

## Legislative Science and Technology Note

# Mental Hygiene and Incarceration in West Virginia

May 2024

In the context of incarceration, mental hygiene most frequently refers to the involuntary commitment of incarcerated individuals to mental health facilities for treatment, but may also refer to general mental healthcare accessibility.

This Science and Technology Note details current mental hygiene policy for incarcerated West Virginians, offers comparison to Kentucky's policies, and offers policy options to enhance the mental hygiene process in West Virginia jails and prisons.

## Mental Health of Incarcerated West Virginians

As of December 31, 2020, approximately [11,000](#) individuals were incarcerated in West Virginia jails and prisons. The prevalence of mental illness in West Virginia correctional facilities has not been reported, but nationally, [~40%](#) of incarcerated individuals have a mental illness and [~60%](#) have a substance use disorder (SUD). As the general West Virginia population has a higher rate of mental illness ([24.62%](#)) than the national average ([19.86%](#)), rates in incarcerated West Virginians are likely similar or higher than the national data.

## Incarcerated West Virginians with Mental Illness or Substance Use Disorder

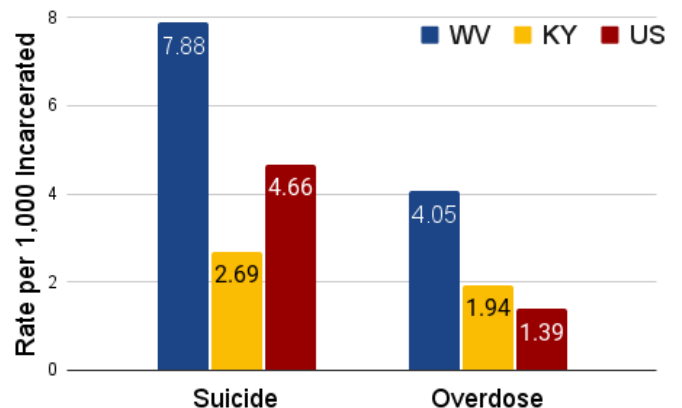
	Percent Affected (US)	WV Population (Estimated)
<b>Jails</b>	--	<b>5510</b>
Mental Illness	44%	2424
SUD	63%	3471
<b>Prisons</b>	--	<b>6044</b>
Mental Illness	37%	2236
SUD	58%	3506

Data source: [Substance Abuse and Mental Health Services Administration](#) and [National Institute of Corrections](#). Affected population values were estimated by multiplying the national rates by the known jail and prison populations in West Virginia.

## Research Highlights

- Of the approximately [11,000](#) individuals incarcerated in West Virginia, [roughly half](#) struggle with mental illness and/or substance use disorder.
- Incarcerated individuals in West Virginia have one of the [highest death rates](#) in the country, primarily driven by suicides and overdoses. Transfers to mental health facilities currently require approval from county circuit courts, magistrates, or mental hygiene commissioners, raising concerns about consistency between jurisdictions.
- Policy options to increase effectiveness, efficiency, and equity in the transfer process include shifting to a centralized or regional system for transfer approvals.

Death Rates Per 1,000 Incarcerated Individuals in West Virginia, Kentucky, and All US Jails, 2008-2019



Data Source: [Reuters](#). Rates were calculated as total deaths per cause divided by the average total jail population in each state.

According to a 2020 Reuters study, West Virginia has the [highest](#) jail death rate in the country. Notably, differences in West Virginia from the national average are driven primarily by [suicide and overdose deaths](#) as shown in the figure above, and those trends were not seen in Kentucky.

## Mental Hygiene Policies for West Virginia Jails and Prisons

Under West Virginia state code [§27-5-2](#), only the chief administrative officer of a correctional facility may file an application to have an incarcerated individual involuntarily committed for mental health treatment. This application is reviewed by a magistrate or mental hygiene commissioner, who may then order an evaluation by a healthcare professional to determine the appropriate treatment course.

