



**The Affordable Care Act:
Opportunity for Addressing Mental
Health Disparities in the Criminal
Justice System**

David H. Cloud

Vera Institute of Justice

David H. Cloud, J.D.

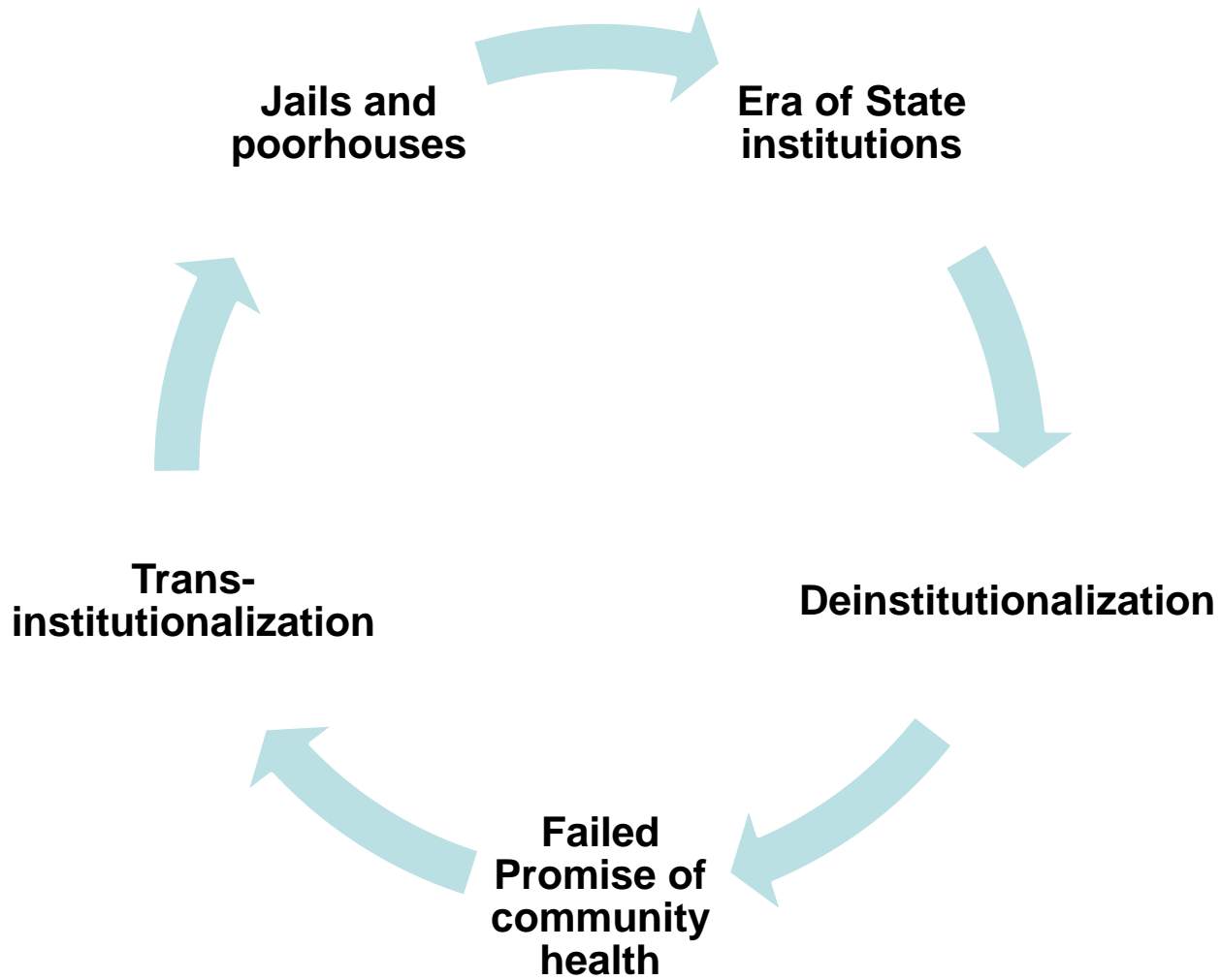
Program Associate, Substance
Use & Mental Health Program

Our program's focus areas:

- Using information-sharing to improve service provision
- Implications of the Affordable Care Act for CJ systems
- Measuring the impact of drug policy
- Evaluating competency restoration services
- Informing jail reentry planning
- Studying how indigent defense systems can be improved to meet the needs of clients with behavioral health disorders.

Outline of Presentation

- 1. Brief history of mental health policy in the U.S.**
- 2. How the Affordable Care Act impacts the justice-involved populations?**
- 3. How local governments can use the ACA to address overrepresentation of mental illness in criminal justice system**



