

MEMORANDUM

February 4, 2015

TO: Health and Human Services Committee
Public Safety Committee

FROM: Linda McMillan, Senior Legislative Analyst 

SUBJECT: **Mental Health in the Correctional Population**

Expected for this session:

Art Wallenstein, Director, Department of Correction and Rehabilitation
Uma Ahluwalia, Director, Department of Health and Human Services (DHHS)
Dr. Raymond Crowel, Chief, DHHS Behavioral Health and Crisis Services
Athena Morrow, Supervisor, DHHS Clinical Assessment and Triage Service (CATS)
Officer Scott Davis, Montgomery County Police Department (MCPD) Crisis Intervention Team
Officer Michael Chindblom, MCPD Crisis Intervention Team
Susie Sinclair-Smith, Executive Director, Montgomery County Coalition for the Homeless
Anthony Sturgess, Health Services Manager, Department of Correction and Rehabilitation

At this session, the joint Committee will have an opportunity to discuss many aspects of how people with mental illness interact with the criminal justice system. This memo is based on the findings of the 2014 Master Confinement Study, by RicciGreeneAssociates/Alternative Solutions Associates. While the study was completed in order to project what the future correctional population may be, one of its tasks was to look at alternatives. The study has detailed descriptions of the current system and identifies issues of concern and gaps in services. The representatives listed will provide comments to the joint Committee as each section is discussed.

Background

The issue of the prevalence of mental health and substance abuse problems in the correctional population as well as the concern that the jails have become a primary provider of

services for people with serious mental illness has been discussed by both the Public Safety and Health and Human Services Committees in previous sessions.

In 2009, the joint Committee received a presentation from Dr. Fred Osher from the Council of State Governments Justice Center regarding a study on the prevalence of serious mental illness such as major depressive disorder, bipolar disorder, schizophrenia, and psychotic disorder. The study found that the rate of current serious mental illness 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.

Other studies have shown that the prevalence of mental health problems (which include a much broader range of mental health issues) among inmates is widespread. The Ohio Office of Criminal Justice Services of Federal data that reported that 63% of male jail inmates and 75% of female jail inmates reported mental health problems. Many times these co-occur with substance abuse problems. Federal data indicated that 17% of persons in local jails with mental health problems were homeless in the year before their incarceration compared to 9% without mental health problems.

Master Confinement Study Overview Comments

The RicciGreene Associates/Alternative Solutions Associates' Master Confinement Study (2014) discusses the following problems that are associated with having seriously mentally ill people housed in jails.

- Mentally ill offenders are often "Frequent Flyers" because most mentally ill people leaving jail receive little psychiatric care.
- Mentally ill inmates have higher jail housing operating costs that include increased staffing.
- Mentally ill inmates can stay in jail longer than non-mentally ill inmates because they have difficulty following jail rules and can have major management problems.
- Mentally ill inmates are more likely to have been homeless before going to jail than other inmates.
- The study notes that in 2012:
 - There were 13,790 bookings in the central processing unit.
 - Of those booked, 8,631 were admitted to jail custody.
 - Approximately 50% of those booked are either released at the bail review hearing or within 5-6 days after arrest.

Pre-Booking Diversion for Mentally Ill Offenders

Pre-Booking Diversion occurs when there is contact between a mentally ill person and the Police Department's Crisis Intervention Team (CIT) officers. The CIT officers are specially trained and are decentralized and available on all shifts so that they may respond to calls where mental illness is involved. The study notes some of the diversion options available, depending on the behavior of the offender.

- Provide individuals and families with information about community mental health services.
- Voluntarily take the person to the DHHS Crisis Center.
- Voluntarily refer and/or take people to a hospital.
- Take a person into custody who meets the criteria for an emergency evaluation.

