and local policymakers are turning their attention from the back end of the criminal justice system—who goes to prison and for how long—to the front end. They are focusing on helping people avoid involvement in the system altogether, rerouting those who get caught up in it but don’t belong, and helping those already involved from getting in even deeper.

Back-end changes over the last decade have led to cost savings and a decline in prison populations in many states, but they’ve addressed only one lever in the complex machinery of the American justice system. And they haven’t stemmed the tide of individuals coming through the system’s front door.

Nearly 12 million people are booked into county jails each year—almost 19 times the admissions to state and federal prisons combined. Nationally, our jails are bursting at the seams and most people—sentenced offenders and those detained before trial—are there for nonviolent traffic, property, drug or other public order offenses.

Research shows that even a few days in jail can harm an individual’s employment prospects and health and can increase the chances they will reoffend or be incarcerated in the future, making jails a virtual gateway to further crime and punishment.

Front-end reforms are aimed at reducing this influx. They require rethinking the way America uses jails, including:

- Expanding community-based services like housing programs and treatment for mental health and addiction to prevent justice involvement and to help jail inmates successfully reenter the community.
- Supporting programs like LEAD (Law Enforcement Assisted Diversion), which allows law enforcement officers to redirect low-level drug offenders to community-based services, instead of jail and prosecution.
- Changing bail/pretrial release policies to create a system that’s person-based, not wealth-based.

Starting With the Facts

Many front-end justice reforms have been kick-started by the need to address jail overcrowding. With jails across the nation operating at or above capacity, officials have been forced to improvise, double- or triple-bunking inmates and turning common areas into makeshift dormitories.

These extreme conditions have prompted
some local officials to take a closer look at who is in jail, why they are there and whether their detention promotes or hinders public safety.

National data show that people having a mental health crisis are more likely to encounter law enforcement than medical assistance. Data also show that most people in local jails have not been convicted, but are awaiting trial, and that nearly 70 percent of those detainees are held on traffic, property or drug charges, not for violent offenses.

But the devil is in the data we don’t have. It is hard to find statewide data that are current, uniform and comprehensive. Cities and counties are responsible for large portions of the criminal justice system infrastructure. Localities often collect data in different formats or by using different metrics. Some don’t collect data at all. As a result, it can be difficult to piece together a clear statewide picture of the justice system.

Florida is the first state to pass legislation to address this issue by requiring information across the system to be compiled in a publicly available central database. The measure passed with nearly unanimous support.

“It’s hard to fight the idea of being completely transparent,” says Representative Chris Sprowls (R), a former prosecutor.

Nearly 70 percent of pretrial detainees are held on nonviolent charges.

Change at All Levels

The justice system encompasses states, counties, cities, courts, law enforcement agencies and other local entities. All of these stakeholders are part of a national movement to improve the system—driving change at all levels.

Many innovative efforts are supported by national campaigns, including:
• The John D. and Catherine T. MacArthur Foundation’s Safety and Justice Challenge—A network of 43 counties, seven cities and two states committed to changing how America thinks about and uses jails.
• The Stepping Up Initiative—A national partnership between the Council of State Governments Justice Center, the National Association of Counties and the American Psychiatric Association Foundation encompassing 455 counties dedicated to reducing the number of people with mental illness in jail.
• The Laura and John Arnold Foundation’s Public Safety Assessment—A suite of resources supporting at least 40 jurisdictions, including the states of Arizona, Kentucky and New Jersey, to implement pretrial risk assessment.

There’s no quick fix to the issues at the system’s front end, but doing nothing will certainly not solve the problems and could even make them worse.
Police, Policy, People

Police departments and lawmakers are striving to create safer communities.

BY AMANDA ESSEX

From holding lip-sync challenges to negotiating serious policy changes, law enforcement officials, citizens and policymakers are working together to create safer communities and increase police effectiveness. Efforts can be seen at all levels of government. At the state level, the volume of legislation addressing law enforcement has increased significantly in the last few years. In 2017 alone, lawmakers introduced some 1,500 bills nationwide and enacted more than 260 of them. That’s a big leap from the 93 new laws passed in 2016 and 64 in 2015. Police have worked with legislators in the development of some of these new laws.

States and law enforcement agencies have re-evaluated their use-of-force policies in light of high-profile incidents involving police and community members. New approaches to dealing with mental illness and emerging technologies have also spurred changes.

Significant legislative trends in recent years include alternatives to arrest, law enforcement training and officer safety.

Not Just Arrests

It used to be that when law enforcement officers encountered someone having a mental health crisis, the only option available was to arrest that person and hold him or her in custody.

As we recognize the unique response required for people with behavioral health needs, however, police options are changing. A few state legislatures have expanded police authority, allowing officers to take people in crisis to treatment facilities or hospitals to address their needs.

A bill signed in August in Illinois supports programs that direct people with substance use disorders away from the criminal justice system and into treatment services. Known as “deflection,” an officer makes the connection between a person who might otherwise have been arrested and a treatment provider or medical professional.

