

C012440 ABSTRACT: In this article, the author describes the inception of mental health courts whose purpose is to address the needs of mentally ill offenders, both adult and juvenile. The nation's first official mental health court in Broward County, Florida, has become a model that has successfully been replicated across the country. Its purpose is to defer prosecution of non-violent offenders with mental illnesses and alternatively link these individuals with treatment and services in the community. The Court employs social workers who evaluate individuals, meet with family and friends, provide case management and follow up services and ongoing linkages with community providers. Participation is voluntary. While this concept is fairly new (since 1997), the results have been largely positive for those who are at risk for becoming involved in the justice system.

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Mental Health Courts

An Alternative to Criminalization

by Ronald S. Honberg, J.D.

TO PARAPHRASE Charles Dickens, today is both the best of worlds and the worst of worlds for children and adults who suffer from conditions affecting the brain such as AD/HD or severe mental illnesses. It is the best of worlds because scientific advances have led to increased knowledge about how to treat people who suffer from these brain disorders. But, it is the worst of worlds because the promises of science have frequently not translated into actual practice in our communities. The resulting gaps in treatment and services have caused immeasurable anguish and suffering for people with mental illnesses and their families. One

of the worst consequences has been the emergence of jails and prisons as de-facto "psychiatric institutions."

The magnitude of this tragedy, known as the "criminalization of mental illness," is almost unspeakable. Experts conservatively estimate that 16 percent of all adults in federal and state jails and prisons—nearly 300,000 people—suffer from severe mental illnesses such as schizophrenia, bipolar disorder (manic-depressive illness) or major depression. The prevalence of children and adolescents with mental disorders, including AD/HD, in our nation's juvenile justice facilities is even higher.¹

Most children and adults with mental disorders incarcerated in juvenile or adult correctional facilities are not hardened or violent criminals. Most are charged with minor felonies or misdemeanors that are a direct consequence of a lack of appropriate treatment and services. For example, municipal jails are filled with adults with severe mental illnesses charged with petty crimes such as trespassing, public nuisance or disorderly conduct. Many police officers admit that they arrest and transport these individuals to jails because there is no place else to take them—there is no confidence that they will receive appropriate treatment in the community. The tragedy of criminalization, while largely hidden from the public's mind and conscience, is one of the greatest public health crises facing our nation today.

Noxious Settings

Jails and prisons are never appropriate settings for providing psychiatric treatment, and are almost guaranteed to exacerbate the symptoms of severe mental illnesses. For children and adolescents with AD/HD or other mental illnesses, juvenile justice facilities are a nightmare. Physical abuse, sexual abuse and exploitation are common—particularly for more vulnerable individuals who are unable to protect themselves. Moreover, punitive techniques, such as seclusion and restraints and solitary confinement, are frequently used on people with mental illnesses who are unable to comply with the rules of correctional facilities because of the severity of their psychiatric symptoms or cognitive disorders.²

Promising Approaches

In recent years, innovative programs have emerged in certain communities around the country to stimulate alternatives to incarceration for low-level offenders with mental illnesses identified as needing treatment and services, not incarceration. Some of these are designed to divert individuals from

criminal justice systems before they are ever arrested or incarcerated.

In Memphis, Tennessee, police crisis intervention teams (CITs) are trained to defuse crises and to link children and adults rapidly with psychiatric treatment in lieu of incarceration. The outcomes achieved by these humane police officers are outstanding and the Memphis program has been replicated in a number of communities across the country—including Portland, Oregon, Albuquerque, New Mexico, Orlando, Florida, and Montgomery County, Maryland—to name a few.