Issues of Concern:

- During the study, representatives from Washington Adventist Hospital (which has a secure mental health unit) told DHHS that it is increasingly difficult to locate and access aftercare for patients, especially sub-acute beds and residential care. This results in longer hospital stays.
- Due to limited availability and the eligibility criteria for community-based services, in Montgomery County the CIT approach relies to a great extent on transporting people to jail.
- Some jurisdictions with effective CIT programs have established specific facilities where police can transport people in mental health crisis instead of transporting them to a hospital or jail. **“What sets these apart from the norm is their identification as a central drop-off point, the availability of both mental health and substance abuse services, a no-refusal policy for police (although this does not mean inpatient stays are guaranteed), and their streamlined intake procedures (usually 30 minutes or less for the police officer.)”** The Master Confinement Study notes that the Montgomery County Crisis Center has limited capacity and the beds are fully occupied. The Crisis Center may also be caring for displaced and homeless families, which is very different population. This leads police to rely more on hospitalization or incarceration. The study provides examples of **“receiving centers”** where police take people who have allegedly committed misdemeanors or minor infractions and exhibit signs of mental illness and/or substance abuse.
- This shortage of alternative beds also poses problems for DHHS CATS staff because there are limited alternatives for those who have been admitted to the Central Processing Unit.

- The Master Confinement Study notes that currently there is discretion in whether and how a dispatcher classifies a call involving a person with a mental illness. This is critical as it determines whether a CIT officer is dispatched. The study says that this issue will be addressed as a part of the universal call-taking system proposal.

Diversion after Booking

Offenders who are not released after their initial hearing with the District Court Commissioner (which may also include the inability to make the bond set) are assessed by the Pre-Trial Assessment Unit. The Pre-Trial Assessment Unit staff estimates that about 20% of the people assessed have indications of some kind of mental health problem. For these people, the DHHS CATS staff performs an evaluation which is presented to the judge at bail review. The evaluation includes options for inpatient and community-based treatment.

To be considered eligible for diversion, a person must be charged with a misdemeanor or non-violent felony, have a limited number of Failure to Appear instances, have no other legal barriers to diversion, and be a match for an appropriate treatment agency.

If an offender is assigned to the Pre-Trial Supervision Unit, staff will complete a mental health and substance abuse evaluation that can include consultation with a DHHS Therapist.

The Intervention for Substance Abuse (IPSA) program can serve as a diversion for people with substance abuse problems but does not serve people with serious mental illness.

Issues of Concern

- Individuals who are released by the District Court Commissioner on personal recognizance (about 35% of arrestees) do not go through a formal mental health screening or to receive information on mental health services.
- Sometimes, even when program resource exists that would allow someone to be diverted, not all mental health programs accept referrals from the criminal justice system.
- Because of the limited availability of residential beds, people with serious and persistent mental illness who are psychiatrically unstable when they enter the jail may not be able to be diverted, even after they are stabilized.
- The study notes that PTSU and CATS staff identified the decrease in community based detox and intermediate care beds as a barrier to diversion, making jail the default location for people in need of mental health treatment.
- The study recommends that suitable housing and supportive case management on an ongoing basis could help with the stabilization of many mentally ill inmates/defendants.

Mental Health Court

Montgomery County, while having a long-standing Drug Court, does not have a Mental Health Court. The goal of a Mental Health Court is to ensure that offenders are complying with treatment and other conditions of their community release. There continues to be great interest in establishing a Mental Health Court in Montgomery County and most recently the State's Attorney has indicated that this is a priority for his office.

The Master Confinement Study considers the Mental Health Court an "Unresolved Issued" for the system. The section of the report on Mental Health Courts is attached at © 1-5 and an excerpt from the Bureau of Justice Assistance's brief, "Mental Health Courts – A Primer for Policymakers and Practitioners" is attached at © 6-15. This brief provides the following working definition:

"A mental health court is a specialized court docket for certain defendants with mental illness that substitutes a problem-solving model for traditional criminal court processing. Participants are identified through mental health screening and assessments and voluntarily participate in a judicially supervised treatment plan developed jointly by a team of court staff and mental health professionals. Incentives reward adherence to the treatment plan or other court conditions, nonadherence may be sanctioned, and success or graduation is defined according to predetermined criteria."

In-House Mental Health Services

The Master Confinement Study describes the in-house services that are provided through DOCR, they include:

- Mental health assessments
- Coordination of emergency commitments to State hospitals
- Facilitation on-site space for competency screenings
- Medication management
- Treatment and services to inmates with less severe mental illness that are housed in the general population
- Treatment and services to inmates housed in the Crisis Intervention Unit
- Community Re-entry and Transitional Services which can advocate for diversions and provide discharge planning
- Project Assisting Transition from Homelessness

Issues of Concern

- The number of inmates admitted to the CIU is limited by the number of beds and does not necessarily reflect the number of inmates that might need special housing due to a mental health problem.