The new law acknowledges that “law enforcement officers have a unique opportunity to facilitate connections to community-based behavioral health interventions that provide substance use treatment and can help save and restore lives,” reduce drug use, overdoses, crime and recidivism, “and help prevent arrest and conviction records that destabilize health, families and opportunities for community citizenship and self-sufficiency.”

A current Illinois police chief and a former chief and current city manager were instrumental in getting the legislation passed. Eric Guenther, chief of police in Mundelein, Ill., says the legislation is unique because it “recognizes a paradigm shift in law enforcement’s approach to those who struggle with substance use.”

Danny Langloss, city manager and former police chief in Dixon, Ill., describes the enactment of the law as a “hopeful day for Illinois law enforcement and those suffering from substance use disorder. … With this bill, the police now have new programs at their disposal that save lives and make our communities safer.”

Kentucky, New Jersey and Texas are among the states that have enacted laws allowing deflection programs.

Law Enforcement Training

States also are requiring officers to complete training on how to respond to someone experiencing an acute crisis. Alabama, California, Montana and South Carolina are among the states to require or encourage crisis intervention training for officers.

A resolution adopted by the Alabama Legislature in 2017 encouraged the state’s Peace Officers Standards and Training Commission to offer mental health awareness training. Resolution sponsor Representative Mike Ball (R) says the training is important because it might allow an officer to avoid using force—especially deadly force. “Nobody wants to use deadly force, though in some instances you might have to,” he says. “But we need our officers trained to de-escalate.”

Arkansas requires officers in the police academy to complete at least 16 hours of training on behavioral health crisis intervention, and South Carolina requires some officers to complete continuing education credits addressing mental health or addictive disorders. Both states’ requirements were put in place in 2017.

Front-End Justice at Work

When Greg began destroying property and disturbing the peace in his rural Nebraska hometown, the sheriff’s deputy was called. Normally, Greg (a pseudonym) would have been arrested. But he was acting so strangely, claiming God was sending him important messages, that the deputy requested assistance from a remote mobile crisis response team, which recommended that Greg receive immediate medical attention instead of being placed in custody. Greg was airlifted to a regional hospital, where doctors discovered a large tumor on his brain.

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Protecting Those Who Serve

Training requirements ensure that officers are prepared to protect themselves in a crisis, to diffuse dangerous situations and to prevent harm to the people they encounter.

States also are considering the mental health needs of their officers, about a quarter of whom have thoughts of suicide, according to The National Alliance on Mental Illness. In addition, law enforcement professionals report “much higher rates of depression, PTSD, burnout and other anxiety-related mental health conditions” than the public.

Colorado created a task force that studied the effect of post-traumatic stress disorder on police officers, many of whom see “horrific things the vast majority of the public will never see,” Sgt. Sean Harper, one of the task force co-chairs, says.

Among the task force recommendations lawmakers incorporated in legislation was making counseling services available to officers. “Who protects the protectors when they fall down?” asked Representative Jonathan Singer (D) before introducing the legislation. The state now includes PTSD among the conditions that qualify for workers’ compensation.

As the body of evidence and research grows, legislatures will be better equipped to make policy decisions that lead to safer communities and promote police effectiveness.

Opioids: What’s Working

State lawmakers are all too familiar with the human costs and policy challenges associated with opioid misuse. They also recognize the need for collaboration between health, criminal justice and other professionals whose daily work is touched by the epidemic and who can aid in preventing overdoses.

Lawmakers have led efforts to forge new partnerships between criminal justice and health care stakeholders and have encouraged evidence-based practices. Recent legislation has focused on intervening at the front end of the justice system by rerouting people toward community-based treatment and other supports before they are arrested and by increasing access to treatment for people involved in the system.

Recent research has shown the effectiveness of these collaborations in reducing overdose deaths. A new publication from the Centers for Disease Control and Prevention, “Evidence-Based Strategies for Preventing Opioid Overdose: What’s Working in the United States,” identified 10 best practices, some of which directly involve collaboration between public health and public safety partners.

Access to naloxone, the opioid-overdose antidote, is the focus of two of the strategies. Putting naloxone into the hands of individuals reentering the community after a period of incarceration can help mitigate their heightened risk of overdose. Providing the antidote to people likely to witness or respond to an overdose, such as law enforcement officers, also has been shown to save lives. Every state has a naloxone access law, and by the end of 2016 it was estimated that more than 1,200 law enforcement agencies had naloxone programs.

Bystanders who witness an overdose often have been using opioids themselves and may be hesitant to call 911 for help. All but five states have adopted a 911 Good Samaritan Law, which provides limited immunity for bystanders and overdose victims who seek medical assistance.

People who have had contact with the justice system have disproportionately high rates of substance use disorders. But correctional facilities are not always able to provide comprehensive treatment. In fact, abstinence requirements often disrupt medication-assisted treatment. In its report, the CDC identified expansion of such treatment as one of its best practices.