But even in communities such as Memphis, many people with mental illness fall through the cracks and are arrested and incarcerated in jails. Once in jails, individuals with mental illnesses tend to remain incarcerated for longer periods than those without mental illnesses. For example, in New York City, a study revealed that individuals with mental illnesses remain in Rikers Island four times longer than individuals without mental illnesses charged with comparable crimes.³

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In 1997, the nation's first "mental health court" was established in Broward County, Florida (Fort Lauderdale), by a task force convened to address swelling numbers of people with mental illness and mental retardation in the Broward County correctional system. In announcing the creation of this court, the Honorable Judge Dale Ross, Chief Judge of the Seventeenth Judicial Circuit, explained that this specialized court was necessary to facilitate "appropriate treatment in an environment conducive to wellness and not punishment, as well as the continuing necessity to insure the protection of the public." The Honorable Ginger Lerner-Wren was appointed as the first mental health court judge, and she remains in this capacity today.

The Broward Mental Health Court was established to defer prosecution of non-

violent offenders with mental illnesses and alternatively link these individuals with treatment and services in the community. The Court employs social workers who evaluate individuals, meet with family and friends, provide case management and follow up services, as well as ongoing linkages with community providers. Participation in the Broward Mental Health Court (and all other mental health courts that have been established) is voluntary.

Individuals are referred to the Broward Mental Health Court in several ways. Some individuals are identified as suffering from mental illnesses or mental retardation upon arrest and are immediately referred to the Court. Others are referred after an assessment or period of observation in the jail setting.

Perhaps the most remarkable feature of the Broward Court is the virtual absence of traditional courtroom formalities and procedures. Judge Lerner-Wren conducts her Court informally in a manner designed to maximize the comfort levels of defendants and their families—and to facilitate frank and open communications between defendants, attorneys, representatives from the mental health system, and other key participants. The Court operates under the auspices of the 17th Judicial Circuit, Broward County, Florida.

Differences from Drug Courts

While loosely based on the drug court model, mental health courts differ from drug courts in important ways. The most significant difference is the underlying philosophy of these respective courts. With drug courts, the consequence for non-compliance with treatment is frequently prosecution and re-incarceration. With mental health courts, there is the recognition that "non-compliance" may be caused by a number of reasons, including a lack of treatment options, poor coordination of services, difficulties on the part of consumers in navigating complex mental health systems, or the actual

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symptoms of these illnesses. Thus, the philosophy underlying mental health courts is one of "therapeutic jurisprudence." Mental health court judges go to great lengths to work proactively to address problems that may be impeding compliance. Their decisions to prosecute or incarcerate mental health court defendants are rarely made, and then only as a last resort. All mental health court judges work closely with the defense attorneys and prosecutors to reach the best decision for all parties involved.⁴

Replication in Other Communities

After Broward County established its mental health court, a number of other communities followed suit, including Seattle, Washington; Anchorage, Alaska; Saint Louis, Missouri; and San Bernardino, California. There are significant differences in the way these courts operate, including differences in eligibility requirements, court procedures

and other aspects. For example, while eligibility for most mental health courts is limited to non-violent misdemeanants or felons, the San Bernardino Court serves individuals charged with or convicted of more serious felonies. More detailed information about the Broward, Seattle, Anchorage, and San Bernardino courts can be found in a U.S. Department of Justice Publication entitled, "Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload" at www.bja.ncjrs.org/publications.

Criticisms and Concerns

Mental health courts have not been met with universal approval within the mental health advocacy community. Some critics fear that mental health courts will serve as an incentive to criminalize individuals who otherwise would not be arrested or incarcerated. Certainly, mental health courts should not operate in this way. But there is

no evidence that this has been the case. On the contrary, alarmingly high rates of criminalization provide strong evidence that many adults and youth with mental or cognitive disorders are arrested and incarcerated because there are frequently no alternatives.⁵ Mental health courts are designed to foster alternatives.

Others criticize mental health courts as inherently coercive and argue that people will be forced to participate in these programs. Again, there is no evidence in support of this. Observations and preliminary studies of mental health courts suggest that judges are bending over backwards to protect the rights of and afford due process to individuals who come through these courts.