- Reductions to funding for jail-based resources, such as Dialectical Behavioral Therapy, that reduce violence and self-destructive behavior.
- Within MCCF there is no designated “step-down” unit discrete from the CIU, which could meet the pressing stabilization needs of many inmates.
- The need for greater supervision and more intensive services for offenders housed at the Pre-Release Center and supervised through home detention because of the increased prevalence of mental health issues for this population. Because of limited services, PRC is not presently an option for many mentally ill inmates.

Grant Award for Re-Entry Program and Forensic Community Treatment Team

DHHS and DOCR will brief the joint Committee on the recent grant award that will use the Pre-Release Center to provide transitional housing for non-violent offenders with co-occurring disorders. The offenders would be engaged and identified at the time of booking and screening and would receive stabilization services while living at the PRC. The goal is to divert people with moderate to severe mental health or co-occurring disorders from jail beds and link them to stable community services. The effort is specifically targeted to those people referred to as “frequent flyers.” The program will include:

- Intensive case management through the establishment of a Forensic Assertive Community Treatment Team (FACT).
- Housing assistance through the services of a Housing Locator (Montgomery County Coalition for the Homeless is a partner) that will also help advocate with landlords and assist people to overcome barriers.
- Assistance in enrolling in the most appropriate health insurance/healthcare plan.
- Training on the impact of incarceration on clinical needs.

It is expected that over the grant period 120 offenders will be served with at least 20% being women. The stabilization period at the PRC is expected to be about 60 days. Case management and other support services would be provided for a minimum of 10-12 months.

6. UNRESOLVED ISSUES

6.1 Approach and Methodology

Approach

The analysis conducted to date identified a variety of system issues that currently impact jail bedspace demand in Montgomery County, or may in the future. Many factors, including the collaborative culture among system stakeholders and the proactive approach to managing jail population growth with best practice programs for pre-trial and pre-release inmates, have helped to keep demand in check.

The consultants' exploration of system resources, policies, and practices – including numerous discussions with all departmental representatives throughout the County's criminal justice system, revealed a few areas that warrant further consideration by the County. They are documented in this chapter as "unresolved issues" because they require further stakeholder engagement, analysis, and decision making that fall beyond the scope of this study before they can - or should - be implemented. The following discussion is for the edification of the County, and the consultants do not intend for them to serve as recommendations on these matters.

Methodology

Issues discussed herein as part of this task were identified during research and communications throughout the current study at large. This chapter presents these issues from a relatively objective standpoint, considering national findings, broad benefits and concerns, pros and cons of each presented issue, with some initial discussion on where Montgomery County currently stands in this regard and where further discussion and County stakeholder engagement is required relative to each initiative or factor. For this task, the consultants were mainly informed by research on national best, evidence based practices, alongside qualitative input from Montgomery County personnel and key stakeholders with regard to County practices, current barriers and considerations, relative to their potential for positively impacting service delivery and/or jail utilization.

6.2 Unresolved Issues

Mental Health Court

Background

As a response to the increasing number of defendants with serious mental health conditions ("mental illnesses") caught up in the criminal justice system, mental health courts have been created in numerous jurisdictions across the United States. In 1997, the U.S. had two mental

6. UNRESOLVED ISSUES

health courts. Today, there are at least 175 mental health courts in the nation, including three such courts in Maryland: Baltimore City, Harford County and Prince George's County.¹

The overarching goals of a mental health court are:

- To reduce the number of defendants with mental illnesses in the criminal justice system, and
- To reduce the number of mentally ill offenders in jail by facilitating diversion and assure treatment for persons with serious mental illnesses.

The qualified support for mental health courts is predicated upon research², which shows that a well-designed mental health court program may:

- Reduce recidivism among participants;
- Improve mental health outcomes, and
- Reduce the length of incarceration for participants.

As part of a larger effort to divert persons with mental illnesses from the criminal justice system at the earliest possible stage, to reduce unnecessary confinement in correctional settings, and to improve outcomes for mentally ill defendants, Montgomery County policymakers have become increasingly interested in the mental health court concept. Having exemplified the benefits of cooperation and cross-agency partnerships in its criminal justice system at large, the County boasts longstanding support for a similar cross-system, collaborative approach to address the specific needs of people with mental illnesses involved with law enforcement, the courts, and corrections.