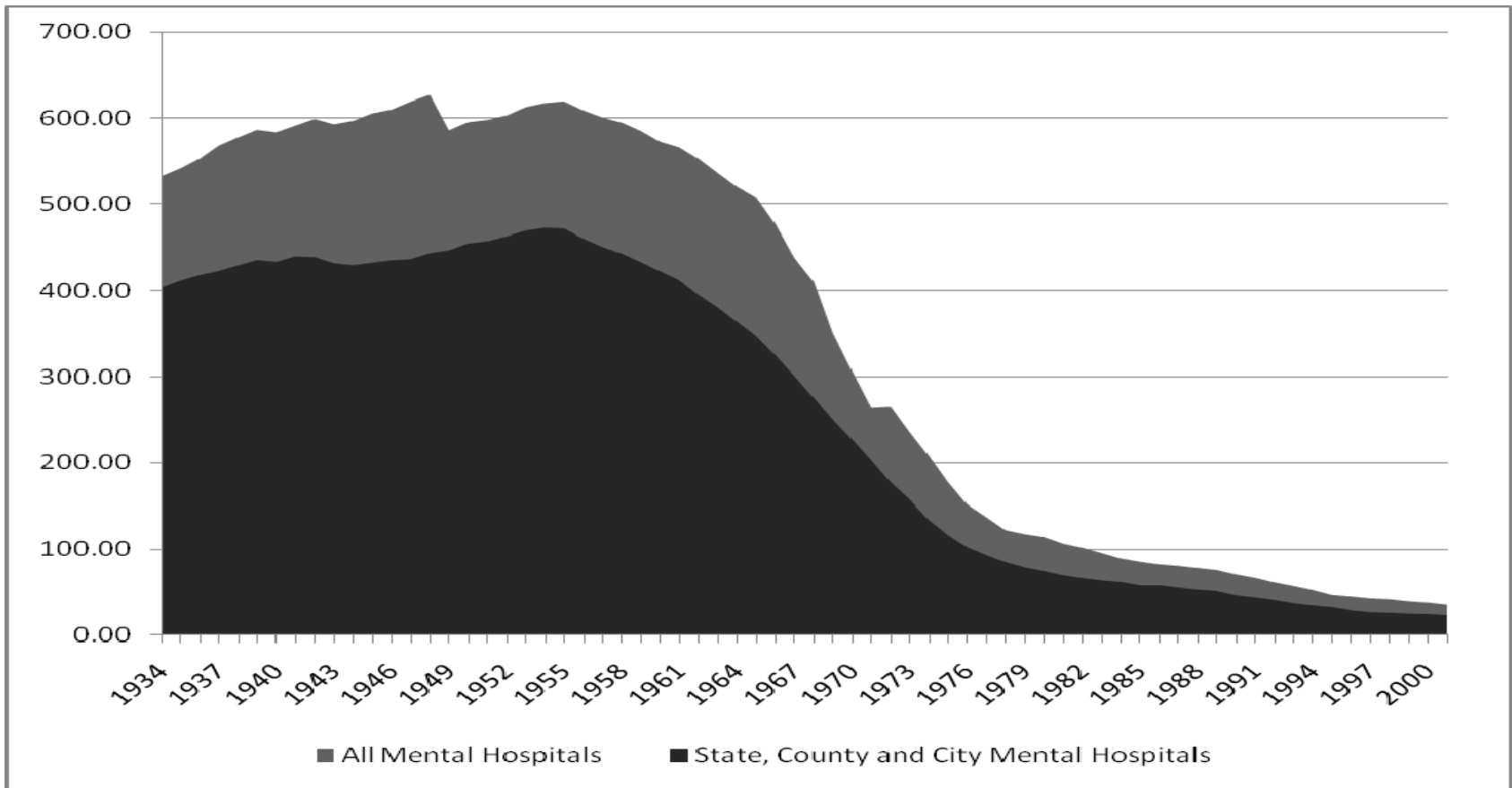
Brief History of Mental Health Care in the United States

The Era of the State Asylums



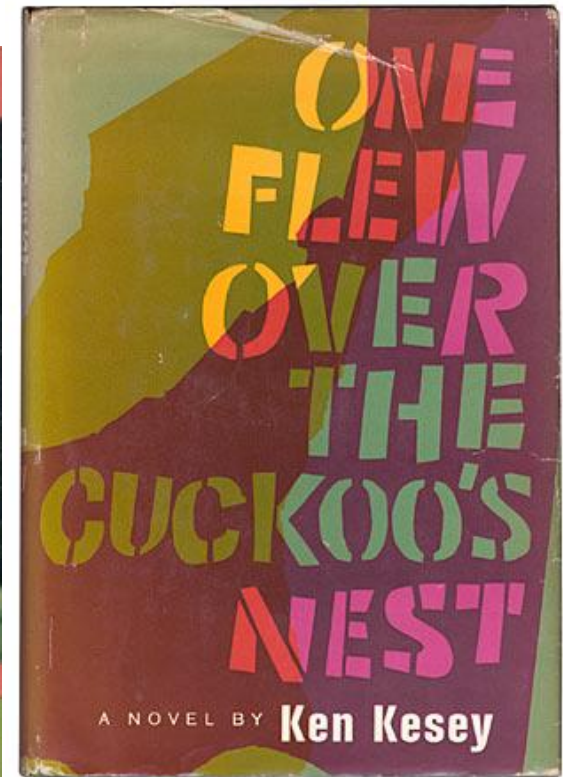
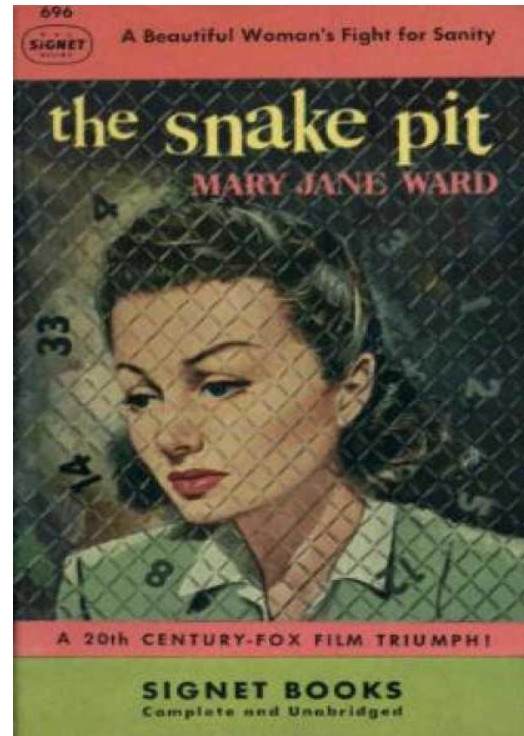
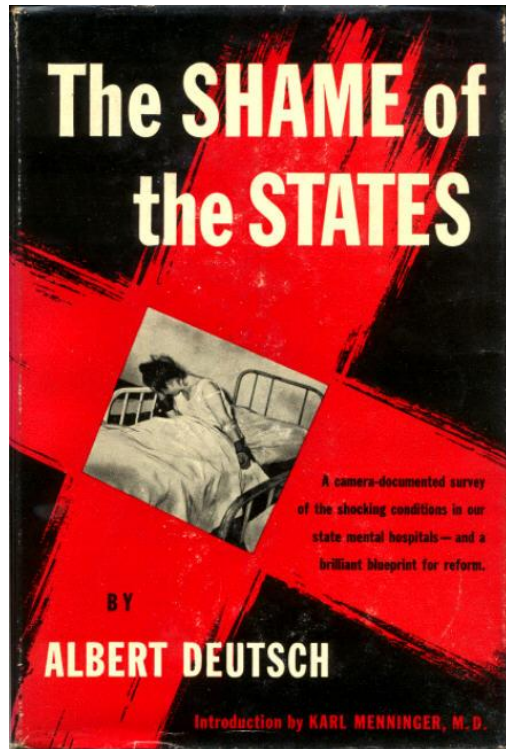
“I tell what I have seen – painful and shocking as the details often are – that from them you may feel more deeply the imperative obligation which lies upon you to prevent the possibility of a repetition or continuance of such outrages upon humanity. I proceed, Gentlemen, briefly to call your attention to the present state of insane persons confined within this Commonwealth, in cages, closets, cellars, stalls, pens! Chained, naked, beaten with rods, and lashed into obedience.”

