

January 9, 2013

Dear Vice President Biden,

On behalf of our nation's counties, we thank you taking the time to talk with us today and for your consideration of these recommendations to the White House Gun Violence Task Force. We stand ready to work with all stakeholders to achieve our common goal of ensuring that all communities are safe from future violent events.

As highlighted in more detail in the pages below, we strongly support a broad national, state and local strategy that is based on evidence-based, grounded research in support of enhanced community prevention and treatment including:

**Executive Action**

- Change Current Federal Law or Regulation that will allow an Otherwise Eligible Person, who is in Custody, but not Convicted, to Continue to Receive Federal Health Benefits until such time as they may be Convicted, Sentenced and Incarcerated
- Double the Capacity of Mental Health and Substance Abuse Programs
- Provide Support to Communities to Invest in Evidence Based Practices and Initiatives
- Invest and Support Crisis Care Services

**Legislative Action**

- Reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDP)
- Enact the Youth Promise Act
- Amend the Health Information Technology for Economic and Clinical Health (HITECH) Act to cover Behavioral Health Providers
- Reauthorize and Fund the Mentally Ill Offender Treatment and Crime Reduction Act
- Support Funding for Direct Services
- Reauthorize and Fund the Second Chance Act
- Support Validated Pretrial Risk Assessment
- Invest in Problem-Solving Courts

Again, we thank you for your consideration of these recommendations. Please do not hesitate to contact NACo Executive Director Matthew D. Chase at 202-942-4201 or email [mchase@naco.org](mailto:mchase@naco.org) if you need any additional information.

Sincerely,



Chris Rodgers  
President

# Detailed Recommendations

## Executive Actions

✓ **Change Current Federal Law or Regulation that will allow an Otherwise Eligible Person, who is in Custody, but not Convicted, to Continue to Receive Federal Health Benefits until such time as they may be Convicted, Sentenced and Incarcerated**

Title XIX of the Social Security Act, which governs the Medicaid program, prohibits Federal Financial Participation (FFP) – the federal match – for services provided to “inmates of a public institution” even if they are eligible for, and enrolled in, Medicaid (Section 1905(a)(A)). Nearly all the states maintain that they are unable to assume the federal share of providing Medicaid services to eligible persons in county custody, and terminate their eligibility. As a consequence, the entire cost of medical care for all arrested and detained individuals falls to the county. Once an individual’s Medicaid eligibility has been terminated, it may take months to reenroll and for benefits to be restored when they are released back into the community.

A provision included in the Affordable Care Act that, beginning in 2014, will require plans offered on the new state-based Affordable Health Insurance Exchanges to cover Qualified Individuals in custody pending disposition of charges. NACo estimates that about one third of the pre-trial jail population will be eligible for Exchange coverage and two thirds may be eligible for Medicaid coverage, based on income and/or disability status in 2014.

*Therefore, all who are eligible for federal medical benefits prior to arrest should continue to be eligible and covered until such time as they have been convicted of a crime, sentenced and incarcerated. NACo has strongly encouraged the Center for Medicare and Medicaid Services (CMS) to harmonize the rules for the Exchanges and Medicaid, to clarify that jail officials may submit enrollment applications on behalf of persons in custody, and to require states to stop terminating eligibility for persons in custody pending disposition. This change not only assists financially strapped local governments, jails, and health departments, but ensures the continuity of care for persons with behavioral health disorders and improves public safety in communities nationwide.*

✓ **Double The Capacity Of Mental Health And Substance Abuse Programs**

Funding for community mental health and substance use treatment services has been cut dramatically. As a result, only a third of those with moderate mental illness, two-thirds of those with severe illness and less than one-tenth of persons with a substance use disorder ever receive any care. Families simply cannot get badly needed care.

*NACo supports this recommendation from members in the behavioral health community including the National Association of County Behavioral Health and Developmental Disability Directors (NACBHDD), and urges that the Affordable Care Act’s provisions supporting integration of mental health care and behavioral health care, including mental health parity, be implemented fully and peer support services expanded.*

✓ **The Federal Government Must Continue to Provide Support to Communities to Invest in Evidence Based Practices and Initiatives**

To advance its primary goal of crime reduction, combating violence, and improving community safety, many State and local governments have committed to Evidence Based Practices and initiatives.

