

MENTAL HEALTH COURTS FAD OR FUTURE?

**By: Judge Randy T. Rogers
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Why Mental Health Courts?

"A revolving door problem has developed in this country. Jails and prisons have become the de facto mental health system of our day. We must reverse this trend. Over the past few years, innovative diversion programs and other pioneering efforts across the nation have been successful in attacking this crisis. We must persevere to be able to provide community treatment for this population..."

Justice Evelyn Lundberg Stratton

What is a Mental Health Court?

As used in Justice Department materials, the term "mental health court" refers to a specialized docket for defendants with mental illnesses that provides:

- (1) the opportunity to participate in court-supervised treatment,
- (2) a court team composed of a judge, court personnel and treatment providers, which team defines terms of participation,
- (3) continued status assessments with individualized sanctions and incentives, and
- (4) resolution of the case upon successful completion of mandated treatment plan.

A recent survey group defined a "mental health court" in a slightly different way. They defined a "mental health court" as an adult criminal court which:

- (1) has a separate docket dedicated to persons with mental illnesses,
- (2) diverts criminal defendants from jail into treatment programs, and
- (3) monitors the defendants during treatment and has the ability to impose criminal sanctions for failure to comply.

In general, however, a "mental health court" can be defined as a specialized docket that involves a group of criminal cases in which the defendant happens to be a person who is suffering from some form of mental illness.

In the court system a docket is a list of cases that have been filed in a particular court. The term docket also refers to a list of cases that are scheduled to be heard by that court on a particular day. [A docket is to a judge what a schedule of appointments is to a physician.]

A specialized docket is a grouping or collection of actions, proceedings, or cases that have common issues of law or fact. A mental health court functions much like a drug court which is a somewhat different form of a specialized docket which involves a group of criminal cases in which the illegal use of drugs is a factor.

Another form of a specialized docket very similar to a mental health court docket is a civil commitment or involuntary commitment docket conducted by probate courts in most states, and by other courts in a few

states. Both of these specialized dockets involve cases which deal with persons with mental illness and usually require some form of assisted outpatient treatment (AOT) by court order. However, in the mental health court the person is facing a criminal charge, which is not the case in a civil commitment or involuntary commitment proceeding.

History of the Mental Health Court Movement

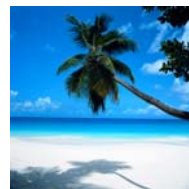


In 1997, a King County (Seattle, Washington) executive appointed a special task force, known as the Mentally Ill Offender (MIO) Task Force, to review and address issues related to mentally ill offenders and commitment laws. The Task Force reviewed three areas: (1) cross system protocols for responsibility and transfer of information regarding mentally ill offenders; (2) assessment of the adequacy of current competency laws for misdemeanants; and (3) assessment of issues regarding their state's Involuntary Treatment Act for mentally ill offenders.

The formation and work of the Task Force was driven by a problem that is faced by all communities across the country: the recognition that the current case processing system employed by the criminal justice system at the misdemeanor level often fails to address the needs of the mentally ill offenders and reduce recidivism. With the system that was in place in King County, judges did not have the opportunity to acquaint themselves with the circumstances surrounding the offender's entrance into the system. Among judges there were

varying levels of expertise around mental illness, and even if the judge was able to identify the illness and was comfortable in dealing with these issues, the system lacked sufficient resources and mechanisms to link individuals with treatment services.

The King County Task Force developed several recommendations to improve and strengthen the systems that handle mentally ill offenders and to identify legislative solutions for consideration during the next state legislative session. One of the recommendations was to develop a pilot Mental Health Court for King County. This court would focus mental illness specialists, including judges, defenders, prosecutors, and community resources, on the mentally ill misdemeanor defendant, thereby greatly increasing coordinated management and treatment of mentally ill defendants.



In 1998, a group from King County visited Broward County Florida (Ft. Lauderdale), to visit and observe the only operating mental health court in the United States. What they saw in Broward County was an innovative approach to addressing the needs of people with mental illness who commit low-level offenses. The court provided a single forum where mentally ill offenders come before a judge who has experience in dealing with people with mental illness to get court ordered treatment and monitoring.

Broward County first began looking into the concept of mental health courts in 1994 when Judge Mark A. Speiser established a task force of community

leaders from the criminal justice, mental health, and law enforcement community. The task force was established because Judge Speiser had serious concerns regarding the care, handling and community placements of mentally ill defendants. Over the next few years, the task force identified solutions to various obstacles facing the mentally ill in the criminal justice system. As a result of the task force initiative, the nation's first "Mental Health Court" was established in June of 1997.



In establishing this court, the view was that there was a need for appropriate treatment in an environment conducive to wellness and not punishment, as well as the continuing necessity to ensure the protection of the public. To that, several goals for the court were developed: create effective interactions between the criminal justice and mental health systems; ensure legal advocacy for the mentally ill defendant; ensure that mentally ill defendants do not languish in jail because of their mental illness; increase access for the mentally ill defendant to community mental health services by creating centralized services; and divert mentally ill defendants with minor criminal charges to community based mental health services.

Upon their return, the group from King County made recommendations for a pilot court in their community. Some of these recommendations included:

(1) establishing a court with a dedicated judge, prosecutor, and defender to handle cases involving mentally ill offenders; (2) the Mental Health Court, through community mental health providers and other agencies, must offer

defendants access to flexible and individualized treatment packages; (3) the Court shall employ the services of a Court Monitor and specialized probation officers to act as linkages between the Court and service providers, and to monitor cases to ensure compliance, and (4) hire consultants to perform two evaluations of the Mental Health Court, a process evaluation after one year and an outcome evaluation after two to three years.