Deinstitutionalization



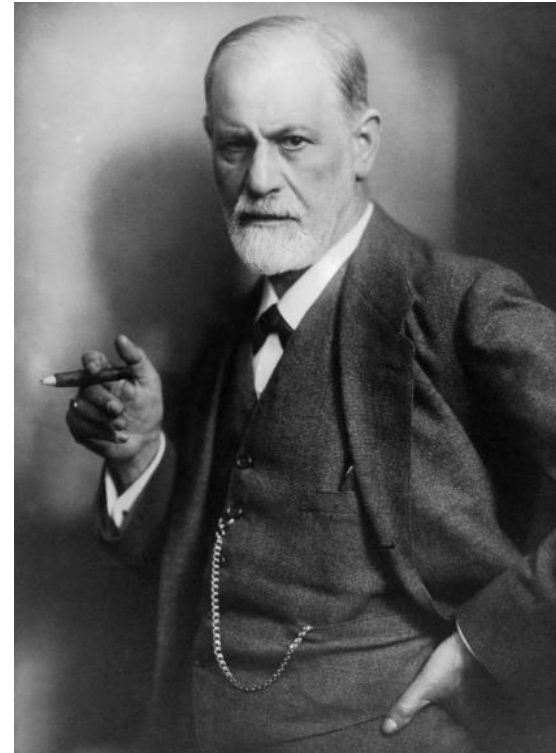
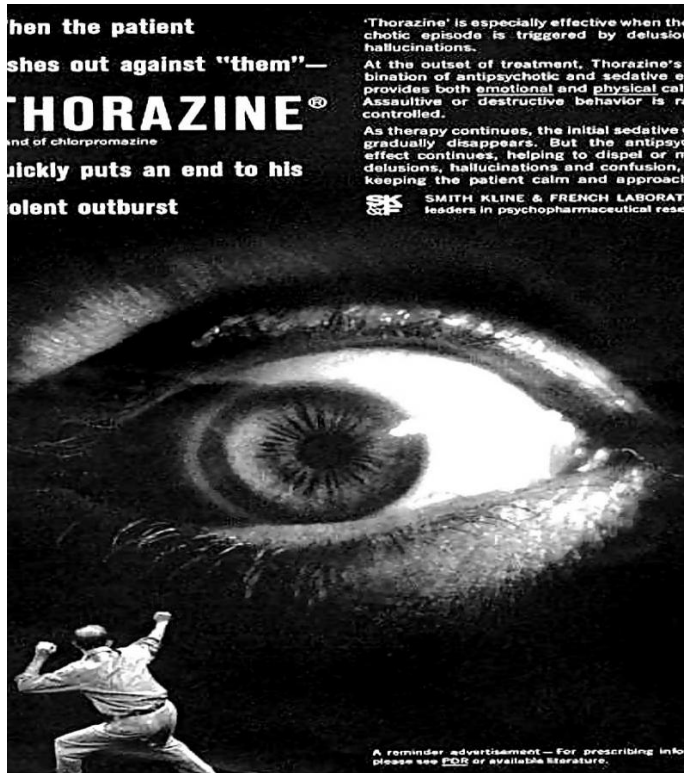
Goal: shift practice of psychiatry away from state-run institutions and into community-based care.

Factors leading to Deinstitutionalization



(1) Exposure of deplorable conditions inside state mental hospitals.

Factors leading to Deinstitutionalization



(2) Advents in psychiatry and psychopharmacology

(3) WWII and the influence of Freudian psychoanalysis and *community* psychology

Factors leading to Deinstitutionalization

(4) Civil Rights Movement:

patients rights, due process,

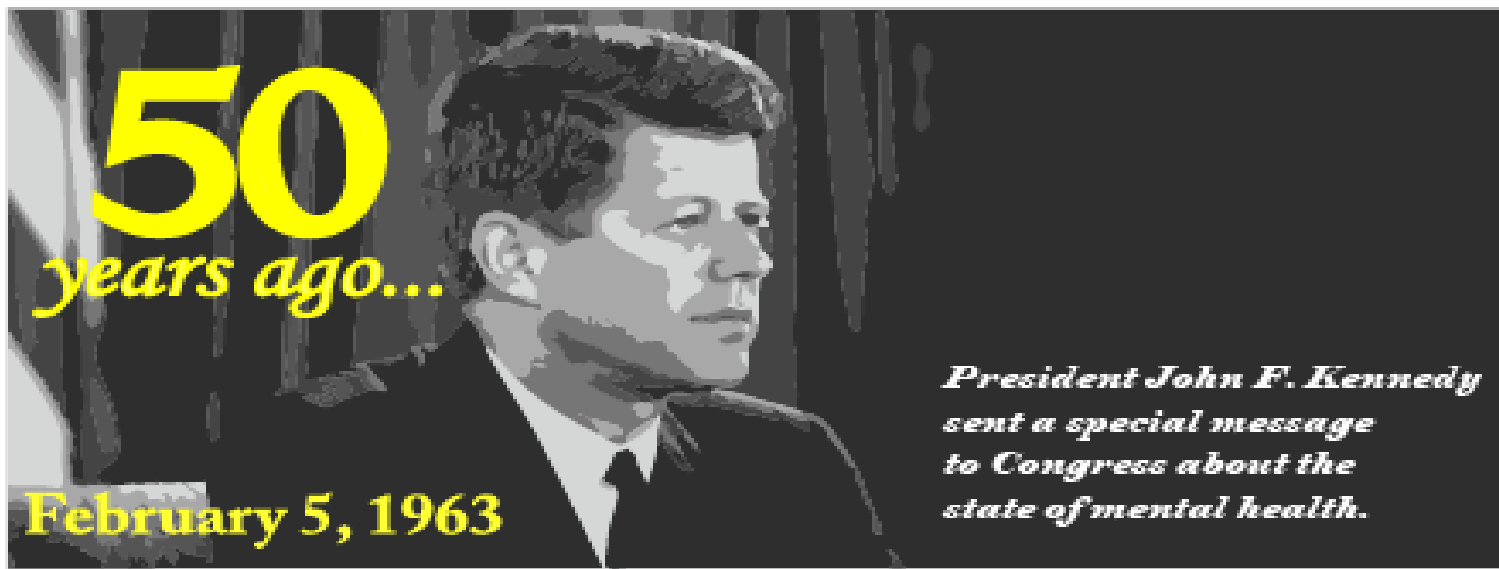
(4) Stricter civil commitment standards

- Mental illness + danger to self or others
- *O'Connor v. Donaldson*

Factors leading to Deinstitutionalization

(5) Increased role of federal government in mental health

- Creation of National Institute of Mental Health (1946)
- JFK and The Community Mental Health Act of 1963



Factors leading to Deinstitutionalization



(6) Financing mental health services: Medicaid, Medicare, SSDI (1965)

Broken promise of community-mental health centers

1970s: By the late 1970s, there are only [650 community health facilities](#) serving 1.9 million mentally ill patients a year.

1980: President Jimmy Carter signs the Mental Health Systems Act which aims to restructure the community mental-health-center program and improve services for people with chronic mental illness.

1981: Under President Ronald Reagan, the Omnibus Reconciliation Act repeals Carter's community health legislation and establishes block grants for the states, ending the federal government's role in providing services to the mentally ill. Federal mental-health spending decreases by [30 percent](#).

Two World's Collide

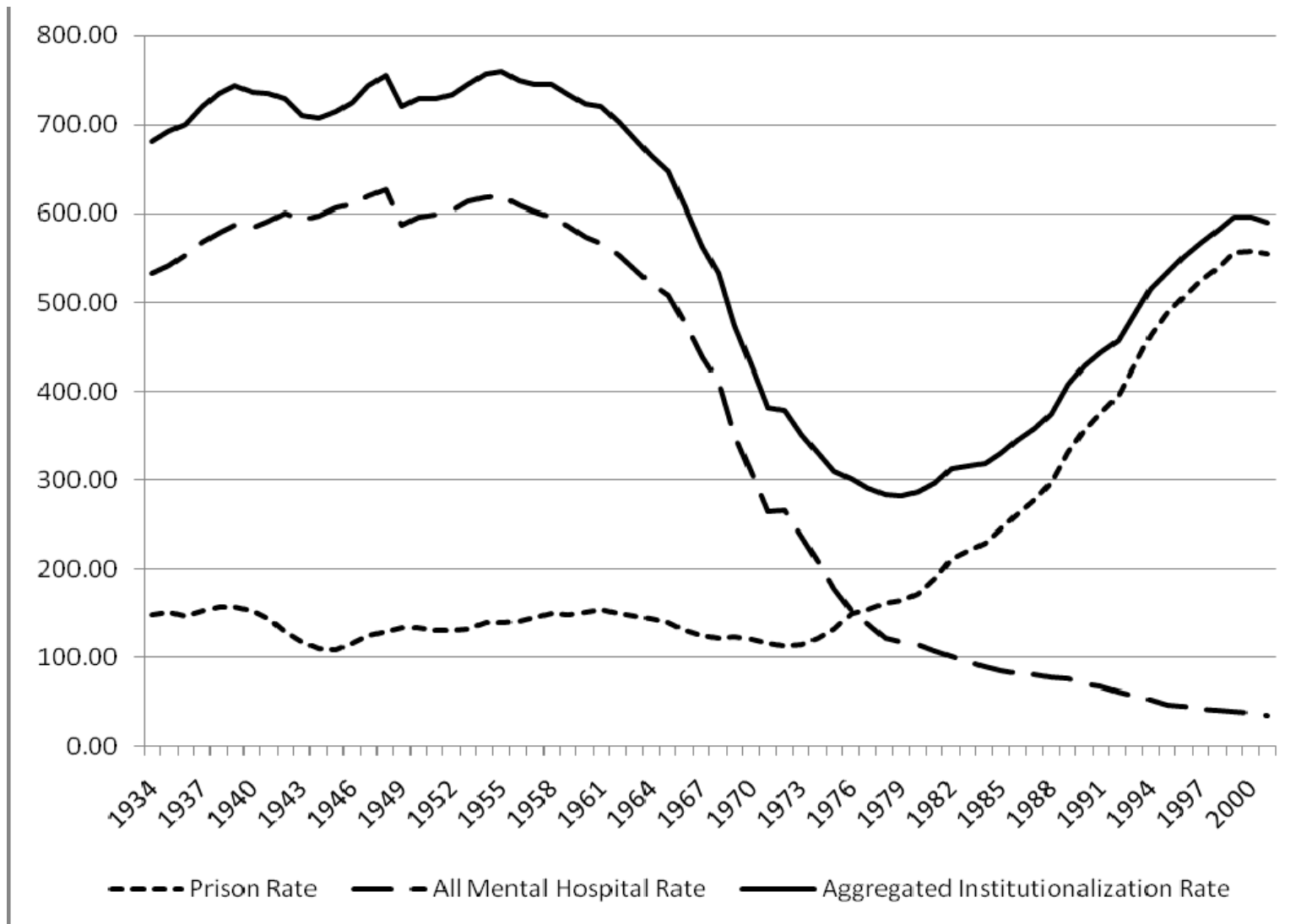
Struggle to Establish Community Mental Health