For instance, the Maricopa County (AZ) Adult Probation Department committed to an Evidence Based Practice (EBP) initiative many years ago, and looked at the five following priority areas: (1) improving empathy and understanding; (2) involving staff in decision making; (3) collaborating with treatment providers; (4) enhancing consistent quality assurance among supervisors; and (5) developing a comprehensive training plan. Since implementation, all projects and department initiatives in the county probation department have impacted and embraced these priority areas; and through collaborations with treatment providers, and cross-system understanding the effectiveness of system wide reforms are being strengthened and continue to develop in the county. Whether through the Probation Department's Prison Reentry Initiative or use of a variety of specialty courts, this focus on EBP has enhanced community safety that will undoubtedly combat future violence in Arizona's largest county.

Also, the National Institute of Corrections Evidence Based Decision Making in local criminal justice systems project aims to build a system wide framework that results in collaboration evidence based decision making in localities. The initiative seeks to equip local decision makers with tools and information that will result in measurable reductions of pretrial misconduct, post-conviction reoffending, and other forms of community harm resulting from crime. Seven jurisdictions have participated in the initiative to develop a structure and a set of principles for achieving an evidence based decision making system.

*The Administration and related federal government agencies must continue to provide support to communities to invest in evidence based practices and initiatives.*

✓ **Invest and Support Crisis Care Services**

A productive way to facilitate reaching individuals with mental illness locally is through the implementation and effective use of crisis care services. Crisis care services aim to work together with law enforcement and others to increase awareness of alternatives for individuals experiencing a mental health crisis. Crisis intervention team training equips law enforcement and others with the tools to recognize and defuse potentially volatile situations. While crisis care services vary in communities across the nation, they all divert people from being involved in the justice system or unnecessary emergency room visits.

Current county examples demonstrate a variety of crisis care services that serve as an essential tool for providing crisis mental health care. For instance, in Hennepin County (MN) juvenile and adult crisis services can access crisis assessment, intervention and stabilization services to residents through Child Crisis and Community Outreach for Psychiatric Emergencies (COPE). Partnering with parents, schools, hospitals, community and faith based organizations and law enforcement, services are available twenty four hours per day, seven days per week and are provided in client homes, schools, hospitals and juvenile detention facilities. Furthermore, in

Yellowstone County (MT), the Community Crisis Center (CCC) was formed as a collaborative effort with four Yellowstone County agencies (Billings Clinic, St. Vincent Healthcare, South Central Mental Health Center and Riverstone Healthcare) after a steady increase in the number of persons presenting to the local emergency rooms for mental health, substance abuse and social services care. The CCC provides crisis services for individuals eighteen and over, and offers a range of services, including working with individuals to find permanent housing. Since inception, the Yellowstone County Detention Facility and the local ERs have seen a significant decrease in numbers of persons admitted to their facilities due to mental illness/substance abuse. This is directly attributable to the efforts of all in diverting persons with mental illness.

*Overall, Crisis Care services improve public safety in communities, save taxpayer dollars; and federal programs and/or initiatives that continue to support these efforts or allow crisis care services as an allowable expense must continue to be enacted and funded.*

## **Legislative Actions**

### **✓ Reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDP)**

The most recent, broadly supported, bipartisan proposal to reauthorize the JJDP includes specific new provisions to this long-standing law designed to increase evidence-based screening and assessment for children and youth who come into contact with the courts, as well as to improve family and community supports and services for mental health and behavioral health. Since 1974, JJDP has provided critical federal funding to states to comply with a set of core protections that shield youth from the dangers of adult jails, keep status offenders out of locked custody, and address the disproportionate treatment of minorities in the justice system. Title II of the law establishes State Formula Funds to support state compliance with these core protections, helping to ensure that states have the resources to build effective state systems that reduce recidivism and promote public safety. The Juvenile Accountability Block Grant (JABG) Program is used in the states and counties to reduce juvenile offending by providing judges and other juvenile justice officials a range of age and developmentally appropriate options that hold youth accountable while giving them the assistance they need to turn their lives around so they are less likely to reoffend.

Title II Grants and JABG are critical to many counties nationwide, and help combat future violence. For instance in Fairfax County(VA), funding for juveniles has decreased significantly since 2002 – from \$140,000 annually to only \$70,000 in 2012. During the launch of JABG, Fairfax County established an intensive supervision program for high risk youth, which included evening supervision in the community. The program was highly effective, but when JABG funding and the county budget were reduced, the program was closed. Fairfax County shifted the small investment from programming and staff to training for probation staff, due to the limited funds and gaps in the county budget. Additionally, the county has used JABG for Training on Evidence-Based Strategies and Systems Reforms, Programming for Court Involved Girls, and Treatment and Trauma Training. With Title II funding, Fairfax County has launched new programs for decades in the county, including detention alternatives such as Outreach Programs and Evening Reporting Centers. These programs were hugely successful and created demand among other probation centers. This funding allowed the county to identify gaps in their

continuum of services, implement innovative, research-based programming, evaluate the impact and take it to scale across the county.