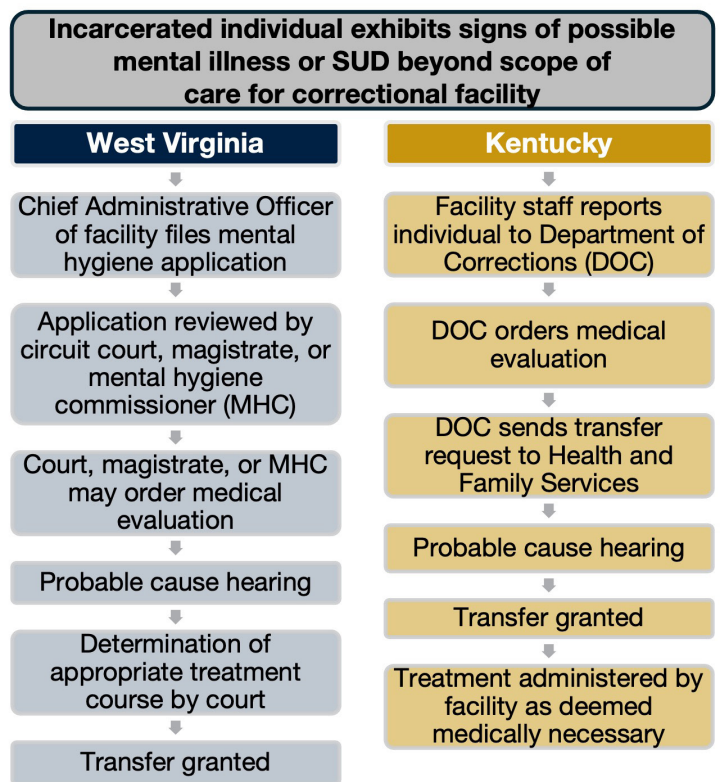
County-appointed [mental hygiene commissioners](#) are attorneys who have attended a one-time orientation course offered by the West Virginia Supreme Court of Appeals and the Department of Health Facilities. In 2023, there were over [250 officials](#) with the ability to make decisions on mental health evaluations for incarcerated West Virginians in over [20 facilities](#) throughout the state. This decision-making process has led some to raise concerns about [consistency](#) across the state and [training](#) of mental hygiene commissioners.

## Benefits of Mental Health Support in Correctional Facilities

Access to mental health treatment while incarcerated is associated with [decreased reoffense \(recidivism\)](#) and [shorter length of incarceration](#), often leading to a [positive return on investment](#).

## Mental Hygiene Decision-Making Process For Incarcerated Individuals in Kentucky and West Virginia

While the mental hygiene decision-making processes in both Kentucky and West Virginia require applications and court involvement, Kentucky's procedure allows any correctional facility staff to report concerning behavior and request evaluation efficiently. Additionally, medical evaluations in Kentucky are ordered by the centralized Department of Corrections (DOC) as opposed to counties' individual court officials. [Kentucky §202A.201](#) outlines explicit procedures for mentally ill inmates, while West Virginia [§27-5-2](#) applies to involuntary commitment of all individuals, incarcerated or not.



## Policy Options to Address Mental Hygiene Procedures in West Virginia

As a result of facility administrators and county-level discretion, two individuals with similar mental illness may be treated very differently depending on the facility they are in and who reviews their case. This may lead to challenges concerning equity and consistency in decision-making between jurisdictions.

One policy option to address this challenge is a regional decision-making model, as proposed by [HB4405](#) in the 2024 West Virginia legislative session. Regional decision-makers benefit from familiarity with local resources while serving multiple correctional facilities.

Alternatively, West Virginia could shift to a more centralized process for treatment/transfer applications, as seen in [Kentucky](#). Such a system could ensure consistent decision-making for individuals incarcerated throughout West Virginia. Further, this policy could reduce the burden on [overloaded](#) circuit courts and magistrates while improving the speed with which incarcerated individuals get the care they need.

This Science & Technology Legislative Note was written by Kensey Bergdorf-Smith, PhD, West Virginia Science & Technology Policy Fellow on behalf of West Virginia University's Bridge Initiative for Science and Technology Policy, Leadership, and Communications. The Bridge Initiative provides nonpartisan research information to members of the West Virginia Legislature upon request. This Science and Technology Legislative Note is intended for informational purposes and does not indicate support or opposition to a particular bill or policy approach. Please see <https://scitechpolicy.wvu.edu/> or contact [scitechpolicy@mail.wvu.edu](mailto:scitechpolicy@mail.wvu.edu) for more information.