

Beyond Bail Reform

Pretrial Assessment and Supportive Services
at Newark Community Solutions

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Disclaimer

The Judiciary, through the Administrative Director of the Courts, contracted with Newark Community Solutions for a one-year fee-for-service contract to provide clinical case management services and connections to community-based treatment for certain CJR-eligible defendants in Essex County with a likelihood of serious mental illness (SMI). However, the recommendations described herein were created solely by Newark Community Solutions. The Judiciary did not assist in preparation of this document. As such, the views, conclusions, and recommendations expressed in this document are not endorsed by the Judiciary, and do not reflect the positions, opinions, or views of the Judiciary.

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Introduction

As pretrial incarceration rates soar across the country, many jurisdictions have passed reforms limiting the use of bail for those who can be released into the community while awaiting trial. While these reforms have worked to safely reduce jail populations, they have not always been accompanied by positive strategies to connect system-involved people with supportive social services. This gap is especially troubling in light of the fact that roughly 44% of people held in jail suffer from some kind of mental illness.¹ As more of these high-needs individuals are released from jail pending trial, there is both a need and an opportunity for programs that can direct them to treatment and services in their communities.

In 2017, through its Criminal Justice Reform Act, New Jersey instituted comprehensive reforms that eliminated the use of cash bail while preserving judges' authority to detain those that pose a flight or safety risk.² These changes made New Jersey a model state in terms of its pretrial practices.³ Five years into the reforms, people continue to show up for court appearances at the same rate as before; crime among people released pretrial remains low; and savings for families, communities, and localities have been considerable. But despite these advances, there remain significant opportunities for improvement—especially when it comes to providing supportive services for people with mental health conditions who have been released pretrial.

In New Jersey's Essex County, the Judiciary convened a team of legal and social service professionals, including Newark Community Solutions (a program of the Center for Justice Innovation), to address this gap.⁴ This report outlines lessons learned through Newark Community Solutions' experience providing assessment and case management services within the resulting pilot program, focusing on how to meaningfully and effectively deliver services at the nexus of the criminal legal and mental health systems. Some recommendations offered for future programming in this area include:

- Allowing for a suitable planning period prior to program launch
- Tracking data during programming in order to make live adjustments as needed
- Accounting for the material and financial needs of program participants
- Adopting an inclusive and flexible understanding of mental health needs

Program Overview

The Essex County Mental Health Diversion pilot program sought to provide voluntary assessment and case management services to individuals with mental illness released into the community while awaiting trial, as well as to expand mental health diversion opportunities for these defendants. As the pilot program's "system navigator," Newark Community Solutions was responsible for providing voluntary assessment and case management services under its Pretrial Assessment and Supportive Services (NCS-PASS) program. The NCS-PASS team included one senior clinician who served as the program's coordinator, two full-time case managers who provided community-based services, one full-time intake specialist based out of the county jail, and one part-time intake specialist who worked in both the jail and the community. Newark Community Solutions and its parent organization, the Center for Justice Innovation, also leveraged expertise through its Data Analytics and Applied Research department and other senior leadership to support the planning, implementation, and data analysis processes throughout the pilot period. Within its one year of operations,⁵ the pilot program and NCS-PASS demonstrated that defendants with mental illness could be engaged within 24 to 48 hours of being detained and linked to ongoing, community-based care.

Opting into voluntary services through NCS-PASS was entirely separate from case processing; no offers were made regarding case disposition or mental health diversion at the point of enrollment. Ultimately, cases could be diverted by legal partners via case dismissals, downgrades to municipal courts, or referrals to existing pre- or post-plea

mental health diversion programming run by the Prosecutor's Office. The Prosecutor's diversion program had different eligibility criteria from the Essex County pilot, requiring a clinical assessment from the program's designated treatment partner with specific parameters regarding diagnoses, regardless of the person's documented clinical history. Participants in the Prosecutor's diversion program were offered alternatives to traditional prosecution whereby completing treatment could result in case dismissal, a substitute for jail time, or a reduced sentence.

