HHS&PS COMMITTEE #1
July 19, 2010

MEMORANDUM

July 15, 2010

TO: Health and Human Services Committee
Public Safety Committee

FROM: Linda McMillan, Senior Legislative Analyst

SUBJECT: **Discussion – Mental Health Courts – Potential Next Steps**

At this session, the joint Committee will have an opportunity to continue its discussion of how to better address the needs of mentally ill people who have committed minor offenses through the establishment of a mental health court or other program structured to decriminalize mental illness and increase treatment compliance. The expected outcome from such efforts is to reduce recidivism by treating the underlying cause for the criminal behavior.

The joint Committee last met on this topic in October, when it received presentations from Dr. Fred Osher from the Council of State Governments Justice Center, Art Wallenstein, Director of the Department of Correction and Rehabilitation, and Uma Ahluwalia, Director of the Department of Health and Human Services. It was noted that this issue was raised in the 2002 Report from the Blue Ribbon Task Force on Mental Health.

Dr. Osher shared information on the study he and others conducted in which Montgomery County served as one of the research sites. The study estimated the current prevalence of serious mental illness among adult male and female inmates. The study found that the rate of current serious mental illness (such as major depressive disorder, bipolar disorder, schizophrenia, and psychotic disorder) for male inmates across all five study sites was 14.5% and for females 31%. In the first phase of the study (2002-2003), 18% of male inmates and 28% of female inmates in Montgomery County were found to have serious mental illness. In the second phase of the study (2005-2006), 8% of male inmates and 21% of female inmates were found to have serious mental illness.

Council staff has asked the following persons to present to the joint Committee at this session:

Department of Health and Human Services:
Dr. Raymond Crowel, Chief, Behavioral Health and Crisis Services
Athena Morrow, Supervisor, Clinical Assessment and Triage Services (CATS)
Uma Ahluwalia, Director, Department of Health and Human Services

As follow-up to the last session, Dr. Crowel has provided a policy memo at © 1-5 that provides summary information on mental health courts and recommendations on potential next steps. Ms. Morrow will provide some additional data about the potential target population in Montgomery County.

Department of Correction and Rehabilitation:
Patricia Sollock, Chief of Mental Health Services, DOCR
Robert Green, Warden, Montgomery County Detention Centers

Montgomery County Mental Health Advisory Committee (MC MHAC):
Mr. Alan Sternstein, MC MHAC Legal Community Representative

The MC MHAC has a committee on decriminalization of mental illness that has been looking at the need for a mental health court in Montgomery County.

NAMI Montgomery County:
Esther Koleko-Kravitz, Executive Director, MC NAMI
Dr. Joel Campbell, Board Member, MC NAMI

Sharon Friedman, Executive Director of the Mental Health Association, and Sharan London, Executive Director of the Montgomery County Coalition for the Homeless have also been invited as a resource for the joint Committee discussion.

Council Staff Comments

In addition to the policy memo from Dr. Crowel (© 1-5), attached to this packet are a brochure from the Prince George's Mental Health Court (© 6-7) and a brief from the Consensus Project titled, "The Essential Elements of a Mental Health Court – Improving Responses to People with Mental Illness."

Dr. Crowel has asked two very important questions in his policy paper: "Is Montgomery County ready for a mental health court?" and "What can we do short-term to better serve the needs of the justice-involved persons with mental illness?"

With regards to the first question, Council staff notes that the Prince George's County Mental Health Court is a component of the District Court. This is the logical court for a mental health court that is serving people who have been arrested for minor, non-violent offenses. This is a different population that those involved in the Montgomery County Drug Court, which are Circuit Court cases for people who are in violation of probation that could generally result in a return to jail or prison. That said; the Administrative Judge of Montgomery County's District Court is not able at this time to commit to a special docket that would be required for a traditional mental health court. He has, however, shared his concern with Dr. Crowel and Council staff about people who are seen by the court clearly as a result of a mental illness. The Prince George's County Mental Health Court is scheduled two full-days per week. During 2009, 438 people were referred to and processed through the Prince George's County Mental Health Court. It appears that on average there is a caseload of about 225. Prince George's County

receives grant funding for two case managers. The development of assessment and treatment plans for participants is a collaborative efforts of government and community-based providers.

In addition to the issue of court capacity, there is additional work that needs to be completed by Montgomery County regarding definition of the target population, what the terms of participation would be, who would be responsible for monitoring, and assessing what community based resources would be needed for participants. **Council staff agrees with Dr. Crowel's suggestion that the Criminal Justice Behavioral Health Initiative (CJBHI) be asked to serve as the collaborative work group to develop recommendations on strategies to support a mental health court or "mini-mental health court" that might use another mechanism, such as placing a case on the stet docket, as an incentive to comply with treatment while addressing the court's concern about additional workload.** (The County's Intervention Program for Substance Abusers (IPSA) places the cases of certain misdemeanor drug offenders on the stet docket while they complete a required program. If they are successful, the case is dropped, if not, the case may move forward. These cases require no special docketing by the District Court.)

Council staff suggests that it would be useful to look at cases from the last year to start to determine which, if any, might have been appropriate for a mental health court or diversion program and then look at the type of services that would have been required for a treatment/compliance plan. Is there sufficient capacity in the mental health system? How many people would need assistance with permanent housing? Were there cases where cash bond was an issue? Who would be responsible for monitoring compliance? What are the concerns of the State's Attorney's Office and the Public Defender/private defense bar? After reviewing past potential cases, it may be possible to structure a pilot program that could be implemented in a relatively short period of time.