Finally, a few critics express concern that mental health courts will divert mental health resources away from others with mental or cognitive disorders who need treatment and services. In a time of scarce

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resources, there are never enough to go around. But the most successful jail diversion programs have largely utilized existing community mental health resources and best practices—such as assertive community treatment (ACT) programs—to achieve success. There is no evidence that these programs have diverted funds away from other equally needy individuals.

Historically, promising approaches to mental health services have been impeded because of ideological divisions among advocates. The concerns set forth above are all legitimate and mental health courts must be carefully monitored and evaluated to protect against unnecessary coercion or diversion of resources. However, these highly speculative concerns do not justify delaying implementation of a very promising model for reducing the unnecessary criminalization of youth and adults with mental illnesses.

Federal Mental Health Courts Program

In November, 2000, President Clinton signed into law "America's Law Enforcement and Mental Health Project," a bill authorizing the Attorney General of the United States to award grants to states, state courts, local courts, units of local government, and Indian tribal governments to fund

mental health courts. The bi-partisan champions of this legislation were Rep. Ted Strickland (D-Ohio) in the House and Senators Mike DeWine (R-Ohio) and Pete Domenici (R-New Mexico) in the Senate.

Unfortunately, new federal programs created by Congress are not automatically funded. Therefore, no money was allocated



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for the mental health courts program until November 2002, at which time \$4 million was appropriated. Responsibility for administering the mental health courts program is vested with the Bureau of Justice Assistance (BJA) within the U.S. Department of Justice. Recently, the BJA issued a notice of funding availability, soliciting applications for grants to establish mental health courts. Since maximum grant awards will be \$150,000 for two years, grant recipients will be expected to match federal grants with state or federal money, and to sustain funding of the court after the two-year federal grants expire.

Promising approaches to jail diversion are only as good as the services in place for responding to the needs of the individuals who are diverted. Good services and strong linkages among the various systems responsible for serving individuals would sharply decrease the need for jail diversion

programs in the first place. In recognition of this, the BJA requires applicants for mental health court grants to demonstrate multi-systemic involvement and commitment of resources as a condition for receiving these grants. More information about the Federal Mental Health Courts grant program can be found at www.ojp.usdoj.gov/BJA/grant/mentalhealth.html.

Models for Youth

Most mental health courts in existence have focused on diverting adults with mental illnesses from criminal justice systems. However, some interest has been shown in establishing Mental Health Courts for adolescents or teens who suffer from mental or cognitive disorders. The BJA has indicated that it will consider applications from projects focused on youth. Additionally, "youth courts" or "teen courts" have been developed in many communities as alterna-

tive justice models for young people incarcerated or at risk of incarceration in juvenile justice facilities. For more information about these courts, visit the National Youth Court Center website at www.youthcourt.net.

Throughout America, youths and adults with mental illnesses are being arrested and incarcerated essentially for the crime of being mentally ill. As a society, we have never adequately committed resources to funding community mental health treatment and services. The consequences are tragic with five times as many individuals with mental illnesses in jails and prisons as in hospitals on any given day.

Mental health courts are not the ultimate solution. Judges cannot provide mental health services or find housing for individuals. But incarcerating non-violent individuals who come into contact with criminal justice systems because of behav-

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iors caused by the symptoms of their untreated mental illnesses is inhumane, unconstitutional and unacceptable in a civilized society. Mental health court judges can and do function as powerful advocates as well as intermediaries in shifting responsibility for mental health services away from corrections and back to mental health systems. Thus, these courts should be strongly considered in all communities where unnecessary criminalization of people with mental illnesses is a problem. ■

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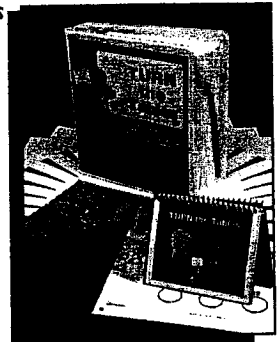
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