- Community mental health centers defunded/underfunded.
- Health plans don't cover services
- Surge in homelessness in inner cities.

Dawn of Mass Incarceration

- War on Drugs
- No more rehabilitation
- "Tough on crime politics"
- Build more prisons
- Increase in quality-of-life prosecutions

Transinstitutionalization



•Bernard E. Harcourt, *An Institutionalization Effect: The Impact of Mental Hospitalization and Imprisonment on Homicide in the United States, 1934–2001*, 40 *J. LEGAL STUD.* 39 (2011)

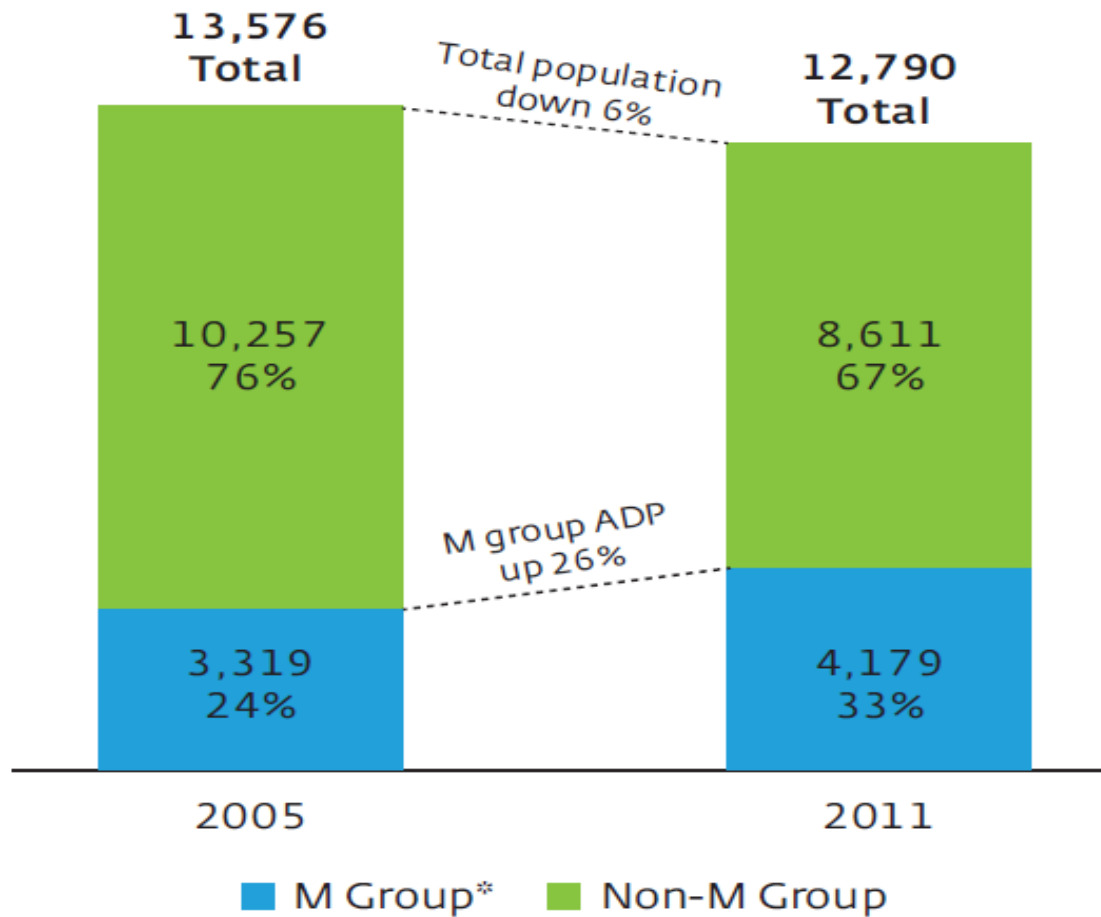
Where are We Now? A Public Health Crisis

Rates of SMI in Jails

- 16-24% of males and 31% of women
- Compare to 4 percent general population
- 3 times as many seriously mentally ill people incarcerated than in state hospitals.
- As of 2010, there about 14 beds per 100,000 people—the same ratio as in 1850.
- **2009:** In the aftermath of the Great Recession, states are cut [\\$4.35 billion](#) in public mental-health spending over the next three years, the largest reduction in funding since deinstitutionalization.