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POLICY MEMO

To: Councilmember George Leventhal
Chair, Health and Human Services Committee

From: Raymond Crowel, Psy.D.
Chief, Behavioral Health and Crisis Services

RE: Meeting the Needs of Justice-Involved Persons with Mental Illnesses – Next Steps for Montgomery County

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The magnitude of the problem is well known. In Montgomery County, an estimated 22 percent of the inmates at MCCF and MCDC are men and women with mental illnesses. Nearly 75 percent of that number is likely to have a co-occurring substance abuse disorder. Once incarcerated, they tend to stay longer and are less likely to be placed on probation than others charged with similar offenses. After release, they are more likely to become repeat offenders.

In this context, Montgomery County policymakers have become increasingly interested in the "mental health court" concept, as part of their ongoing efforts to solve this problem.

This memo responds to questions raised by the County Council regarding the nature and effectiveness of these specialized courts to adjudicate mentally ill defendants. The memo first describes mental health courts and discusses their benefits and limitations. It then summarizes growing evidence that these programs can produce positive outcomes for their participants and the public.

Mental health courts are, however, not without limitations – the principal being that they serve only a small percentage of mentally ill persons in the criminal justice system; and to date, they have had limited support from key constituencies in Montgomery County. They also require the allocation of additional resources unlikely to be made available in the current fiscal climate. As a result, creating a full-fledged county mental health court may be difficult to achieve in the immediate future.

Given this reality, the memo concludes by offering a set of short- and long-term recommended next steps intended to achieve the same ends: increased collaboration between police, behavioral health, prosecutors, defense attorneys, and judges to reduce unnecessary confinement in correctional settings and improved outcomes for mentally ill defendants.

What is a mental health court and how does it work?

A mental health court is a court with **a specialized docket for eligible defendants with mental illnesses**. Its purpose is to hold mentally ill criminal defendants accountable for their actions, while not criminalizing mental illness. The goal is to address the root causes of behaviors that bring defendants to court, using the authority of the court to encourage defendants to engage in treatment and make other needed changes in their lives.

In 1997, the U.S. had two mental health courts. Today, there are at least 175, including courts in Baltimore City and Prince George's County. While they vary from jurisdiction to jurisdiction, the vast majority have four characteristics:

1. A **problem-solving, rather than the traditional adversarial, approach** to court processing for certain defendants with mental illnesses.

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2. **Court-supervised, community-based treatment** – in lieu of criminal sanctions – for participating defendants, managed by a team of court staff and mental health professionals.

3. **Regular status hearings** to periodically review treatment plans and other conditions for appropriateness and to either reward participants who adhere to court conditions or sanction those who do not.

4. **Graduation criteria** that define each participant's completion of the program.

At the heart of a mental health court is **extensive collaboration** among criminal justice, behavioral health, and related agencies. **Team members** usually include a judge, representatives from the prosecutor's office and defense bar, probation or parole officers, and a case manager and/or representatives from the mental health treatment system.

Mental health courts can set **eligibility criteria** for participation based on needs in the offender population, including specific diagnostic categories, the number and or seriousness of recurring offenses, or the capacity of the system to safely address a candidates needs in the community, among other factors.

Potential participants are typically **screened** early on in the criminal justice process by court staff such as Pretrial Services, the Public Defender's office, the States Attorney, or other service providers with mental health training. **Participation is voluntary**.

The team develops a tailored plan for each defendant with a **treatment plan, conditions, rewards, consequences, monitoring, and community-based support**. Conditions frequently include adhering to the treatment plan, complying with medications, drug testing, avoiding subsequent arrests, and meeting vocational or educational goals. Participants who meet conditions might have charges dismissed or reduced. Those who fail to meet conditions may be returned to court for prosecution or be subject to lesser graduated sanctions, including short-term incarceration or hospitalization. Where non-compliance stems from acute psychiatric disturbances, e.g., psychotic or delusional behavior, the person may be admitted to a psychiatric facility on an emergency basis.

What are the benefits and limitations of mental health courts?

Mental health courts provide both **indirect and direct benefits** to participants and the communities in which they live. Indirectly, they:

- **Increase awareness:** Because they are highly visible, mental health courts help increase public awareness about the nature of mental illness and treatment alternatives.
- **Foster collaboration:** Because they are built on a collaborative model, their successful implementation sets the stage for broader cross-system collaboration and can provide the impetus for building stronger community-based services and treatment alternatives.

Most importantly, research on existing mental health courts is finding evidence that they:

- **Lower costs:** An analysis of the fiscal impact of the Allegheny County mental health court, produced by the Rand Corporation in 2007, showed a decrease in jail costs in the second year of court participation that more than offset treatment costs.
- **Reduce recidivism:** A 2007 evaluation found that San Francisco behavioral health court participants (compared with mentally ill traditional court participants) were less

likely to be arrested for new crimes, less likely to commit violent crimes, and more likely to maintain reduced recidivism after they were no longer under the supervision of the court.

- **Increase treatment:** In Broward County, mental health court participants had greater access to treatment services and were more likely than non-participants to continue treatment after the program concluded, according to a 2003 study.