Direct Services: Eligibility, Assessment, and Case Management

Legal and clinical eligibility criteria for the pilot program were set by the Judiciary prior to launch. To be legally eligible, an individual had to be: (1) charged on a complaint-warrant, meaning that they had to be detained post-arrest for a third- or fourth-degree crime or disorderly person's offense; and (2) released into the community under the Criminal Justice Reform Act at either their Central Judicial Processing hearing or a subsequent detention hearing. Clinical eligibility meant that the individual had or was suspected of having a serious mental illness as determined by the jail's initial health screening tool or the public defender's pre-court interview. A Newark Community Solutions intake specialist at the Essex County Correctional Facility received all legal and clinical eligibility lists from respective partners and identified individuals who met both sets of criteria.

The intake specialist then explained the purpose of the program to eligible individuals. If the defendant expressed interest, an initial intake was conducted. Intended to swiftly screen for social service needs and build rapport with potential participants while they were still incarcerated, the initial intake explored mental health history and assessed for needs related to the social determinants of health, including substance use, housing, employment, and more. If the defendant accepted case management and was released, a second assessment was completed by a Newark Community Solutions case

manager in the community. The second assessment further explored need areas identified in the initial assessment, which helped the case manager prioritize interventions and referrals when case planning. Providing a follow-up assessment was critical as both time and privacy were limited when completing assessment interviews inside the jail's holding area.

Per program design, case management was made available to program participants for up to 90 days following release. While engagement in mental health treatment was a requirement of the program, participants who were not enrolled in treatment could receive case management support for four to six weeks before being discharged as a "participant opt out." When receiving services in the community, participants were assigned a case manager who helped them to identify service goals. Individual case management sessions were completed over the phone or in-person at either the Essex County Superior Courthouse or at Newark Community Solutions' office in Newark's South Ward. Referrals were made to mental health treatment and other community support programs. System navigation also included coordination with Pretrial Service officers, biweekly court updates, and weekly court reviews with the Office of the Public Defender. Service plans were reviewed at 30-day intervals and attorney reviews continued until the participant completed their 90 days of case management or had their case resolved through downgrade, dismissal, or referral to diversion. Newark Community Solutions offered weekly "open houses" at its community office to account for service engagement complications caused by the digital divide. These events also allowed for co-located services with a local mental health peer support program.

Lessons and Recommendations

Lessons learned from this project, both successes and challenges, provide essential understanding for other jurisdictions as they replicate and adapt program models in their communities. As is customary with pilot programs, data collection and analysis represented a critical component of

NCS-PASS operations, even though the program only recruited participants for nine months. Still, the observed trends and lessons learned offer valuable information for practitioners about both participant populations as well as program development and cross-sector collaboration efforts.

Lesson #1

When working together, institutions and organizations across the legal and behavioral health systems can change how defendants with mental health needs experience pretrial supervision.

The mental health pilot in Essex County involved representatives from state and local government, the behavioral health system, the legal system, and local non-profits. Within four months of formally announcing the plan for this pilot, each of these partners mobilized to prepare for its launch. Government institutions, such as the Judiciary, are central actors in these early stages of a program because they are uniquely situated to gather all necessary partners across sectors, articulate a shared vision, and set expectations for both collective and individual benchmarks for success. For NCS-PASS, these established relationships allowed Newark Community Solutions' leadership to more quickly solve critical logistical issues related to service co-location and information-sharing than would have been possible had the organization been working more independently. With help from the correctional facility's warden, the local courts, and the public defender, Newark Community Solutions was able to co-locate screening within the county correctional facility, quickly move through the requisite personnel clearance processes, develop a system to receive legal and clinical eligibility information daily, and share program updates with the public defender—all before a single defendant was referred to the program. Thus, as the organization charged with identifying participants, enrolling them into case management services, and providing community-based care, Newark Community Solutions was able to effectively and efficiently reach defendants with suspected mental health needs and provide care, enrolling 181 participants over the course of a nine-month period.

Recommendation

Designing and implementing an impactful program which spans multiple anchor systems requires intentional planning by a team comprised of a diverse array of partners. The few months that NCS-PASS had to work with partners to build a basic infrastructure for the program were crucial in order to effectively meet the needs of program participants. Whether the goal of a program is to provide voluntary services only, develop opportunities for legal diversion, or some combination of the two, a minimum six-month planning period is advised. The planning team must, at minimum, include representation from every institution expected to contribute to the project. During this period, the lead agency directing the project must help to develop a shared mission for the team, indicate programmatic priorities, and establish clear benchmarks for success. While the lead agency at the planning period may not ultimately be responsible for implementing, managing, and sustaining the project, their involvement in the early days of the program will develop the shared vision and language to move the project forward. When possible, investing in independent expert assistance to act as a formal training and technical assistance partner can provide the capacity, resources, and knowledge for a successful planning period and, by extension, smoother program launch.