Research and Findings

Is a Mental health Court a viable option in Montgomery County?

Since 2010, through the Mental Health Advisory Committee (MHAC), Montgomery County has been exploring the possibility of implementing a mental health court at the District Court level to better address the needs of individuals with mental illnesses in the criminal justice system. This is the logical Court for a Mental Health docket that is serving people who have been arrested for minor, non-violent offenses.

¹ Evaluations of the Mental Health Courts in Maryland can be found at: <http://www.courts.state.md.us/opsc/mhc/evaluations.html>

² Research on Mental Health Court can be found in Appendix D.

2

6. UNRESOLVED ISSUES

With Council support, the County has already made considerable progress on a number of key fronts, as reported in the *Policy Memo on Mental Health Courts*:

- **Criminal Justice Behavioral Health Initiative (CJBHI):** In place since 2000, the CJBHI seeks to identify and address the mental health community's needs. An effective cross-system collaborative process, "[t]he CJBHI brings together county agencies (the Police, Corrections and Rehabilitation, and Health and Human Services Department, HHS); the legal system (Courts, Probation and Parole, State's Attorney, and Public Defender); private providers; and other stakeholders to build a quality service delivery system for offenders with behavioral health problems." The CJBHI's "Steering Committee now represents a broad coalition that supports the development of a Mental Health Court and other needed services. Additional partners also interested in serving this population include housing and shelter providers, adult protective services and various mental health advocates."
- **Community-based services:** The County has many of the clinical services that are necessary to support a Mental Health Court. Through the behavioral health system, the County offers its residents a plethora of services that could be designed to fit into a Mental Health Court model and offer support for the court's operations, if this initiative was undertaken. In addition to community services, a strong partnership between HHS and DOCR has resulted in the collocation of substance abuse and mental health services in the County's correctional facilities. Examples of such cooperative services are the Clinical Assessment and Triage Service (CATS), operating at MCDC, and the MCCF Crisis Intervention Unit (CIU). In addition, DOCR facilities offer effective case management services, can address co-occurring disorders, and provide supportive community re-entry programs that could serve potential Mental Health Court participants.

How would a Mental Health Court help the system in the long term?

Above all, mental health courts must avoid becoming a preferred point of entry into needed services for persons who have otherwise been unable to obtain community-based treatment, and no treatment preference should be given to persons accused of crimes over others who have not committed a crime. In other words, mental health courts should not deplete already lacking community treatment options, thus leading to a situation where individuals suffering from mental illness in the community must get criminally involved to access services. Rather, such a court should serve to allow otherwise incarcerable offenders a less

6. UNRESOLVED ISSUES

restrictive alternative, offering a route to supportive treatment and mental stability.

The filing of actual criminal charges against persons with mental illnesses, which would result in their assignment to a mental health court, should be the last resort after all reasonable efforts at diversion have been exhausted. In this regard, the mental health court program should be seen as only one part of a coordinated community effort to reduce the number of persons with mental illnesses in the criminal justice system.

In its *Policy Memo on Mental Health Courts*, the County recognized that for a mental health court to be effective, the number of participants must be limited. With consideration to comparatives from the existing drug court and the noted need for more community-based services and treatment for this varied population the 2010 memorandum states that: "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."

What are the barriers to moving forward on this?

According to criminal justice representatives, the County faces two main challenges to the creation of a Mental Health Court:

- **Insufficient judicial system support:** As noted in the *Policy Memo on Mental Health Courts*, "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." In the past, these groups have offered scarce support for this initiative, with reasons ranging from "already crowded dockets, questions about effectiveness, concerns about costs, [to] opposition in principle to "specialty" courts." Conversations with District Court representatives seem to indicate that the Montgomery County District Court Administrative Judge's inability to commit to a necessary mental health court specialty docket, noted in the 2010 Memo, has not changed. However, County representatives see a memorandum sent to State Public Defenders by Public Defender Paul DeWolf as an important development. This memorandum encouraged more liberty in public defenders' specialty court involvement - including mental health courts - and "may represent an opportunity to build legal system support for a mental health court."
- **Insufficient resources:** The most dismaying obstacle in today's economic and fiscal environment is often cost, with regard to both

6. UNRESOLVED ISSUES

court operations and the arising service needs. In order to run a successful Mental Health Court, the District Court would need additional funds to acquire new judicial, prosecutorial, and defense resources to serve mental health court participants, while simultaneously clearing the already crowded docket. Similarly, the county behavioral health system would require additional support and resources to continue serving others in need and provide new services to the mental health court population. As has become clear throughout this Report, there are particular insufficiencies in terms of residential services for the mentally ill.