Still, mental health courts do have significant **limitations**. They:

- Can **effectively serve only a limited number** of those who are eligible. In Montgomery County, for example, our drug court currently operates at a capacity of ninety. Given the need for a greater range of community-based treatment services for a number of different mental illnesses and more complicated monitoring requirements, it would be fair to assume that a mental health court would serve no more than thirty – out of several hundred – MCCF and MCDC inmates with mental illnesses.
- May **reduce overall service capacity**. Despite the fact that the goal of mental health courts is to increase demand for community-based mental health services, most jurisdictions have not expanded service capacity accordingly. Thus, an unintended consequence of an *effective* mental health court can be fewer treatment options for people with mental illnesses outside the criminal justice system.

Critics of mental health courts also argue that they are an **infringement of the individual's due process rights**. By volunteering, or being "leveraged" into a mental health court process, individuals may spend a longer time involved with the criminal justice system than if they had proceeded with the standard criminal justice proceedings. But the reality is that severely ill individuals who are currently processed through the criminal justice system all too often are caught in a continuous cycle of arrest, prosecution, and incarceration. To address this, the County could impose time limits based on sentencing guidelines.

Is Montgomery County ready for a mental health court?

The Council's most recent questions about mental health courts are indicative of its long-standing support for such effective, cross-system approaches to address the needs of people with mental illnesses involved with law enforcement, the courts, and corrections.

With Council support, the county has already made considerable progress on a number of key fronts:

- **Collaboration:** An effective cross-system collaborative process, the Criminal Justice Behavioral Health Initiative (CJBHI), has been in place since 2000 to identify and address the needs of the community. The CJBHI brings together county agencies (the Police, Corrections and Rehabilitation, and Health and Human Services Department); the legal system (Courts, Probation and Parole, State's Attorney, and Public Defender); private providers; and other stakeholders together to build a quality service delivery system for offenders with behavioral health problems. Its Steering Committee now represents a broad coalition that supports development of a mental health court and other needed services. Additional partners also interested in serving this population include housing and shelter provides, adult protective services and advocates.
- **Community-based services:** We are also fortunate to have at least some of the necessary clinical services needed to support a mental health court. The county behavioral health system offers an array of services that could be configured to support the operation

of a mental health court. A strong partnership between HHS and DOCR has resulted in the collocation of mental health and addictions services in MCDC and MCCF. Examples are the Clinical Assessment and Triage Service (CATS), operating at MCDC, and the MCCF Crisis Intervention Unit (CIU). In addition, we have existing case management, co-occurring treatment, and community re-entry support programs that could serve mental health court participants.

Nonetheless, two problems represent significant challenges to creation of a county mental health court:

- **Insufficient judicial system support:** No effort to create a mental health court can succeed without the active participation of district court judges, the state's attorney, and the public defender's office. Historically, support from these groups in the county has been limited. The stated reasons range from the pragmatic to the philosophical: already crowded dockets, questions about effectiveness, concerns about costs, and opposition in principle to "specialty" courts. There has been, however, an important recent development: Paul DeWolf has sent a memorandum to State Public Defenders giving them greater latitude to become involved in specialty courts, including mental health and drug courts. This change may represent an opportunity to build legal system support for a mental health court.
- **Insufficient resources:** In the current economic and fiscal environments, **the most daunting obstacle is cost**, for both the operations of the court and for the service needs it would generate. Given an already overwhelmed docket, the district court would need adequate resources for new judicial, prosecutorial, and defense resources to serve mental health court participants. Similarly, the county behavioral health system does *not* have sufficient resources to serve both mental health court participants and others in need. This is especially true for residential services.

What can we do short-term to better serve the needs of the justice-involved persons with mental illnesses?

Step 1: Take concrete steps to build judicial system support for a mental health court.

a. Use the CJBHI as the vehicle to **develop strategies with the district court, prosecutors, and defense attorneys** regarding critical issues such as managing the mentally ill offenders on court dockets and other needs of the courts.

b. Develop a **consultation/educational forum for the courts** on lessons learned from other jurisdictions on mental health courts and other approaches to decriminalizing mental illness.

Step 2: Use existing resources to brief the district court, conduct small pilots, and implement other court-based initiatives.

c. Develop a **consultation/educational forum for the courts** on the mental health needs of offenders and alternatives to prosecution and incarceration.

d. Pilot "**mini mental health courts**." The "stet docket" is an inactive court docket, maintained by the state's attorney's office, in which the court indefinitely postpones trial of a criminal charge. With the support of an interested and willing judge, prosecutor, and public defender, and a case manager provided by DHS, we would be able

to use the "stet" docket with a small number of defendants with mental illnesses to provide community-based services, gain treatment compliance, and monitor progress. One possibility is a pilot for ten to fifteen "high-end" users that would enable us to learn from a "test" of the essential elements of a mental health court with a small, but highly needy, population.

e. Provide **support to parole and probation** on alternatives to reoffending for mentally ill persons.

f. Make a **HHS case manager** available to work with any interested judge.

Step 3: Make a few key no- or low-cost changes in policy and practice.

g. **Change the practice of discharging mentally ill offenders at court.** The Sheriff's office will not transport inmates' possessions to court and will not return released persons to MDCD/MCCF to pick up their possessions, including medications and appointments for community-based services. As a result, these persons often fail to make the connection to on-going care and do not have medications needed to sustain them until their clinic appointments. This sets the stage for failure for many transitioning offenders.

h. Create more **"one stop shops"** to provide a combination of case management; mental health, addiction treatment, and health services; and vocational or employment services in one location.