*JJDPA increases evidence-based screening and assessment for children and youth, combats future violent events and must be reauthorized by Congress in 2013.*

✓ **Enact the Youth PROMISE Act**

Youth violence results in considerable physical, emotional, social, and economic consequences. Although rates of youth homicide have declined substantially during recent years, much work remains in reducing this public health burden. Homicide is the second leading cause of death among youth aged 10–24 years in the United States, and violence is also a major cause of nonfatal injuries among youth according to data from the Centers for Disease Control and Prevention (CDC). In 2009, a total of 650,843 young people aged 10–24 years were treated in emergency departments for nonfatal injuries sustained from assaults according to the same data from CDC. No state, city or county is immune to the devastating impact of youth violence. For instance, more than 500 youths have been killed in Cook County (IL) since 2008, with 80 percent of the homicides occurring in 22 predominantly African-American or Latino neighborhoods. The vast majority of these are the result of gang violence. Chicago's overall homicide rate rose 25 percent in the first six months of 2012 - with 308 homicides through the end of July 2012, compared to 243 for the same period in 2011, according to a report by CBS Chicago. Cook County and other local governments are working to combat this epidemic on young residents, and collective efforts are needed now more than ever.

The bipartisan Youth Prison Reduction through Opportunity, Mentoring, Support and Education (Youth PROMISE) Act aims to reduce violence in communities with a high concentration of youth at risk of school disengagement, social disconnection and delinquent behavior by providing targeted federal investments to support empirically based prevention and intervention strategies, such as family strengthening programs, academic and school supports, positive youth development and other evidence based interventions such as those identified in “Blueprints for Violence Prevention.” Overall, the legislation recognizes that steps need to be taken away from ineffective policies that focus on punishment and incarceration and toward policies that focus on evidence-based prevention and intervention to address juvenile delinquency.

*Since 2007, efforts to enact the legislation have stalled despite wide public and congressional support. Ultimately, communities would be encouraged to invest in quality evidence-based prevention and intervention programs (such as early childhood, voluntary home visiting, mentoring, mental health, job training and school-based programs) instead of programs that strictly focus on punishment and incarceration. The Youth Promise Act must be enacted.*

✓ **Amend the Health Information Technology for Economic and Clinical Health (HITECH) Act to Cover Behavioral Health Providers**

Enact legislation that corrects an oversight in the HITECH Act that excluded key providers of behavioral health and substance use treatment services from specific categories of incentive fund eligibility that would provide them with much-needed funding to enhance quality of care. Legislation should authorize psychiatric hospitals, county behavioral health providers, including

those in county jails, Community Mental Health Centers (CMHCs), clinical psychologists, and substance use treatment providers to participate in grant programs like the Regional Extension Centers and Beacon Communities under the HITECH Act and qualify for financial incentives for the “meaningful use” of Electronic Health Records (EHRs) through the HITECH Act’s Medicare and Medicaid reimbursement systems.

Inadequate reimbursement for behavioral health providers in Medicare and Medicaid have resulted in significant financial challenges for behavioral health and substance use treatment providers. For example, fewer than half of behavioral health providers possess fully implemented EHR systems. On average, information technology (IT) spending in behavioral health organizations represents 1.8% of total operating budgets – compared with 3.5% of total operating budgets for general health care services.

People with major mental health and addiction disorder need access to interoperable electronic health records. If behavioral health providers cannot adopt HIT at a rate comparable with primary care facilities, hospitals and physicians, it will soon become impossible to provide clinical care coordination. Specifically, because persons with serious mental illnesses are a high cost patient population, federal government efforts to reduce health spending through Medicaid Health Homes, Medicare Accountable Care Organizations and state efforts to enroll dual eligibles in integrated care settings will be compromised if behavioral health providers remain excluded from the HITECH Act.