This is not higher math... If you reduce programs and remove funding, it isn't as if fairy dust will be spread throughout the clouds and these peoples' mental health issues will go away. They will still have them, and it's a question of where they will go from there."—
Tom Dart, Cook County, Illinois

New York City:



Source: The City of New York Department of Correction

Other health problems

Substance Use Disorders:

- Conservative estimates suggest at least half (though as many as 80%) of people entering jail have SUD under DSM-IV.
- 15-20 % receive any treatment

Chronic Disease:

- higher rates of many chronic medical conditions, including hypertension, asthma, arthritis, cancer, cervical cancer, and hepatitis

Infectious disease/communicable diseases:

- **HIV:** 1 out of 7 people with HIV in USA pass through a correctional facility
- **Hepatitis C:** rate is 9 to 10 times higher among incarcerated populations

Risk for people with SMI behind bars

- Sometimes unidentified by poor screening protocols
- Inadequate access to proper treatment; disruption in medication regimens.
- More likely to be victimized
- Difficulty conforming to rigid rules of correctional facilities
- More likely to be placed in solitary confinement

Islands Apart from Mainstream Health

- ❑ Lack of Communication between systems
- ❑ Lack of information sharing
- ❑ Fragmented funding streams
- ❑ Fragmentation b/w substance use and mental health treatment
- ❑ Different agency cultures



The Affordable Care Act: A New Era for opportunity?



A Brief Journey of the ACA

- Other presidents that tried to pass national health reform:
 - Eisenhower, FDR, Truman, Nixon, Carter, Clinton,
- Signed into law in March, 2010
- Upheld by the Supreme Court in 2012
 - Medicaid expansions are optional
 - Individual mandate is constitutional
- Health Insurance Exchanges opened in October 2013
- Employer mandate delayed for one year
- House Republicans have tried to repeal 42 times (not including the recent shutdown)
- House republicans only got minor tightening of income verification requirements through shutdown.

Big Picture of the ACA



Provisions that impact CJ systems

1. Medicaid Expansions
2. Mandate to enroll vulnerable populations
3. “Pending disposition”
4. Parity Substance use and mental health = “essential benefits”
5. Accountable Care Organizations (Health Homes)
6. Health Information Technology (HIT)

Medicaid Expansions- Single, Childless Adults

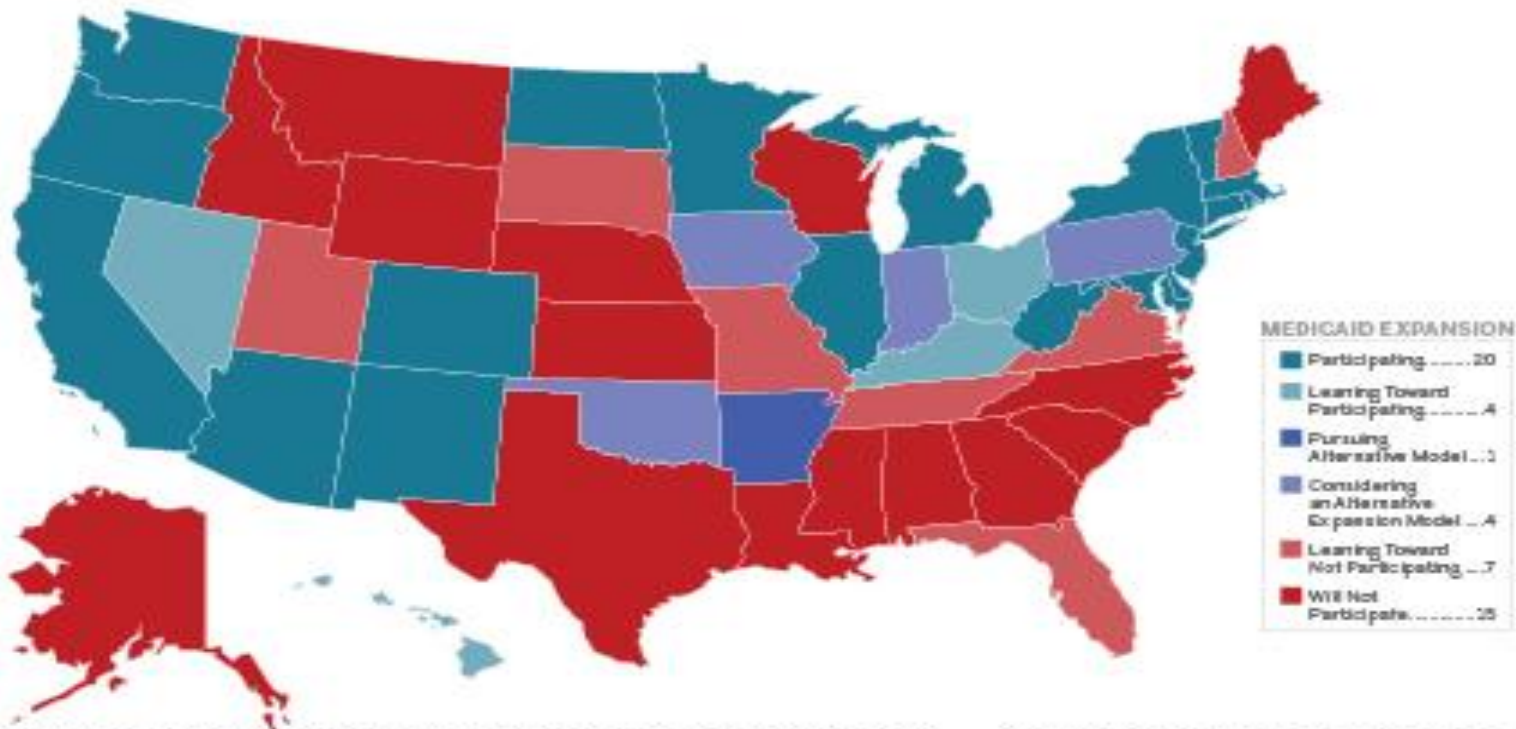
Expands eligibility criteria:

- ✓ Only applies in states opting to expand
- ✓ Now income-based: 133 percent of the federal poverty level
- ✓ Don't have to have children/dependents
- ✓ Federal gov. covers 100 percent of matching costs for ***newly eligible*** enrollees, from 2014 through 2016
- ✓ Gradually reduce FFP to 90 percent matching in 2020.

New York: already sets eligibility at 150% FPL.