Lesson #2

Individual needs impacted how participants engaged with services, necessitating changes to program design to reflect what was learned about the population served.

60% of eligible people approached about the NCS-PASS program voluntarily accepted services and completed an intake while in custody, totaling 181 individuals. 86% of those who completed an assessment were released from custody as part of New Jersey's Criminal Justice Reform Act, and 63% of those individuals initiated case management in the community, meaning that just over half of the people assessed received case management. Initiation of case management services among individuals who completed an assessment was found to be linked to certain characteristics.

Specifically, participants lacking identification or reporting family/community support needs were statistically significantly less likely to initiate case management services. Those with housing, food, finance, and educational needs were also notably less likely to initiate case management upon release. With respect to diagnoses reported at intake, there was no statistically significant relationship between diagnosis and case management initiation; however, those reporting a schizophrenia diagnosis were notably less likely to initiate services in the community.⁶ Factors underlying these trends merit further exploration.

While every individual who completed an assessment in custody requested further case management, not all remained engaged for the full 90-day period following release. Of those who were released from custody, 43 were immediately lost to contact and never connected with their assigned case manager; 39 began services and later opted to discontinue services (either explicitly or by ceasing to engage with the program); and others were initially lost to contact only to engage well into their 90-day service period. The reasons for this varied, but common explanations included: (1) a number of cases were downgraded or dismissed within one month of release; (2) some participants refused mental health treatment upon reentering the community, disqualifying them from participation in the program; (3) some participants were unsheltered and had no working cell phone; or (4) participants prioritized other needs over the mental health services provided through NCS-PASS (e.g. maintaining new employment, working with other service providers, etc.).

Successful “completion” of voluntary services can be difficult to define. For the purposes of this report, Newark Community Solutions considered case management to be successfully completed if the participant either remained enrolled and connected with the program for the full 90-day case management period or terminated case management at a mutually agreed-upon time following the delivery of case management services. Newark Community Solutions noted that people reporting anxiety disorders at intake and identification needs at their community

assessment were statistically significantly less likely to complete case management in the community.

Recommendation

The trends noted above reflect the importance of understanding the population served when designing an intervention, and of incorporating trends into program design throughout the early stages of development. Even the most thorough planning period cannot predict how individuals and systems will respond to services. Gathering information about when and how individuals connect and disconnect with a program early on can allow for swift responses to enhance the intervention’s impact. Still, to understand these trends and adjust services accordingly requires time and patience. Programs that seek to be data-driven should allow for a minimum two-year period of active pilot intervention to gather information and analyze the data before making major, substantive programmatic changes. During this period, however, smaller adjustments can be made based on observations and initial data collection. For example, as noted above, many program participants lacked access to a working phone or e-mail. To account for this, Newark Community Solutions began offering weekly “open houses” and providing participants with the address and hours of these events to contact the program prior to their release. Larger-scale recommendations based on the full pilot data, such as predictors of initial engagement, indicate that additional interventions could be incorporated at custodial intake when participants endorse needs that place them at higher risk of being lost to contact. Additionally, another segment of the population discontinued services because their court cases were transferred to the municipal court system. This revealed an opportunity for strengthening relationships with other court systems with which participants were interacting.

Out of the 181 NCS-PASS program participants, 86% of those who completed an assessment were released from custody as part of New Jersey’s Criminal Justice Reform Act and 63% of those who were released initiated case management services once in the community.