What else could be done longer-term, beyond the courtroom, to fully address the problem?

Step 4: Strengthen county service capacity in critical areas.

i. Increase **service co-location.**

j. Expand and strengthen **wraparound case management services** to fully support ex-offenders' community reentry.

Step 5: Build a full continuum of services for mentally ill defendants and offenders.

k. Create multidisciplinary fully integrated **Forensic Assertive Community Teams** (FACT) to provide comprehensive, community-based psychiatric treatment, rehabilitation, and support services to consumers of mental health services with the most severe disabilities.

l. Develop a dedicated mental health treatment service whose niche is to **serve transitioning offenders with mental illnesses**, beginning prior to their release from the jail.

m. Provide long-term **housing alternatives** for mentally ill offenders who are returning to the community.

Program Description:

The Prince George's County Mental Health Court program is designed to increase the collaboration and cooperation between the mental health treatment system, the criminal justice system and the District Court while addressing the needs of individuals with mental disorders. The program uses a problem solving approach to the court process and offers defendants with mental illnesses an opportunity to obtain an array of services including an evaluation to a judicially supervised treatment plan.

Mental Health Court Team:

Members of the Mental Health Court Team include representatives from the criminal justice agencies, county core service agencies and community based service providers including a judge, prosecutor, public defender, treatment agencies, providers and probation officers. The court and participating agencies are committed to collaborating for the purpose of improving outcomes for this special population while increasing public safety.

The Prince George's County Mental Health Court is a collaborative effort of:

The Prince George's County District Court

Office of Problem-Solving Courts
Administrative Office of The Courts

The State's Attorney Office
(301) 952-3555

Office of the Public Defender
(301) 952-2128

Department of Parole & Probation

Prince George's County Department of Family Services Mental Health and Disabilities Administration
(301) 985-3890

Prince George's County Department of Corrections
(301) 952-7025

Prince George's County Police Department

Prince George's County Commissioner's Office

Office of the Sheriff for Prince George's County

Mental Health Court Advisory Committee

Prince George's County
Mental Health Court
14735 Main Street, Room 345B
Upper Marlboro, Maryland 20772

Doris Winston
Mental Health Coordinator
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PRINCE GEORGE'S COUNTY DISTRICT COURT

MENTAL HEALTH COURT

A NEW APPROACH FOR MENTALLY ILL OFFENDERS

Honorable Thomas J. Love
Administrative Judge

Honorable Patrice E. Lewis
Mental Health Court Judge

MISSION STATEMENT

Prince George's County is committed to implementation and expansion of the District Court Mental Health Court Program. The program is designed to promote public safety, and facilitate greater access for defendants with mental illnesses to ensure they receive mental health and substance abuse treatment. The goal is to help improve the quality of life for people with mental illnesses charged with crimes by making more effective use of the limited justice and mental health resources.

GOALS

- Identify defendants with mental illness
- Improve access to public mental health treatment services
- Improve the quality of life for people with mental illnesses charged with certain crimes
- Reduce recidivism
- Improve linkages between the criminal justice system and the mental health system
- Make more effective use of limited criminal justice and mental health resources
- Expedite case processing
- Improve public safety

OUR PURPOSE

This Court works to direct eligible offenders with mental illness away from incarceration and into appropriate community treatment. The Mental Health Court has four main purposes:

- To reduce inappropriate incarceration of mentally ill offenders and promote their safety and well being.
- To reduce repeated criminal activity by offenders with mental illness (legal recidivism).
- To reduce length and frequency of hospitalization of mentally ill offenders (clinical recidivism).
- Increase community awareness of the relationship between mental illness and offender behavior.

WHO IS ELIGIBLE

- To receive services from Prince George's County, the individual must be a County resident
- Diagnosed with mild to severe mental illness and/or trauma-related disorder
- Eligible for public (private) mental health services
- Agrees to comply with program requirements
- Charged with a misdemeanor within the jurisdiction of the District Court
- Has never been convicted of a crime of violence

TREATMENT

Treatment services are available to Mental Health Court participants in four main areas:

- Clinical services include evaluation, individual therapy, psychiatric services, group therapy and family counseling.
- Mobile treatment is available to clients that cannot get to services, as well as to those clients that are resistant to treatment.
- Non-clinical services include vocational rehabilitation, which provides supportive employment and job skills training.
- Case management services provide links to community-based services, community-based resources, and advocacy, including links to housing options.

Additionally, participants can receive assistance in obtaining the first 30 days of prescription medication through the County Department of Family Services Mental Health and Disabilities Administration.

Defendants released from a county run-facility can only receive a 7-day supply of prescription medication.

Prince George's County Crisis Response System

- 24 Hour Mobile Crisis Team
- Warmline/Helpline
- Counseling (weekdays, weekends and evenings)
- Crisis Services
- In-Home Family Crisis Services

Other Services Available: **(301) 429-2185**
(301) 927-4500

Ten Essential Elements

PLANNING AND ADMINISTRATION

A broad-based group of stakeholders representing the criminal justice, mental health, substance abuse treatment, and related systems and the community guides the planning and administration of the court.