Beyond the Pledges: Where the States Stand on Medicaid

29 States Moving Toward Expansion—September 17, 2013



Notes: Based on literature review as of 9/17/13. All policies possible to change without notice. HHS has announced that states can obtain a waiver to use federal funds to shift Medicaid-eligible residents into private health plans. The District of Columbia plans to participate in Medicaid expansion and will operate its own exchange.

Source: American Health Line, <http://ahlinet.com/2012/03/03/medicaid-where-each-state-stands-on-the-medicaid-expansion/>, accessed 9/17/13.



Learn more about the impact of the Supreme Court ruling at:
advisory.com/MedicaidMap
 © The Advisory Board Company

ACA mandates local governments to enroll vulnerable populations into health plans.

- The ACA specifically requires states to provide targeted outreach to facilitate the enrollment of underserved and vulnerable populations in Medicaid.
PPACA § 2201(b)(1)(F)

“Essential benefits”



Justice and Health



A national resource for justice and health data sharing

VERA
INSTITUTE OF JUSTICE

ACA Expands Parity:

- Health plans must offer comparable coverage for physical and mental health benefits.
- The Affordable Care Act builds on the Mental Health Parity and Addiction Equity Act of 2008

Parity + Essential Benefits: Before and After

Before ACA

- 1/3 of people covered in the individual market no SU treatment coverage.
- 20% in individual market no MH coverage.
- Federal parity did not apply to individual market plans.
- Parity protections did not apply to small group plans.
- 47.5 million Americans are uninsured, of which 25% have mental health or substance use treatment need.

Post -ACA

- About 4 million people w/ individual plans gain access to SU/MH treatment.
- 1.2 million with small group plans will gain coverage for SU/MH.
- 7.1 million people w/ minimal SU/MH coverage, will gain protection under parity law.
- 23.3 million in small group plans will gain parity protection.
- Extends coverage to the uninsured who will gain coverage and parity.

Mental Health and Substance Use: Summary

- **32.1 million** Americans will gain access to coverage that includes mental health and/or substance use disorder benefits that comply with federal parity requirements.
 - An additional **30.4 million** Americans who currently have some mental health and substance abuse benefits will benefit from the federal parity protections
- **62 million Americans gain access to behavioral healthcare protected by parity law**

ACA incentivizes creation of “health homes”

What is a health home?

- coordinate care for people with Medicaid who have chronic conditions
- “whole-person” or patient-centered philosophy.
- Health Homes providers integrate and coordinate primary, acute, behavioral health, and long-term services and supports to treat the whole person
- Health home services that are eligible for the 90% federal match

Who are they designed for?

1. Have 2 or more chronic conditions
2. Have one chronic condition and are at risk for a second
3. Have one serious and persistent mental health condition

“Pending disposition” Clause

- ❑ **What the law says:** “An individual shall not be treated as a qualified individual if, at the time of enrollment, the individual is incarcerated, other than incarceration pending the disposition of charges”. § 1312 (f) (1) (B)
- ❑ **What it means:** Individuals who have not been charged but not yet convicted of a crime can enroll in a qualified health plan through the exchanges while in jail.
- ❑ **Special enrollment period**– allows people who lose coverage (e.g. someone leaving prison) not to have to wait for open enrollment to sign up for qualified health plan.
- ❑ **Does not mean Medicaid will pay for health services provided in jail– still prohibited by federal law**

ACA encourages adoption of Health Information Technology

- ❑ Health Reform encourages adoption of HIT
- ❑ \$18 million in grant funds to support 37 health center networks
- ❑ Jails and prisons eligible for financial reimbursements for purchasing electronic health records.
 - ✓ If 30 percent of patients are **enrolled** in Medicaid and in a state that “suspends” rather than terminates Medicaid.
 - ✓ Since NY is expansion state, jails and prisons could cash in on incentives for EHRs.

What these changes mean for people with mental illness in the CJ system?

- **Better coverage in the community.** Currently about 85-90 percent of people passing through jails are uninsured. This will be reduced in states opting to expand Medicaid. Only means they will have Medicaid in the community.
- **Increased Access to comprehensive health:** Essential benefits mean they will have access to substance use and mental health treatment: many for the first time.
- **Health homes =** better solution to promote care coordination and continuity.
- **More opportunities for early diversion!**

What are the benefits of more people in jail having health insurance?

- Steady funding streams for community based treatment *** (less time writing grants!)
- How states and local governments bill Medicaid for certain services In diversion programs is still TBD.
- Increased continuity in care (lower morbidity and mortality)
- Decreased use of emergency rooms and acute care facilities.
- Could reduce correctional health costs (less unhealthy population)

What can I do?

- **Streamline enrollment into health plans:** opportunity to enroll people passing through the jails in Medicaid or health plan,
- **Think about public health interventions in correctional settings:** Time in custody could be an important opportunity to provide them with information about health coverage options, improve health literacy, and encourage responsibility for health.
- **Bolster diversion and reentry planning:** if and when capacity for substance use/MH treatment in community increase, more opportunity for continuity in care. New relationships with community providers.
- **Play a role in Medicaid redesign:** make the case for coverage of your services under Medicaid.

What can I do?