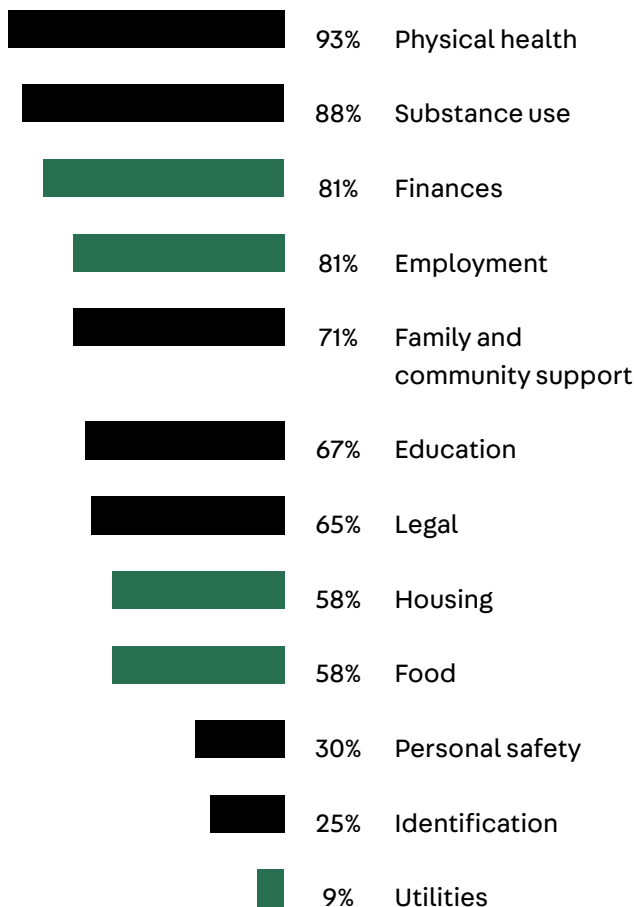
Lesson #3

Financial instability and its associated service needs presented a major barrier for participants.

Almost every NCS-PASS participant reported financial needs, with 97% of participants reporting concerns in one of the following areas: financial assistance, housing, food security, employment, or utilities. The widespread nature of financial needs suggests that programmatic interventions to assist this population should not be limited to healthcare. To illustrate, two of the four most frequently identified needs at intake related to finances and employment. Over half of the participants engaged in the program reported unstable or tenuous housing conditions, while 70% reported

NEEDS REPORTED AT INITIAL INTAKE

At intake, participants reported a wide range of social needs, many related to finances and the ability to pay for basic needs.



that it was somewhat hard or very hard to pay for basic necessities. Half of participants worried about food running out within the past year, and 19% reported actually running out of food often. This profile illustrates that many people eligible for and interested in supportive services through NCS-PASS are struggling to meet their most basic needs. While partnerships with agencies providing these services and referrals to local programs for housing, public benefits, and employment were possible through the program, such referrals do little to offset the reality of an affordable housing crisis, long waitlists and processing times for public benefits, and a volatile job market for low-wage workers. This reality highlights the fact that supports for the population served by NCS-PASS must go beyond mental health treatment and include robust policy interventions to buttress the social welfare system. The problem was not simply that NCS-PASS participants were unaware of the services available to satisfy their most basic needs; rather, in some instances, support was inadequate or nonexistent. Thus, family and community support figured prominently in individuals' initiation of and subsequent involvement in services post-release; family can often supplement the basic needs that are difficult to meet within the existing social service ecosystem.

Recommendation

Preliminary findings suggest that when considering the intervention needs of people released via criminal justice reform, material support plays just as critical a role as behavioral health treatment. Accordingly, if policymakers wish to fully realize the ambitious goals outlined in programs like the Essex County Mental Health pilot, investment in services cannot stop at creating more case managers. No amount of system navigation will be adequate if the social service system itself is not able to support the needs of people released pretrial. Thus, investment in services tailored for people who are released pretrial should go beyond case management and strengthen the systems participants navigate by including assistance for material supports within the social service system itself. Just as contracts and partnerships with healthcare providers bolster the capacity of the behavioral health system to

deliver specialized care to court-involved people, so too must diversion initiatives work with public assistance programs, supportive housing providers, and other cash and non-cash benefit programs to expeditiously respond to the most basic needs of court-involved people.

Lesson #4

Goals for behavioral health and legal outcomes are not always in alignment, particularly when interventions occur in the early stages of legal involvement.