*Congress must amend the HITECH Act to cover behavioral health providers.*

✓ **Reauthorize and Fund the Mentally Ill Offender Treatment and Crime Reduction Act**  
Many local correctional officers and sheriff deputies report that they are overwhelmed and unprepared to address the needs of people with serious mental illness. The human and fiscal costs of arresting and detaining hundreds of thousands of non-violent offenders with serious mental health needs have reached a breaking point. As a result, Congress enacted the Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA) in 2004, and authorized a \$50 million grant program to be administered by the Department of Justice (DOJ). The law also created the Justice and Mental Health Collaboration Program (JMHCP) to help states and counties design and implement collaborative efforts between criminal justice and mental health systems. State and local governments have used these grants for a broad range of activities, including establishing jail diversion programs, mental health courts, creating or expanding community-based treatment programs, or providing in jail treatment and transitional services.

For instance, in Salt Lake County (UT) MIOTCRA has assisted the counties' Mental Health Court Services in providing better case management, treatment services, and community supervision for the purpose of improving the mental health and well being of participants, reducing recidivism, and improving access to mental health resources. Additionally, In March 2012, Salt Lake County launched three new mobile mental health crisis units that will help increase access to mental health services for county residents supported by MIOTCRA funding. The three units include a licensed mental health professional and a Certified Peer Specialist and conduct a psychiatric assessment and help stabilize the person when they first arrive on a scene.

After the situation is under control, the team members then refer individuals to appropriate community mental health resources and provide consultation to families and care providers. Finally, the teams follow-up with the person to make sure he or she goes to recommended referrals or appointments. Overall, MIOTCRA supports programs like the one described in Salt Lake County, and in many communities are increasing public safety by facilitating collaboration among the criminal justice, juvenile justice, and mental health and substance abuse treatment systems to improve access to effective treatment for people with mental illnesses involved with the justice system. By keeping the mentally ill within the health and human services system, counties are better able to monitor their condition, provide treatment, combat future violence, and long-term state and local costs are reduced.

*The MIOTCRA program is up for congressional reauthorization in September 2013. Congress must not only reauthorize the program, but provide adequate funding to support MIOCRA.*

✓ **Support Funding For Direct Services**

County behavioral health authorities help people with serious mental health, developmental disability and substance abuse problems that would have nowhere else to turn. During this unprecedented economic downturn, states have been forced to cut mental health agency budgets by a combined total of nearly \$3.4 billion over the last three years with public mental health agencies now serving nearly 7 million Americans – a huge 10 percent increase over 2008. The Community Mental Health Service (CMHS) Block Grant is the principal federal discretionary program supporting community-based mental health services for adults and children. States utilize block grant dollars to provide a range of critical services for adults with serious mental illnesses and children with serious emotional disturbances, including employment and housing assistance, case management (including Assertive Community Treatment), school-based support services, family and parenting education, and peer support.

Virginia counties' community service boards and behavioral health authorities always use their CMHS funds to target those with serious mental illness or serious emotional disturbance. For instance, they use CMHS funds to support Program of Assertive Community Treatment (PACT) teams, where daily contact with the client assures medication adherence and allows frequent reassessment of mental status. This assures timely intervention if someone is decompensating. CMHS funds also support school based services, allowing county behavioral health authorities to respond to school requests for evaluation and/or intervention for children and youth they are concerned about.

*The federal government must continue to provide sustained funding for the CMHS Program.*

✓ **Reauthorize and Fund the Second Chance Act**

The number of individuals in prisons and jails is at an all-time high, and the vast majority will be released back into their communities at some point. Federal and state corrections facilities held over 1.6 million prisoners at the end of 2010 and at least 95 percent of state prisoners will be released back to their communities. Facing a number of issues and obstacles upon their return and often lacking services or support, a large number of these individuals recidivate. To combat this issue and provide support, Congress enacted the Second Chance Act in 2007. The Act

provides resources to states, local governments and nonprofit organization to improve outcomes for people returning to communities from prisons and jails.

For instance, in San Mateo County (CA), the county used Second Chance Act funds for sophisticated screening and assessment tools to develop individualized reentry plans with a package of services that may include peer mentoring support, education and employment services, mental health and substance abuse treatment, life skills training, or housing services. Also, the Baltimore City Health Department used Second Chance Act demonstration grant funding to expand their initiative focusing on youth who are at the highest risk of becoming either a victim or perpetrator of violence. Second Chance funds enabled the program to enhance case management and case planning services to Baltimore youth while they were in placement, as well as increased monitoring, referrals, and support for youth and their families following release.