Direct Releases from Court

In Montgomery County, by the Court's direction, individuals who are found not guilty or whose cases are dismissed in court must be released directly into the community instead of being returned to the jail by the Sheriff's Department for out processing.³ As court released inmates are by law no longer under DOCR custody, the provision of any later transportation would make these individuals a liability to the Sheriff's Department – a burden that the Department, currently providing all inmate transportation, will not take on.

As a result of this practice, individuals are routinely released from court wearing jail-issued jumpsuits, and they must walk the 3.5 miles from the court in Rockville to retrieve their belongings at MCDC. While there is at this time nothing that DOCR can do about an inmate that has been released from Court and decides to walk back to the detention center through the City of Rockville – transportation of inmates does not at this time fall under DOCR services – DOCR has consistently disagreed with the current policy.⁴

Besides the practical benefit of processing all released inmates back through the jail to retrieve their property and their clothing, the issue is also a primary area of concern regarding the flow back of the mentally ill into the community. Jail staff has repeatedly emphasized the vital importance of ensuring successful community referrals and providing medications for mental health clients to support continuity in treatment and service provision.

³ Once an inmate is released from Court, the individual is no longer an inmate, and is free to go wherever he/she wants. While the Public Defender's Office has been handing out Taxi Vouchers to encourage more released individuals to use a cab to return to the Detention Center (MCDC) from the Court to collect their possessions, the reality is that the majority of these individuals end up walking through the streets of Rockville wearing jail uniforms, therefore increasing both public and individual safety concerns.
(http://www.reentrypolicy.org/program_examples/mccf-reentry-for-all/CCM_Barriers_Report.pdf).

⁴ By policy, Baltimore City, Baltimore County and Montgomery County do not have centralized release, but do it in practice. In every other County, individuals are brought back to jail for release processing purposes, according to the Montgomery County DOCR Director.

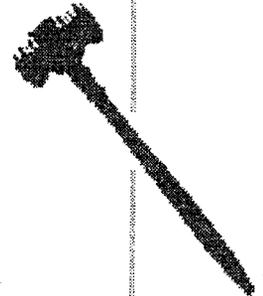
Introduction

Mental health courts have spread rapidly across the country in the few years since their emergence. In the late 1990s only a handful of such courts were in operation; as of 2007, there were more than 175 in both large and small jurisdictions.¹

If this recent surge in popularity is any indicator, many more communities will consider developing a mental health court in the coming years. This guide is intended to provide an introductory overview of this approach for policymakers, practitioners, and advocates, and to link interested readers to additional resources.

The guide addresses a series of commonly asked questions about mental health courts:

- Why mental health courts?
- What is a mental health court?
- What types of individuals participate in mental health courts?
- What does a mental health court look like?
- What are the goals of mental health courts?
- How are mental health courts different from drug courts?
- Are there any mental health courts for juveniles?
- What does the research say about mental health courts?
- What issues should be considered when planning or designing a mental health court?
- What resources can help communities develop mental health courts?



Why Mental Health Courts?

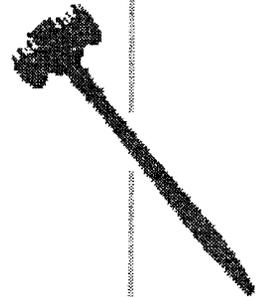
Mental health courts are one of many initiatives launched in the past two decades to address the large numbers of people with mental illnesses involved in the criminal justice system. While the factors contributing to this problem are complicated and beyond the scope of this guide, the overrepresentation of people with mental illnesses in the criminal justice system has been well documented:²