Mental health courts are situated at the intersection of the criminal justice, mental health, substance abuse treatment, and other social service systems. Their planning and administration should reflect extensive collaboration among practitioners and policymakers from those systems, as well as community members. To that end, a multidisciplinary "planning committee" should be charged with designing the mental health court. Along with determining eligibility criteria, monitoring mechanisms, and other court processes, this committee should articulate clear, specific, and realizable goals that reflect agreement on the court's purposes and provide a foundation for measuring the court's impact (see Element 10: Sustainability).

Ideally, the development of a mental health court should take place in the context of broader efforts to improve the response to people with mental illnesses involved with, or at risk of involvement with, law enforcement, the courts, and corrections. Such discussions should include police and sheriffs' officials, judges, prosecutors, defense counsel, court administrators, pretrial services staff, and corrections officials; mental health, substance abuse treatment, housing, and other service providers; and mental health advocates, crime victims, consumers, and family and community members.

The planning committee should identify agency leaders and policymakers to serve on an "advisory group" (in some jurisdictions members of the advisory group will also make up the planning committee), responsible for monitoring the court's adherence to its mission and its coordination with relevant activities across the criminal justice and mental health systems. The advisory group should suggest revisions to court policies and procedures when appropriate, and should be the public face of the mental health court in advocating for its support. The planning committee should address ongoing issues of policy implementation and practice that the court's operation raises. Committee members should also keep high-level policymakers, including those on the advisory group, informed of the court's successes and failures in promoting positive change and long-term sustainability (see Element 10). Additionally, by facilitating ongoing training and education opportunities, the planning committee should complement and support the small team of professionals who administer the court on a daily basis, the "court team" (see Element 8).

In many jurisdictions, the judiciary will ultimately drive the design and administration of the mental health court. Accordingly, it should be well represented on and take a visible role in leading both the planning committee and advisory group.

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TARGET POPULATION

Eligibility criteria address public safety and consider a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses. Eligibility criteria also take into account the relationship between mental illness and a defendant's offenses, while allowing the individual circumstances of each case to be considered.

Because mental health courts are, by definition, specialized interventions that can serve only a portion of defendants with mental illness, careful attention should be paid to determining their target populations.

Mental health courts should be conceptualized as part of a comprehensive strategy to provide law enforcement, court, and corrections systems with options, other than arrest and detention, for responding to people with mental illnesses. Such options include specialized police-based responses and pretrial services programs. For those individuals who are not diverted from arrest or pretrial detention, mental health courts can provide appropriately identified defendants with court-ordered, community-based supervision and services. Mental health courts should be closely coordinated with other specialty or problem-solving court-based interventions, including drug courts and community courts, as target populations are likely to overlap.

Clinical eligibility criteria should be well defined and should be developed with an understanding of treatment capacity in the community. Mental health court personnel should explore ways to improve the accessibility of community-based care when treatment capacity is limited and should explore ways to improve quality of care when services appear ineffective (see Element 6: Treatment Supports and Services).

Mental health courts should also focus on defendants whose mental illness is related to their current offenses. To that end, the planning committee should develop a process or a mechanism, informed by mental health professionals, to enable staff charged with identifying mental health court participants to make this determination.

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TIMELY PARTICIPANT IDENTIFICATION AND LINKAGE TO SERVICES

Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.

Providing safe and effective treatment and supervision to eligible defendants in the community, as opposed to in jail or prison, is one of the principal purposes of mental health courts. Prompt identification of participants accelerates their return to the community and decreases the burden on the criminal justice system for incarceration and treatment.

Mental health courts should identify potential participants early in the criminal justice process by welcoming referrals from an array of sources such as law enforcement officers, jail and pretrial services staff, defense counsel, judges, and family members. To ensure accurate referrals, mental health courts must advertise eligibility criteria and actively educate these potential sources. In addition to creating a broad network for identifying possible participants, mental health courts should select one or two agencies to be primary referral sources that are especially well versed in the procedures and criteria.

The prosecutor, defense counsel, and a licensed clinician should quickly review referrals for eligibility. When competency determination is necessary, it should be expedited, especially for defendants charged with misdemeanors. The time required to accept someone into the program should not exceed the length of the sentence that the defendant would have received had he or she pursued the traditional court process. Final determination of eligibility should be a team decision (see Element 8: Court Team).

The time needed to identify appropriate services, the availability of which may be beyond the court's control, may constrain efforts to identify participants rapidly (see Element 6: Treatment Supports and Services). This is likely to be an issue especially in felony cases, when the court may seek services of a particular intensity to maximize public safety. Accordingly, along with connecting mental health court participants to existing treatment, officials in criminal justice, mental health, and substance abuse treatment should work together to improve the quality and expand the quantity of available services.

TERMS OF PARTICIPATION

Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualized to correspond to the level of risk that the defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.

Mental health courts need general program parameters for plea agreements, program duration, supervision conditions, and the impact of program completion. Within these parameters, the terms of participation should be individualized to each defendant and should be put in writing prior to his or her decision to enter the program. The terms of participation will likely require adherence to a treatment plan that will be developed after engagement with the mental health court program, and defendants should be made aware of the consequences of noncompliance with this plan.