Equally important is ensuring continuity of care for people leaving the system by establishing links to treatment in the community. Several states have enacted legislation in the past few years to increase access to medication-assisted treatment, and some corrections facilities have started programs of their own.

The Rhode Island corrections department, for example, runs a statewide program that offers access to all FDA-approved medications for treating opioid addiction, something other correctional programs have been hesitant to authorize due to security concerns. After one year, fatal overdoses for recently incarcerated people dropped by 60 percent, and overdose fatalities statewide fell by 12 percent.

States will continue to innovate in their efforts to stem the opioid tide. Time will tell if those efforts are succeeding.

—Amber Widgery
In the 1800s, a person could land in jail for not paying rent to his or her landlord. Debtors’ prisons were banished almost two centuries ago, but it’s not uncommon to see the term in news headlines today. A debtor can no longer be locked up for failing to pay a private creditor, but people can end up behind bars if they can’t pay their court fees or can’t make bail before their case is heard. Pretrial defendants, despite being presumed innocent until proven guilty, can languish in jail, sometimes for months, without being convicted of a crime.

Recent criminal justice reforms are shedding light on the roles wealth and poverty play in determining who goes free.

Recent Reforms and Court Cases
Pretrial release and bail reform efforts, such as reducing reliance on cash bail and using non-financial release options, are sweeping the nation. In nearly half the states, the law starts with the presumption that certain defendants be released solely on their promise to appear.

Now, attention is turning to whether the accused’s ability to pay should matter when setting bail. According to a report from the Federal Reserve, making bail would be a hardship for 40 percent of Americans, who say they do not have at least $400 available in cash for unexpected, emergency expenses, like a flat tire or broken appliance, or a bail bond.

A California case made headlines earlier this year when a court ruled that a “defendant may not be imprisoned solely due to poverty.” The case involves Kenneth Humphrey, then 63, who was accused of following a 79-year-old disabled man into his apartment and demanding money. Humphrey has a history of substance abuse and several prior felony convictions. In this case, he allegedly took $7 and a bottle of cologne from the man.

Bail was originally set at $600,000, tantamount to a detention order for Humphrey. California’s 1st District Court of Appeal held that the lower court’s failure to consider what Humphrey could afford when setting his bail violated his due process and equal protection rights.

The case is just one of several nationwide in which bail schedules amount to a form of wealth-based detention. As courts address the issue, state legislatures are beginning to step in and tackle financial inequities associated with pretrial detention. Below are examples of several recent legislative efforts.

Ability to Pay

Ability-to-pay determinations often require courts to consider factors beyond a defendant’s income and assets when setting bail. Courts must consider, for example, whether a defendant is a family’s sole breadwinner. The goal is to prevent long-term detention of defendants who are neither a threat to public safety nor a flight risk. New Hampshire law, for example, states that the court “shall not impose a financial condition that will result in the pretrial detention of a person solely as a result of that financial condition.”

Pretrial Fees and Options

A few states have extended ability-to-pay determinations to include pretrial supervision fees, such as those for electronic monitoring or substance use treatment. Nebraska directs the courts to waive pretrial supervision fees that a defendant cannot afford, while Illinois directs the courts to use community supervision as an alternative to jail. A few days in jail can upend people’s lives, costing them
their jobs and financial stability. Supervision in the community lets defendants keep their jobs while protecting public safety.

States also are increasing the use of electronic monitoring and home detention—often used to supervise probationers and parolees—for pretrial detainees. A new Massachusetts law will soon enable sheriffs to recommend that the court place pretrial detainees unable to make bail in pretrial service programs. Vermont law now encourages judges to consider home detention if a defendant is unable to pay bail. And Louisiana’s Lafourche Parish made permanent its Pretrial Home Incarceration Pilot Program, which includes electronic monitoring of defendants.

**Second-Look Hearings**

Some states require courts to take a “second look” at the bail amount initially ordered and determine whether inability to pay is keeping a detainee behind bars. Some states mandate a review after a certain time frame; others require the defendant or another party to make the motion. The time limits and procedures vary by state.

Delaware requires judicial review of pretrial release conditions within 10 days of detention, if the person is unable to make bail within 72 hours. In Texas, certain defendants who do not post bail after 48 hours are presumed to be unable to pay. Illinois not only requires a second-look hearing, but also provides a $30 credit against a detainee’s 10 percent cash bond for every day he or she is detained pretrial. Once the bond amount reaches $0, the defendant must be released.

**A New Conversation**

The dialogue on bail continues to change. This year, the Delaware legislature renamed its “system of bail” a “system governing the release of defendants pending a final determination of guilt.” Nebraska added statutory language directing courts to consider “all methods of bond and conditions of release to avoid pretrial incarceration.”

And California—well, California just entirely eliminated cash bail.