- Prevalence estimates of serious mental illness in jails range from 7 to 16 percent, or rates four times higher for men and eight times higher for women than found in the general population.³
- A U.S. Department of Justice study from 1999 found that half of the inmates with mental illnesses reported three or more prior sentences.⁴ Other research indicates that people with mental illnesses are more likely to be arrested than those without mental illnesses for similar crimes and stay in jail and prison longer than other inmates.⁵
- In 1999, the Los Angeles County Jail and New York's Rikers Island jail held more people with mental illnesses than the largest psychiatric inpatient facilities in the United States.⁶
- Nearly two-thirds of boys and three-quarters of girls detained in juvenile facilities were found to have at least one psychiatric disorder, with approximately 25 percent of these juveniles experiencing disorders so severe that their ability to function was significantly impaired.⁷

Without adequate treatment while incarcerated or linkage to community services upon release, many people with mental illnesses may cycle repeatedly through the justice system. This frequent involvement with the criminal justice system can be devastating for these individuals and their families and can also impact public safety and government spending. In response, jurisdictions have begun to explore a number of ways to address criminal justice/mental health issues, including mental health courts, law enforcement-based specialized response programs, postbooking jail diversion initiatives, specialized mental health probation and parole caseloads, and improved jail and prison transition planning protocols. All of these approaches rely on

extensive collaboration among criminal justice, mental health, substance abuse, and related agencies to ensure public safety and public health goals.

Mental health courts serve a significant role within this collection of responses to the disproportionate number of people with mental illnesses in the justice system. Like drug courts and other “problem-solving courts,” after which they are modeled, mental health courts move beyond the criminal court’s traditional focus on case processing to address the root causes of behaviors that bring people before the court.* They work to improve outcomes for all parties, including individuals charged with crimes, victims, and communities.



*Drug courts have been particularly instrumental in paving the way for mental health courts. Some of the earliest mental health courts arose from drug courts seeking a more targeted approach to defendants with co-occurring substance use and mental health disorders.

What Is a Mental Health Court?

Despite the recent expansion of mental health courts, there are not yet nationally accepted, specific criteria for what constitutes such a court. Although some initial research identified commonalities among early mental health courts, the degree of diversity among programs has made agreement on a core definition difficult.⁸ Mental health courts vary widely in several aspects including target population, charge accepted (for example, misdemeanor versus felony), plea arrangement, intensity of supervision, program duration, and type of treatment available. Without a common definition, national surveys developed on mental health courts have relied primarily on self-reported information to identify existing programs.⁹

The working definition that follows distills the common characteristics shared by most mental health courts. The Justice Center worked with leaders in the field to also develop consensus on what these characteristics should look like and how they can be achieved, as documented in *The Essential Elements of a Mental Health Court*.*

A Working Definition of a Mental Health Court

A mental health court is a specialized court docket for certain defendants with mental illnesses that substitutes a problem-solving model for traditional criminal court processing. Participants are identified through mental health screening and assessments and voluntarily participate in a judicially supervised treatment plan developed jointly by a team of court staff and mental health professionals. Incentives reward adherence to the treatment plan or other court conditions, nonadherence may be sanctioned, and success or graduation is defined according to predetermined criteria.¹⁰

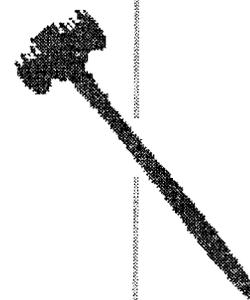
*As the commonalities among mental health courts continue to emerge, practitioners, policymakers, researchers, and others have become interested in developing consensus not only on what a mental health court is but on what a mental health court should be. *The Essential Elements of a Mental Health Court* describes 10 key characteristics that experts and practitioners agree mental health courts should incorporate. Michael Thompson, Fred Osher, and Denise Tomasini-Joshi, *Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court* (New York, NY: Council of State Governments Justice Center, 2008), www.consensusproject.org/tmhcp/essential.elements.pdf.

What Types of Individuals Participate in Mental Health Courts?

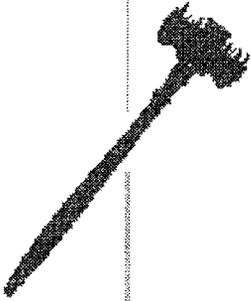
The majority of mental health court participants suffer from serious mental illnesses. Mental illness is a general term that includes a range of psychological disorders. A subset of serious mental illnesses is severe and persistent mental illness. This includes conditions that involve long-term and profound impairment of functioning—for example, schizophrenia, schizoaffective disorder, bipolar disorder (formerly called manic depression), severe depression, and anxiety disorders. In addition to describing level of functioning, most states also use criteria for “severe and persistent” to prioritize access to public mental health services.