Whenever plea agreements are offered to people invited to participate in a mental health court, the potential effects of a criminal conviction should be explained. Collateral consequences of a criminal conviction may include limited housing options, opportunities for employment, and accessibility to some treatment programs. It is especially important that the defendant be made aware of these consequences when the only charge he or she is facing is a misdemeanor, ordinance offense, or other nonviolent crime.

The length of mental health court participation should not extend beyond the maximum period of incarceration or probation a defendant could have received if found guilty in a more traditional court process. In addition, program duration should vary depending on a defendant's program progress. Program completion should be tied to adherence to the participant's court-ordered conditions and the strength of his or her connection to community treatment.

Least restrictive supervision conditions should be considered for all participants, especially those charged with misdemeanors. Highly restrictive conditions increase the likelihood that minor violations will occur, which can intensify the involvement of participants in the criminal justice system.

When a mental health court participant completes the terms of his or her participation in the program, there should be some positive legal outcome. When the court operates on a pre-plea model, a significant reduction or dismissal of charges can be considered. When the court operates in a post-plea model, a number of outcomes are possible such as early terminations of supervision, vacated pleas, and lifted fines and fees. Mental health court participants, when in compliance with the terms of their participation, should have the option to withdraw from the program at any point without having their prior participation and subsequent withdrawal from the mental health court reflect negatively on their criminal case.

INFORMED CHOICE

Defendants fully understand the program requirements before agreeing to participate in a mental health court. They are provided legal counsel to inform this decision and subsequent decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant's competency whenever they arise.

Defendants' participation in mental health courts is voluntary. But ensuring that participants' choices are informed, both before and during the program, requires more than simply offering the mental health court as an option to certain defendants.

Mental health court administrators should be confident that prospective participants are competent to participate. Typically, competency determination procedures can be lengthy, which raises challenges for timely participant identification. This is especially important for courts that focus on defendants charged with misdemeanors (see Element 3: Timely Participant Identification and Linkage to Services). For these reasons, as part of the planning process, courts should develop guidelines for the identification and expeditious resolution of competency concerns.

Even when competency is not an issue, mental health court staff must ensure that defendants fully understand the terms of participation, including the legal repercussions of not adhering to program conditions. The specific terms that apply to each defendant should be spelled out in writing. Defendants should have the opportunity to review these terms, with the advice of counsel, before opting into the court.

Defense attorneys play an integral role in helping to ensure that defendants' choices are informed throughout their involvement in the mental health court. Admittedly, the availability of defense counsel varies from one jurisdiction to another. In some communities, defendants' access to counsel depends on the crime with which they were charged or the purpose of the hearing. Recognizing these constraints, courts should strive to make defense counsel available to advise defendants about their decision to enter the court and have counsel be present at status hearings. It is particularly important to ensure the presence of counsel when there is a risk of sanctions or dismissal from the mental health court. Defense counsel participating in mental health courts—like all other criminal justice staff assigned to the court—should receive special training in mental health issues (see Element 8: Court Team).

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6 TREATMENT SUPPORTS AND SERVICES

Mental health courts connect participants to comprehensive and individualized treatment supports and services in the community. They strive to use—and increase the availability of—treatment and services that are evidence-based.

Mental health court participants require an array of services and supports, which can include medications, counseling, substance abuse treatment, benefits, housing, crisis interventions services, peer supports, and case management. Mental health courts should anticipate the treatment needs of their target population and work with providers to ensure that services will be made available to court participants.

When a participant is identified and linked to a service provider, the mental health court team should design a treatment plan that takes into account the results of a complete mental health and substance abuse assessment, individual consumer needs, and public safety concerns. Participants should also have input into their treatment plans.

A large proportion of mental health court participants have co-occurring substance abuse disorders. The most effective programs provide coordinated treatment for both mental illnesses and substance abuse problems. Thus, mental health courts should connect participants with co-occurring disorders to integrated treatment whenever possible and advocate for the expanded availability of integrated treatment and other evidence-based practices.[3] Mental health court teams should also pay special attention to the needs of women and ethnic minorities and make gender-sensitive and culturally competent services available.

Treatment providers should remain in regular communication with court staff concerning the appropriateness of the treatment plan and should suggest adjustments to the plan when appropriate. At the same time, court staff should check with community-based treatment providers periodically to determine the extent to which they are encountering challenges stemming from the court's supervision of the participant.

Case management is essential to connect participants to services and monitor their compliance with court conditions.[4] Case managers—whether they are employees of the court, treatment providers, or community corrections officers—should have caseloads that are sufficiently manageable to perform core functions and monitor the overall conditions of participation. They should serve as the conduits of information for the court about the status of treatment and support services.

Case managers also help participants prepare for their transition out of the court program by ensuring that needed treatment and services will remain available and accessible after their court supervision concludes. The mental health court may also provide post-program assistance, such as graduate support groups, to prevent participants' relapses.