Flexible timelines for treatment enrollment can improve trust and contribute to better outcomes; however, these timelines do not neatly map onto the timelines for legal case processing. While engaging individuals as early as possible in the legal process is a best practice,⁷ it cannot be assumed that opting for services within hours of arrest will, or always should, translate to enrollment in a legal diversion program. Findings from the pilot project revealed that the practices which successfully allowed for early screening and treatment referrals complicated legal case processing, particularly in the early stages of the pilot. When the NCS-PASS program came

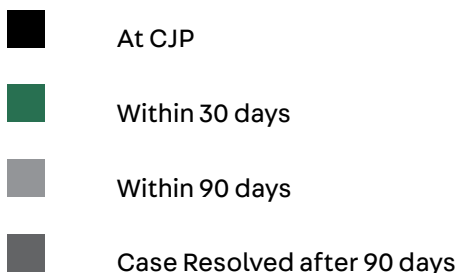
to a close, none of the 181 participants who had opted for an assessment had been accepted into the existing mental health diversion program in the county. Many were never referred for the program because they were not legally eligible, and the few who had applied were eventually denied because they did not meet the diversion program’s clinical eligibility criteria.

This disconnect between the participants’ service outcomes and legal case outcomes is underscored by a misalignment between eligibility criteria for NCS-PASS and the eligibility criteria for the diversion opportunities available through the pilot partners. Nearly two-thirds of participants enrolled in NCS-PASS had their cases dismissed or downgraded via traditional case processing within the first 90 days of release. Because the legal eligibility for NCS-PASS included disorderly-persons offenses and lesser degree felonies, the majority of participant cases were ultimately referred to municipal court, but the pilot program lacked partnership in those courthouses. As a result, the progress made in the NCS-PASS program did not automatically follow participants as their cases progressed through the legal system.

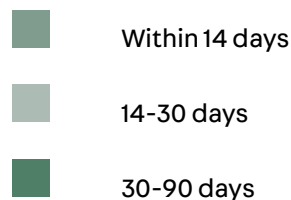
TREATMENT ENGAGEMENT AND CASE RESOLUTION

The length of time it took for a participant to engage in treatment did not always align with the progression of their legal matters. These charts illustrate how nearly half of participants who engaged in treatment took over 30 days to do so, by which time many court cases had already been dismissed or downgraded.

Case Downgrade and Dismissal Status



Length of Time to Engage in Treatment



Another consideration regarding this disconnect relates to treatment enrollment timelines. Over half of the participants who went to treatment took more than 30 days to attend their first behavioral health treatment appointment. The underlying factors that may have contributed to these delays merit further study. However, it is evident that people require time, space, and trust to follow through on treatment recommendations, and are often willing to engage once given that flexibility. Considering that nearly 50% of all NCS-PASS cases were downgraded or dismissed in the first 30 days of the program, the opportunity for case mitigation based on treatment progress all but disappeared.

Recommendation

The relationship between legal eligibility, court processes, and service expectations must reflect the realities of the work and ensure proportionality between program expectations and the participant's legal issues, particularly when considering lower-level offenses. If criminal case diversion is a priority, program design must be legally and clinically viable such that the charges considered for the program align with the clinical interventions available. The planning period represents a critical time to ensure that mechanisms for service delivery are consistent with the expectations for legal diversion. Program partners must set standards for special case consideration resulting from community-based treatment and, when case diversion is a possibility for a range of charges, expectations for "service engagement" and the corresponding timeline for court-mandated service involvement should be tiered to preserve legal parity.

Many NCS-PASS participants who attended community-based treatment services did so only after about 30 days following their release. Tiering interventions can preserve the behavioral health goals of the project while allowing the flexibility necessary to consider the most appropriate legal outcome for an individual's case. In practice, this means that diversion programs should avoid rigid time frames (e.g., stipulating that participants commence treatment or obtain a diagnosis within two weeks) when working at the intersection of the legal system

and mental health needs, as such time frames can be counterproductive to reaching the very populations these programs wish to serve. When possible, supportive service and diversion programs within the criminal legal system should allow for adequate engagement and fostering of the helping relationship, thereby ensuring that the program is accessible to all who qualify.

Lesson #5

Adopting an inclusive, flexible understanding of mental health promotes equity in diversion efforts.