Some mental health courts accept individuals with a broader array of disabling conditions than mental illness alone. While developmental disabilities, traumatic brain injuries, and dementias are not included in federal statutory and regulatory definitions of serious mental illness, they may be the cause of behavioral problems that result in criminal justice contact and may also co-occur with serious mental illnesses. Each mental health court determines how flexible to be on eligibility requirements and, when screening an individual who does not precisely fit standard criteria, whether to accept participants on a case-by-case basis. Working with individuals who have needs that fall outside the typical mental health service continuum requires additional partnerships with other community agencies, and so acceptance decisions are based, in part, on an individual's ability to benefit from a court intervention given these clinical and system capacity considerations. All individuals must be competent before agreeing to participate in the program.

Although addictive disorders are considered mental illnesses and are included in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, their diagnosis, treatment interventions, and providers differ from those for nonaddictive mental illnesses. Nevertheless, the majority of people with mental illnesses involved with the criminal justice system—approximately three out of four—also suffer from a co-occurring substance use disorder.¹¹ As a result, mental health courts must address this population and treat both mental health and substance use disorders in a comprehensive and integrated fashion. The vast majority of mental health courts accept individuals with co-occurring disorders, and some courts even seek out this population, but few mental health courts accept defendants whose only mental disorders are related to substance use.



The prevailing belief in the scientific community is that mental disorders, both addictive and nonaddictive, are neurobiological diseases of the brain, outside the willful control of individuals. People with mental illnesses cannot simply decide to change the functioning of their brain. As with physical illnesses, it is believed that mental disorders are caused by the interplay of biological, psychological, and social factors. This acknowledged lack of control contributes to the belief that mental health courts, which rely on treatment and flexible terms of participation rather than the traditional adversarial system, represent a more just way for courts to adjudicate cases involving people with mental illnesses. Nevertheless, entering a mental health court does not negate individuals' responsibility for their actions. Mental health courts promote accountability by helping participants understand their public duties and by connecting them to their communities.



What Does a Mental Health Court Look Like?

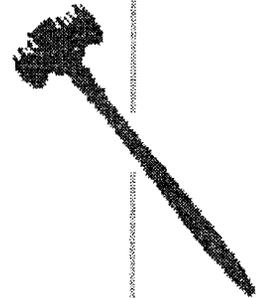
The enormous variability in mental health court design and operation has led some observers to note that “if you have seen one mental health court, you have seen one mental health court.” Nevertheless, while great variety exists, mental health courts share several core characteristics. What follows is a description of one mental health court in action that reflects some of these central features, the “essential elements.”

Every Wednesday afternoon, County Courthouse Room 13 assumes a mental health docket. The courtroom team (judge, defense attorney, prosecutor, probation officer, court coordinator, and case manager) has already met for several hours to discuss the people who will be appearing that day.

The first individuals before the bench are those entering the court for the first time. They have already undergone basic screening for program eligibility, had their mental health needs assessed, and been given a description of the mental health court program. The judge explains why they have been offered the opportunity to participate and describes the court’s procedures. She asks if they want to enter the program and whether they fully understand the terms of participation. Those who agree to participate (the majority) are welcomed into the court.

After the new participants have been admitted, the court proceeds with status hearings for current program participants. The judge inquires about their treatment regimens, and publicly congratulates those who received positive reviews from their case managers and probation officers at the staff meeting. One participant receives a certificate for completing the second of four phases of the court program. The judge hands down sanctions of varying severity to individuals who have missed treatment appointments—tailored to the needs of each participant. The judge also informs several participants that certain privileges they had hoped to obtain will be withheld because of their misconduct over the past two weeks. Throughout the status hearings, conversation remains informal and individualized, often relaxed. Observers unfamiliar with mental health court procedures may be uncertain of what they are witnessing, but they will be sure of one thing: this is not a typical courtroom.

In the following days, the mental health court team will work to develop a service plan for each new participant to connect him or her quickly to community-based mental health treatment and other supports. Those individuals who have declined to participate will return to the original, traditional court docket.