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3. Evidence-based practices (EBPs) are mental health service interventions for which consistent scientific evidence demonstrates their ability to improve consumer outcomes. R. E. Drake, et al., "Implementing Evidence-Based Practices in Routine Mental Health Service Settings," *Psychiatric Services* 52 (2001): 179–182. Other EBPs include assertive community treatment, psychotropic medications, supported employment, family psychoeducation, and illness self-management.
4. The term "case management" has multiple definitions. Moreover, specific interventions such as assertive community treatment (ACT) and intensive case management (ICM) are themselves case management models. According to the Substance Abuse and Mental Health Services Administration (SAMHSA) "any definition of case management today is inevitably contextual, based on the needs of a particular organizational structure, environmental reality, and prior training of the individuals who are implementing it, whether they are social workers, nurses, or case management specialists" (see SAMHSA's Treatment Improvement Protocol [TIP] #27, "Case Management for Substance Abuse Treatment"). The definition of a particular case management approach can be derived from its functions and objectives. Case management functions include assessing, planning, linking, coordinating, monitoring, and advocating. For example, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the U.S. Department of Justice in its publication *Drug Identification and Testing in the Juvenile Justice System*, defines case management as "an individualized plan for securing, coordinating, and monitoring the appropriate treatment interventions and ancillary services necessary to treat each offender successfully for optimal justice system outcomes."

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CONFIDENTIALITY

Health and legal information should be shared in a way that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.

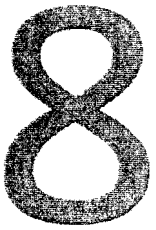
To identify and supervise participants, mental health courts require information about their mental illnesses and treatment plans. When sharing this information, treatment providers and representatives of the mental health court should consider the wishes of defendants. They must also adhere to federal and state laws that protect the confidentiality of medical, mental health, and substance abuse treatment records.

A well-designed procedure governing the release and exchange of information is essential to facilitating appropriate communication among members of the mental health court team and to protect confidentiality. Release forms should be part of this procedure. They should be developed in consultation with legal counsel, adhere to federal and state laws, and specify what information will be released and to whom.[5] Potential participants should be allowed to review the form with the advice of defense counsel and treatment providers. Defendants should not be asked to sign release of information forms until competency issues have been resolved (see Element 5: Informed Choice).

When a defendant is being considered for the mental health court, there should not be any public discussions about that person's mental illness, which can stigmatize the defendant. Even information concerning a defendant's referral to a mental health court should be closely guarded—particularly because many of these individuals may later choose not to participate in the mental health court. To minimize the likelihood that information about defendants' mental illnesses or their referral to the mental health court will negatively affect their criminal cases, courts whenever possible should maintain clinical documents separately from the criminal files and take other precautions to prevent medical information from becoming part of the public record.

Once a defendant is under the mental health court's supervision, steps should be taken to maintain the privacy of treatment information throughout his or her tenure in the program. Clinical information provided to mental health court staff members should be limited to whatever they need to make decisions. Furthermore, such exchanges should be conducted in closed staff meetings; discussion of clinical information in open court should be avoided.

5. For information on complying with the Health Insurance Portability and Accountability Act (HIPAA), please visit SAMHSA's Web site at www.hipaa.samhsa.gov/hipaa.html.



COURT TEAM

A team of criminal justice and mental health staff and service and treatment providers receives special, ongoing training and helps mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.

The mental health court team works collaboratively to help participants achieve treatment goals by bringing together staff from the agencies with a direct role in the participants' entrance into, and progress through, the court program. The court team functions include conducting screenings, assessments, and enrollments of referred defendants; defining terms of participation; partnering with community providers; monitoring participant adherence to terms; preparing for all court appearances; and developing transition plans following court supervision. Team members should work together on each participant's case and contribute to the court's administration to ensure its smooth functioning.

The composition of this court team differs across jurisdictions. These variations notwithstanding, it typically should comprise the following: a judicial officer; a treatment provider or case manager; a prosecutor; a defense attorney; and, in some cases, a court supervision agent such as a probation officer. Many courts also employ a court coordinator responsible for overall administration of the court, which can help promote communication, efficiency, and sustainability. Regardless of the composition of the team, the judge's role is central to the success of the mental health court team and the mental health court generally. He or she oversees the work of the mental health court team and encourages collaboration among its members, who must work together to inform the judge about whether participants are adhering to their terms of participation.

Mental health court planners should carefully select team members who are willing to adapt to a nontraditional setting and rethink core aspects of their professional training. Planners should seek criminal justice personnel with expertise or interest in mental health issues and mental health staff with criminal justice experience. Planners should also work to ensure that the judge who will preside over the mental health court is comfortable with its goals and procedures.

Team members should take part in cross-training before the court is launched and during its operation. Mental health professionals must familiarize themselves with legal terminology and the workings of the criminal justice system, just as criminal justice personnel must learn about treatment practices and protocols. Team members should also be offered the opportunity to attend regional or national training sessions and view the operations of other mental health courts. New team members should go through a period of training and orientation before engaging fully with the court.

Periodic review and revision of court processes must be a core responsibility of the court team. Using data, participant feedback, observations of team members, and direction from the advisory group and planning committee (see Element 1), the court team should routinely make improvements to the court's operation.

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9 MONITORING ADHERENCE TO COURT REQUIREMENTS

Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.

Whether a mental health court assigns responsibility for monitoring compliance with court conditions to a criminal justice agency, a mental health agency, or a combination of these organizations, collaboration and communication are essential. The court must have up-to-date information on whether participants are taking medications, attending treatment sessions, abstaining from drugs and alcohol, and adhering to other supervision conditions. This information will come from a variety of sources and must be integrated routinely into one coherent presentation or report to keep all court staff informed of participants' progress. Case staffing meetings provide such an opportunity to share information and determine responses to individuals' positive and negative behaviors. These meetings should happen regularly and involve key members of a team, including, when appropriate, representatives from the prosecution, defense, treatment providers, court supervision agency, and the judiciary.