Connect Jails and Prison health providers with Health Homes:

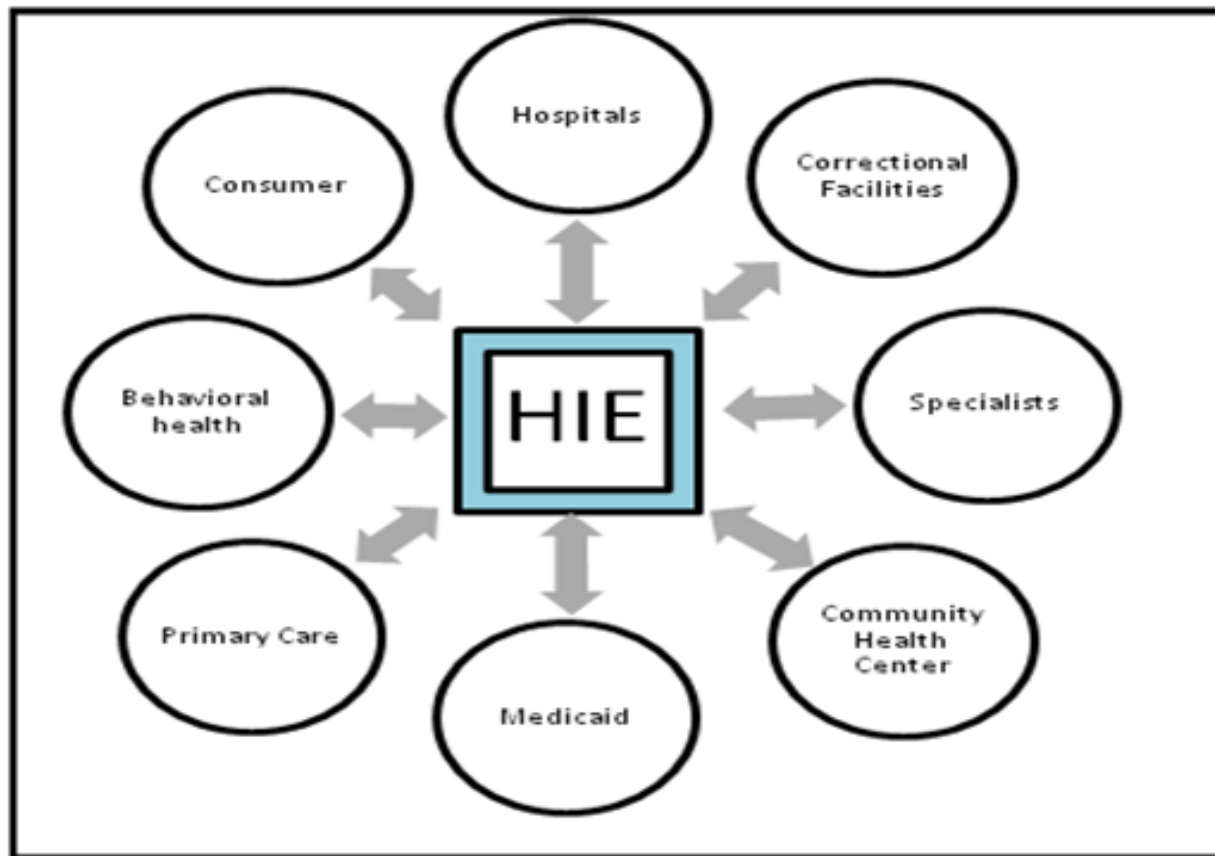


What can I do?

- **Explore investing in electronic health records for jails and prisons:**
 - **Build connectivity between jails and community health systems**
- **Benefits of electronic health records?**
 - Improve continuity in care
 - Identify people appropriate for diversion
 - Better opportunities for information sharing
 - Reduce medical error

What does connectivity look like?

Connecting with Health Information Exchanges (HIEs)– such as SHIN-NY



General advice

- As capacity for behavioral health treatment in the community expands, identify new partners.
- Identify local health reform working groups— get a seat at the table.
- Keep an eye out for notice of rule makings in the federal register that address people involved in the criminal justice system.
- Think strategically about what services provided in the community for this population can be charged to Medicaid.
- Be politically savvy— use data to rebut the “giving criminals healthcare” argument. Use empirical research to make the case.
- Think about what you can do early on in the adjudicative process to divert and link to community based services as an alternative to incarceration.

Where to find more information

The screenshot shows a web browser window displaying the 'Resources' page of the Justice and Health CONNECT website. The browser's address bar shows the URL 'http://www.jhconnect.org/resources'. The website header includes the logo for Justice and Health CONNECT, with the tagline 'A national resource for justice and health data sharing'. Navigation links for 'HOME', 'BACKGROUND', 'TOOLKIT', 'RESOURCES', and 'ABOUT US' are visible, with 'RESOURCES' highlighted. A search bar and a 'JOIN OUR MAILING LIST' link are also present. The main content area is titled 'RESOURCES' and features a section for filtering by issue area, document type, or relevance. Under 'New Search', there are two columns of checkboxes: 'SUBJECT' and 'AND A TYPE'. The 'Health Reform and Criminal Justice' checkbox is checked. Below the filters is a 'FILTER BY KEYWORD' text box and a large teal button labeled 'Search the JH Connect Resource Library'. The Windows taskbar at the bottom shows the time as 3:36 PM on 10/18/2013.

Justice and Health
CONNECT
A national resource for justice and health data sharing

JOIN OUR MAILING LIST SEARCH

HOME BACKGROUND TOOLKIT **RESOURCES** ABOUT US

RESOURCES

FILTER BY ISSUE AREA, DOCUMENT TYPE, OR RELEVANCE

New Search

SUBJECT AND A TYPE

- Background
- Ethical Considerations
- Governance
- Health Reform and Criminal Justice
- Legal Issues
- Technology
- Academic papers
- Case studies and interviews
- Fact sheets and FAQs
- Other Toolkits
- Reports, issue briefs and white papers
- Templates
- Webinars, video, podcasts

FILTER BY KEYWORD

Search the JH Connect Resource Library

3:36 PM
10/18/2013

www.jhconnect.org

Recap

- Community mental health treatment has been a continuous struggle in American history
- The overrepresentation of people with SMI in our jails are the extreme effects of this inadequacy.
- Not a panacea, and definitely challenge, but the Affordable Care Act offers unprecedented opportunities to improve this situation.
- It will require the leadership, interagency collaboration, innovation, long-term commitment.

Questions?

My Contact Information.

David H. Cloud dcloud@vera.org

212-376-3053

Vera Institute of Justice

233 Broadway

12th Floor

New York, NY 10279