When planning and operating a pretrial service program, it is important to be mindful that mental health needs are not limited to those with official mental illness diagnoses. Throughout the pilot, Newark Community Solutions engaged individuals who may not have been formally diagnosed with a serious mental illness, but who were experiencing very real mental health symptoms. For the purposes of early intervention, it proved advantageous that the pilot program allowed "suspected" serious mental illness to constitute clinical eligibility. For example, early in the project, Newark Community Solutions assessed a young mother who appeared to be struggling with post-partum depression. She had not been formally diagnosed and had no history of mental illness; however, her presentation in the jail suggested that she was highly symptomatic but did not know where or how to seek help. While post-partum depression is not necessarily regarded as a serious mental illness that would qualify someone for a formal diversion program—particularly a program that requires a year of monitoring—this individual clearly had a need for the services that the pilot was able to offer.

A more inclusive understanding of mental health also promotes equity in diversion efforts. Rigid clinical criteria for admission into diversion programs run the risk of reinforcing the systemic inequities that exist within the realm of healthcare. Research has indicated that there are racial disparities in who is diagnosed and what diagnosis they are given within the healthcare system.⁸ An excessively narrow definition of mental illness and rules around proof

of illness can exclude people who are deemed “not sick enough” from access to the services and resources that pretrial programming offers.

Recommendation

Programs that seek to provide early assessment and intervention services for legally involved people with mental health needs must consider how to assist those who are symptomatic but may not ultimately meet the full criteria for some diagnoses. As practitioners and jurisdictions strive to eliminate barriers to equal access to justice and consider the mental health needs of those in the system, they must utilize inclusive definitions of mental health and create a range of diversion opportunities that reflect the diversity of mental health needs. While the broader definition of “mental illness” for NCS-PASS meant that many people clinically eligible for pretrial services were not eligible for the existing mental health diversion program, the experience with the NCS-PASS program suggests that both pretrial services and diversion programs which seek to serve people with mental health needs should consider more inclusive clinical eligibility criteria, particularly those programs situated in communities where mental health stigma is particularly pronounced and/or mental health treatment services are scarce.

Conclusion

This pilot demonstrated that institutions and organizations within both the legal and behavioral health systems can collaborate to change how defendants with mental health needs experience pretrial supervision, and added more evidence to support growing calls for systemic reform in this area. Collectively, the work of NCS-PASS positively impacted the lives of those who received services and produced several lessons to inform current and future pretrial service programs, particularly those which may seek to integrate into mental health diversion programs. In the pilot program’s year of operations, partners were able to quickly come together to create a system to identify eligible individuals within 48 hours of arrest, prior to their release from pretrial detention; link individuals to mental health treatment in the community; and gather information from the work

to inform future services and policy development. In all, NCS-PASS and the larger mental health pilot in Essex County provided insight into the possibilities of interventions at the nexus of the social service and legal systems within pretrial services, while also revealing the need for expanded investment in people’s broader social service needs, intentional planning, evaluation of interventions, and programmatic adjustments based on data analysis.

Endnotes

1. Bronson, J. & Berzofsky, M. June 2017. *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12*. Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf>.
2. Criminal Justice Reform. 2018. New Jersey Courts. Retrieved from <https://www.njcourts.gov/public/concerns/criminal-justice-reform>.
3. Jorgensen, I. & Smith, S.S. Dec. 2021. *The Current State of Bail Reform in the United States: Results of a Landscape Analysis of Bail Reforms Across All 50 States*. HKS Faculty Research Working Paper Series RWP21-033.
4. The pilot program was made up of partners from the New Jersey Administrative Office of the Courts, the Essex County Vicinage, the Essex County Prosecutor’s Office, the Office of the Public Defender, the Essex County Correctional Facility, the New Jersey Department of Human Services, and Newark Community Solutions.
5. Note: The NCS-PASS program engaged in nine months of participant recruitment and 12 months of service delivery.
6. Due to the small sample size for statistical purposes, throughout this report a liberal threshold for statistical significance was used ($p < .1$); this means that to be considered significant there is at least a 90% probability that detected differences are due to generalizable trends rather than being due to chance. Newark Community Solutions considered any differences larger than 5% to be “notable.”
7. *Criminal Justice Standards: Diversion*. 2022. American Bar Association. Retrieved from https://www.americanbar.org/groups/criminal_justice/standards/diversion-standards/
8. *Mental Health Disparities: African Americans*. 2017. American Psychiatric Association. Retrieved from <https://www.psychiatry.org/File%20Library/Psychiatrists/Cultural-Competency/Mental-Health-Disparities/Mental-Health-Facts-for-African-Americans.pdf>.

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