*Legislation to reauthorize the program was not enacted during the 111<sup>th</sup> and 112<sup>th</sup> Congresses, but lawmakers continued to fund this critical program. The Federal Government must act now and reauthorize and fund the Second Chance Act.*

#### ✓ **Support Validated Pretrial Risk Assessment**

With shrinking budgets and growing jail populations, counties across the nation are facing tough decisions on how to control local criminal justice costs while minimizing the effects on public safety. According to national data, local governments spend more on criminal justice than state governments or the federal government. Since 1982, the direct expenditure on criminal justice by local governments has grown from almost \$21 billion to over \$109 billion by 2006. For individuals who are arrested, the Federal government should encourage State and local public safety agencies to use a validated pretrial risk assessment instrument to assess risk that an individual will be rearrested or fail to appear in court. Comprehensive pretrial services programs screen every person arrested and booked into county jails, interview and investigate information prior to the defendant's first appearance, use research based risk assessment instruments that guide appropriate release decisions and supervision conditions, and assist in determining pretrial release conditions and regular reports to the court of both positive and negative outcomes.

For instance, In central Virginia, eight counties have pooled resources for pretrial services, which are administered by the nonprofit OAR/Jefferson Area Community Corrections (OAR/JACC). As a result, participating cities and counties receive state funding to establish their own pretrial services agencies to systematically improve the ability of judicial officers to assess defendants' risk to public safety while assuring their appearance in court. The participating agencies interview and screen defendants using Virginia's validated risk-assessment tool on-site at two regional jails, complete record checks, make recommendations to the court and provide supervision to those who are released under certain conditions, which often include in-person visits, drug testing and substance abuse evaluation. In 2007–08, the program completed roughly 1,200 interviews and pretrial investigations, made recommendations to the court in half the cases and received 687 placements for supervision. Of those under the supervision of OAR/JACC, 85 percent successfully avoided re-arrest and appeared in court for trial or sentencing — better than the national average, according to the Bureau of Justice



Statistics. As a result, the central Virginia counties saved hundreds of jail bed days, provided for improved public safety and protected alleged victims and the community-at-large by monitoring defendants awaiting trial.

*The Federal government must continue to provide incentives or support programs that encourage State and local public safety agencies to use a validated pretrial risk assessment instrument to assess risk.*

#### ✓ **Invest in Problem-Solving Courts**

Since the early 1990s, problem-solving courts have evolved from a lone drug court in Miami-Dade County and a single community court in midtown Manhattan to more than 2,500 problem-solving courts in the United States including, but not limited to drug, domestic violence, reentry, mental health, veteran and other specialty courts. Numerous research efforts support and even the Department of Justice acknowledges that if implemented properly, the problem-solving approach can decrease recidivism, reduce crime, improve coordination among justice agencies, enhance services to victims, and increase trust in the justice system. Problem-solving courts represent a shift in the way courts are handling certain offenders and working with key stakeholders in the justice system. In this approach, the court works closely with prosecutors, public defenders, probation officers, social workers, and other justice system partners to develop a strategy that will pressure an offender into completing a treatment program and abstain from repeating the behaviors that brought them to court. Problem-solving court strategies include extended probation, frequent appearances before a judge, frequent meetings with probation officers, staggered sentencing that breaks up jail time into segments and allows the participant to "earn" reductions in jail time with good behavior, and regular alcohol and other drug testing. Many counties have initiated Problem Solving Courts in an effort to alter the incarceration process to make it a more resourceful process that actually gives solutions to problems rather than a punishment.

For instance, working directly with the 17th Judicial Circuit Court, Winnebago County (WI) has established a comprehensive prosecution process that seeks to find meaningful solutions for criminal proceedings. Their program is based on five platforms: (1) Diversion Programs; (2) Deferred Prosecution; (3) Specialty Courts, such as drug and mental health courts; (4) Alternative-to-incarceration models; and, (5) re-entry models. The 17th Judicial Circuit Court has established a wide array of specialty courts and encourages rehabilitation as an alternative to incarceration. As prisons in Winnebago County have historically been overcrowded, the Problem Solving Courts initiative has given a solution to the incarceration dilemma. Also, the establishment of these specialty courts combined with alternative punishments has saved the county a great deal of money and time that would have otherwise been spent on a prisoner. As a result of the mental illness specialty court alone, a total of 25,389 jail days were saved between 2005 and 2010 for an expense savings of \$1,523,340 at \$60 per day.

*Overall, Problem-solving courts result in more defendants turning their lives around and becoming healthy law-abiding citizen, and reduces violence in communities, while also improving public safety and saving taxpayer dollars. Congress must continue to support Problem-solving courts.*