Status hearings allow mental health courts publicly to reward adherence to conditions of participation, to sanction nonadherence, and to ensure ongoing interaction between the participant and the court team members. These hearings should be frequent at the outset of the program and should decrease as participants progress positively.

All responses to participants' behavior, whether positive or negative, should be individualized. Incentives, sanctions, and treatment modifications have clinical implications. They should be imposed with great care and with input from mental health professionals.

Relapse is a common aspect of recovery; nonadherence to conditions of participation in the court is common. But nonadherence should never be ignored. The first response should be to review treatment plans, including medications, living situations, and other service needs. For minor violations the most appropriate response may be a modification of the treatment plan.

In some cases, sanctions are necessary. The manner in which a mental health court applies sanctions should be explained to participants prior to their admittance to the program. As a participant's commission of violations increases in frequency or severity, the court should use graduated sanctions that are individualized to maximize adherence to his or her conditions of release. Specific protocols should govern the use of jail as a consequence for serious noncompliance.

Mental health courts should use incentives to recognize good behavior and to encourage recovery through further behavior modification. Individual praise and rewards, such as coupons, certificates for completing phases of the program, and decreased frequency of court appearances, are helpful and important incentives. Systematic incentives that track the participants' progress through distinct phases of the court program are also critical. As participants complete these phases, they receive public recognition.

Courts should have at their disposal a menu of incentives that is at least as broad as the range of available sanctions; incentives for sustained adherence to court conditions, or for situations in which the participant exceeds the expectation of the court team, are particularly important.

10 SUSTAINABILITY

Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically (and procedures are modified accordingly), court processes are institutionalized, and support for the court in the community is cultivated and expanded.

Mental health courts must take steps early in the planning process and throughout their existence to ensure long-term sustainability. To this end, performance measures and outcome data will be essential. Data describing the court's impact on individuals and systems should be collected and analyzed. Such data should include the court's *outputs,* such as number of defendants screened and accepted into the mental health court, as well as its *outcomes,* such as the number of participants who are rearrested and reincarcerated. Setting output and outcome measures are a key function of the court's planning and ongoing administration (see Element 1).[6] Quantitative data should be complemented with qualitative evaluations of the program from staff and participants.

Formalizing court policies and procedures is also an important component of maintaining mental health court operations. Compiling information about a court's history, goals, eligibility criteria, information-sharing protocols, referral and screening procedures, treatment resources, sanctions and incentives, and other program components helps ensure consistency and lessens the impact when key team members depart. Developing additional plans for staff turnover helps safeguard the integrity of the court's operation.

Because sustaining a mental health court without funding is difficult, court planners should identify and cultivate long-term funding sources early on. Court staff should base requests for long-term funding on clear articulations of what the court plans to accomplish. Along with compiling empirical evidence of program successes, mental health court teams should invite key county officials, state legislators, foundation program officers, and other policymakers to witness the court in action.

Outreach to the community, the media, and key criminal justice and mental health officials also promotes sustainability. To that end, mental health court teams should make community members aware of the existence and impact of the mental health court and the progress it has made. More important, administrators should be prepared to respond to notable program failures, such as when a participant commits a serious crime. Ongoing guidance from, and reporting to, key criminal justice and mental health leaders also helps to maintain interest in, and support for, the mental health court.

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6. The next edition of this document will include benchmarks that will help courts determine whether this is taking place in their jurisdictions. For guidance on collecting outcome data, please see Henry J. Steadman, *A Guide to Collecting Mental Health Court Outcome Data,* May 2005, published by the CSG Justice Center and available at www.consensusproject.org/mhcourts/MHC-Outcome-Data.pdf.

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Conclusion

In courtrooms across the country, judges, prosecutors, and defense attorneys are seeing increasing numbers of defendants who have serious untreated mental illnesses charged with committing low-level crimes. Traditional court processes do little to improve outcomes for many of these people. They cycle again and again through jail, courtrooms, and our city streets.

As an alternative to the status quo, court officials, working in partnership with leaders in the mental health system and local and state policymakers, have designed problem-solving mental health courts. These courts depart from the traditional model used in most criminal proceedings. Instead, as a team and under the judge's guidance, prosecutors, defense attorneys, and mental health service providers connect eligible defendants with community-based mental health treatment and, in lieu of incarceration, assign them to community-based supervision.

The number of mental health courts in the United States has grown significantly. These programs share much in common from one county to another. There are also aspects of each mental health court's design and operation that are unique, as variation is the hallmark of this country's criminal justice system, and one of its strengths. At the same time, experts in criminal justice and mental health practice agree that there are essential elements to mental health courts, which enable them to span both the criminal justice and mental health systems effectively and to ensure that the rights of participants and community members are respected. This publication describes and explains these essential elements of a mental health court.

To design and implement a mental health court with attention to each of these elements is a challenge for those just starting a conversation about a possible mental health court, as well as for those who have operated a mental health court for years. Yet seasoned and new mental health court teams alike have demonstrated a willingness to address such complicated challenges. The essential elements described in this document are written for them and others following in their footsteps, all of whom work tirelessly to make communities healthier and safer, promote the efficient use of public resources and tax dollars, and improve outcomes for people with mental illnesses who are involved in the criminal justice system.