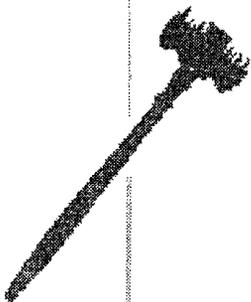


What Are the Goals of Mental Health Courts?

At their heart, mental health courts represent a response to the influx of people with mental illnesses into the criminal justice system. They seek to use the authority of the court to encourage defendants with mental illnesses to engage in treatment and to adhere to medication regimens to avoid violating conditions of supervision or committing new crimes. Unlike some programs that divert individuals from the justice system and merely refer them to community service providers, mental health courts can mandate adherence to the treatment services prescribed, and the prospect of having charges reduced or dismissed provides participants with additional incentives.

Communities start mental health courts with the hope that effective treatment will prevent participants' future involvement in the criminal justice system and will better serve both the individual and the community than does traditional criminal case processing. Within this framework, mental health court planners and staff cite specific program goals, which usually fall into these categories:

- Increased public safety for communities—by reducing criminal activity and lowering the high recidivism rates for people with mental illnesses who become involved in the criminal justice system
- Increased treatment engagement by participants—by brokering comprehensive services and supports, rewarding adherence to treatment plans, and sanctioning nonadherence
- Improved quality of life for participants—by ensuring that program participants are connected to needed community-based treatments, housing, and other services that encourage recovery
- More effective use of resources for sponsoring jurisdictions—by reducing repeated contacts between people with mental illnesses and the criminal justice system and by providing treatment in the community when appropriate, where it is more effective and less costly than in correctional institutions

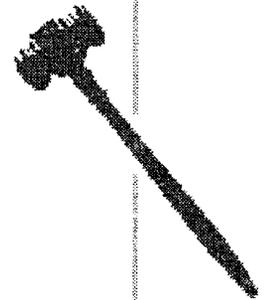


How Are Mental Health Courts Different from Drug Courts?

Drug courts are the best known and most widespread of the various problem-solving court models and have in many ways served as a prototype from which mental health courts have evolved. The high rate of co-occurring mental health and substance use disorders among individuals in the criminal justice system also suggests significant overlap in the target populations of these related court programs. In fact, in some jurisdictions, the inability of the local drug court to effectively manage individuals with serious mental illnesses precipitated the development of a mental health court.

Important differences remain in the principles and operation of drug courts and mental health courts; mental health courts are not merely drug courts for people with mental illnesses.¹² Although little research has been conducted comparing drug courts and mental health courts, it is already clear that jurisdictions interested in building on the experiences of their drug courts to develop a mental health court will need to adapt the model in significant ways to accommodate individuals with mental illnesses.

The majority of the differences listed below stem from the fact that mental illness, unlike drug use, is, in and of itself, not a crime; mental health courts admit participants with a wide range of charges, while drug courts focus on drug-related offenses. Also, whereas drug courts concentrate on addiction, mental health courts must accommodate a number of different mental illnesses, and so there is greater variability among treatment plans and monitoring requirements for participants than in drug courts.



Key Differences between Drug Courts and Mental Health Courts

PROGRAM COMPONENT	DRUG COURTS . . .	MENTAL HEALTH COURTS . . .
Charges accepted	Focus on offenders charged with drug-related crimes	Include a wide array of charges
Monitoring	Rely on urinalysis or other types of drug testing to monitor compliance	Do not have an equivalent test available to determine whether a person with a mental illness is adhering to treatment conditions
Treatment plan	Make treatment plans structured and routinized; apply sanctioning grid in response to noncompliance, culminating with brief jail sentence	Ensure that treatment plans are individualized and flexible; adjust treatment plans in response to nonadherence along with applying sanctions; rely more on incentives; use jail less frequently
Role of advocates	Feature only minimal involvement from advocacy community	Have been promoted heavily by some mental health advocates, who are often involved in the operation of specific programs; other mental health advocates have raised concerns about mental health courts, either in general or in terms of their design
Service delivery	Often establish independent treatment programs, within the courts' jurisdiction, for their participants	Usually contract with community agencies; require more resources to coordinate services for participants
Expectations of participants	Require sobriety, education, employment, self-sufficiency, payment of court fees, some charge participation fees	Recognize that even in recovery, participants are often unable to work or take classes and require ongoing case management and multiple supports; few charge a fee for participation