King County then established a Mental Health Court that offered misdemeanor defendants with mental illness a single point of contact where the defendant could work with a team of specialists to receive court ordered treatment as a diversion from prosecution or as a sentencing alternative. Participation in the court was strictly voluntary.

By implementing a specialized court that offers treatment alternatives to jail for people with mental illnesses, who are charged with misdemeanor offenses, Broward County and King County attempted to reduce recidivism among this population, decrease the use of the jail to warehouse the mentally ill offender, and at the same time, increase public safety.

In 1999, as the development of the mental health movement continued to mold itself in the image of the slightly older drug court movement, another group of people seeking better ways to deal with mentally ill persons formed yet another task force. Organized by John Staup, a local mental health director from Butler County, Ohio, the group

held the "Southwest Ohio Regional Forum on Mental Health Courts and the Mentally Ill Offender" in November, 1999.

This Forum was sponsored by a number of organizations and agencies including NAMI Ohio; the Health Foundation of Greater Cincinnati; the Mental Health Boards of Brown, Butler, Clermont and Hamilton Counties in Ohio; and Recovery Services of Warren and Clinton Counties [of Ohio]. A crowd of more than 250 mental health professionals, law enforcement officials, and court representatives gathered from throughout Ohio to hear Judge Mark Speiser from Broward County, Florida, and Judge James Cayce from King County, Washington, describe the process their jurisdictions had used to develop the nation's first mental health court dockets.



In 2001 a next major step in the development of mental health courts took place when Justice Evelyn Lundberg Stratton created the Ohio Supreme Court Advisory Committee on Mentally Ill in the Courts. Justice Stratton's interest in this area was rooted in her experience as a trial judge. ***"When I was a trial judge I would frequently see people in my courtroom who had an underlying mental illness. So, the jails, in essence as I saw it, became de facto hospitals. And I've found since getting involved in this issue that is exactly what they've become."*** - Justice Evelyn Stratton

Justice Stratton and the other members of the Ohio Supreme Court Advisory Committee on Mentally Ill in the Courts recognized the urgent need to

examine the needs of the mentally ill people caught up in the revolving door of the criminal justice system. Today the membership of Justice Stratton's Committee has grown to include members from the state Department of Mental Health; the state Department of Alcohol and Drug Addiction Services; the state Department of Rehabilitation and Correction; the state Department of Criminal Justice Services; judges and law enforcement officials; housing and treatment providers; consumer advocacy and legal rights groups; and many others.

The Ohio Supreme Court Advisory Committee on Mentally Ill in the Courts serves as a national model of an effective collaborative effort which brings needed innovation to the process of dealing with the mentally ill in the courts.

In May, 2003, the First Annual Conference on Mental Illness and the Criminal Justice System, sponsored by Capital University, the Ohio Chapter of the National Alliance for the Mentally Ill, and the Ohio Supreme Court Advisory Committee on Mentally Ill in the Court, was held in Columbus, Ohio. The Conference has become an annual event.

Survey of Mental Health Courts

According to a Survey of Mental Health Courts completed in February 2005 as part of the Criminal Justice / Mental Health Consensus Project, the number of mental health courts in America now exceeds 100.

The rapid growth of the numbers of mental health courts is a result of a variety of factors, which include (1) the widely-recognized need to find better ways for the criminal justice system to deal with persons suffering from various types of mental illnesses, (2) the proven success of drugs courts and similar forms of problem-solving courts which have developed within the last decade (3) the fact that Congress has promoted the development of mental health courts with the passage in 2000 of America's Law Enforcement and Mental Health Project Act, which instructed the Attorney General to fund demonstration projects.

NAMI, the National GAINS Center for People with Co-Occurring Disorders in the Justice System, the TAPA Center for Jail Diversion, and the Council of State Governments (coordinator of the Criminal Justice/ Mental Health Consensus Project), with substantial help from Mr. Paul Spaite, Esq., compiled this survey of mental health courts. Additional information was provided by the Pretrial Services Resource Center and the Treatment Advocacy Center.

For the purpose of the Survey, mental health courts were defined as adult criminal courts which (1) have a separate docket dedicated to persons with mental illnesses, (2) divert criminal defendants from jail into treatment programs, and (3) monitor the defendants during treatment and have the ability to impose criminal sanctions for failure to comply.

The survey is an ongoing project and can be viewed in its entirety at: www.mentalhealthcourtsurvey.com.

Because mental health courts are such a new development, empirical evidence explaining which elements of a mental health court process is most effective is limited. The Department of Justice, along with the MacArthur Foundation, is planning to conduct an evaluation of mental health courts funded through the Mental Health Courts Grant Program.

The Future of Mental Health Courts

The design and operation, and the administration, of the nation's first 100 mental health courts vary dramatically. In many ways each court is unique, influenced by the available resources and different personalities present in the jurisdiction where the court is located. As more studies are completed about existing mental health court programs it is likely that the number of mental health court dockets will continue to grow.

"Mental Health Courts increase availability and access to a wide range of services for offenders with mental illness, enabling them to stop cycling through the justice system to become fully participating members of the community once again." -

Domingo S. Herraiz, Director of the Office of Justice Programs Bureau of the Justice Assistance, U. S. Department of Justice.

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