Position Statement 52: In Support of Maximum Diversion of Persons with Serious Mental Illness from the Criminal Justice System

Statement of Policy

Mental Health America (MHA) supports maximum diversion from the criminal justice system for all persons accused of crimes for whom voluntary mental health or substance use treatment is a reasonable alternative to confinement or other criminal sanctions. MHA urges the utilization of diversion programs at the earliest possible phase of the criminal process, preferably before booking or arraignment. Conversely, MHA supports minimizing the use or threat of use of criminal sanctions to compel mental health treatment. These principles apply with equal force to adults and juveniles.

MHA supports the long-term goal of integrating persons living with mental and substance use conditions into a culturally competent community-based mental health care system focused on consumer empowerment and quality of life, and aimed at their recovery. Over the past two decades, jail diversion programs have emerged as a viable and humane alternative to the criminalization and inappropriate criminal detention of individuals with mental and substance use conditions. Diversion programs have been heralded for their potential benefits to the diverted persons, the criminal justice system and the community.

Another critical issue for individuals with a mental or substance use condition is that of coercion. With a deeper understanding of the role of recovery in the successful treatment of mental health or substance use problems, MHA is wary of the expanded use of the criminal justice system, with its increased focus on persons with mental illness, as a substitute for voluntary community-based treatment that mental health advocates have consistently sought. The sense of dependency and helplessness that comes from linking treatment to incarceration is at the core of the need for effective diversion.

MHA encourages local and state affiliates, consumers, stakeholders, and other advocates to support the development of diversion strategies that promote police officer training, community engagement, and early intervention in an effort to keep persons with mental and substance use conditions out of the criminal justice system.

Background

An estimated 11.4 million people are admitted to local jails every year in the United States. On any given day, about 2 million people can be found incarcerated in U.S. prisons or jails. According to the President’s New Freedom Commission on Mental Health’s Interim Report,

approximately 5-7 percent of adults have a “serious mental illness.” The Federal Regulations define “serious mental illness” to mean any diagnosable mental disorder that affects work, home, or other areas of social functioning. The Bureau of Justice Statistics reported that since midyear 2005 more than half of all prison and jail inmates had a mental health problem. Fifty-six percent of state prisoners, 45 percent of federal prisoners, and 64 percent of jail inmates have a mental health problem. Mental health problems were defined by two measures and must have occurred in the 12 months prior to the interview. One measure was a recent history of mental illness, by clinical diagnosis or treatment by a mental health professional. The other, symptoms of a mental health problem based on criteria specified in the *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition, DSM-IV). People with mental health and substance use conditions are repeatedly arrested for petty offenses.

The Surgeon General’s report entitled Mental Health: Cultural, Race, and Ethnicity showed that disparities existed in mental health systems for persons of diverse populations and that mental and substance use conditions exacted a greater toll on their overall health. National indicators show that persons of color are disproportionately represented in both adult and juvenile justice systems. Studies also show that while there are few, if any, differences in the nature and scope of crimes committed by persons of color in comparison to their white counterparts, their rates of arrest, prosecution, and incarceration, as well as the length of sentences, are substantially higher.

Fewer than 5 percent of jails polled nationwide in 1992 had procedures to divert inmates with mental health conditions from the criminal justice system into the mental health treatment system. Since then, the establishment of jail diversion programs has become more commonplace. There have been 294 jail diversion programs in operation since 2003, 17 of which were funded by SAMSHA’s Center for Mental Health Services.

Another form of diversion has also arisen by way of Mental Health Courts. In 2000, The Mental Health Courts Program was created by "America's Law Enforcement and Mental Health Project" (Public Law 106-515). In 2003, the Bureau of Justice Assistance funded 23 of these courts which helped to relieve over-burdened criminal courts that ordinarily handled all cases relating to mental health. Participants in a study focusing on mental health courts reported improved quality of life and demonstrated greater gains in developing independent living skills and reduced drug problems and new criminal activity. Today, more than 150 of these courts exist, and more are being planned.

The extraordinary human and financial costs to the criminal justice system argue strongly that effective diversion may produce better results at a lower cost. Community-based programs for people with mental illness and substance use conditions would help to provide not only appropriate treatment for them, but would decrease duration or even prevent incarceration altogether. Four SAMHSA-sponsored jail diversion programs have recently released data showing the most well-controlled cost-effectiveness results to date. Costs were defined as those from all court appearances, public defenders’ and prosecutors’ offices, the police, and incarceration days.

Mental health problems among the population of persons in the nation’s jails and prisons are serious and growing. In New York State, a five-year study of persons in the mental health and

correctional systems established that men who were involved with the public mental health system were four times as likely to be jailed as men in the general population. Another published report on a New York City jail found that the average length of stay for a mentally ill inmate was 215 days, as opposed to 42 days for all other inmates. The Los Angeles County Jail, Cook County Jail in Chicago and New York City's Riker's Island "each hold more people with mental illness on any given day than any hospital in the United States." The Los Angeles County Jail has for a number of years been declared to be the largest mental health facility in the country. In an era of deinstitutionalization, jails and prisons have become *de facto* mental health treatment facilities.

People with mental and substance use conditions in jails and prisons have complex and challenging needs. Almost 75 percent have co-occurring mental health and substance use disorders. Homelessness is widespread in the mental health community as well. Inmates with mental health conditions are twice as likely to have experienced homelessness in the year prior to arrest compared to inmates not diagnosed with mental illness. Half of the inmates with mental health conditions in prison were incarcerated for committing nonviolentcrimes. Many have been incarcerated for minor offenses such as trespassing, disorderly conduct and other symptoms of untreated mental illness.

Call to Action

The increasing involvement of persons with mental health and substance use conditions in the criminal justice system has enormous fiscal, public safety, health and human costs. Diverting individuals with mental and substance use conditions away from jails and prisons and toward more appropriate and culturally competent community-based mental health care has emerged as an important component of national, state and local strategies to provide effective mental health care; to enhance public safety by making jail and prison space available for violent offenders; to provide judges and prosecutors with alternatives to incarceration; to provide specialty training to law enforcement and probation personnel to deal effectively with mental health and substance use issues; and to reduce the social cost of providing inappropriate mental health services or no services at all. The success of diversion programs in communities across the country is generating genuine excitement and hope that real progress can be made in meeting the challenge of criminalization and reducing the toll it exacts on these individuals, their families, service agencies and the criminal justice system.

Mental Health America recognizes that the development of diversion programs involves negotiation between the mental health system, law enforcement officers, public defenders, prosecutors, court personnel and others in the criminal justice system. Each community must reach consensus on the type of diversion program appropriate for that community and the severity of offenses that may disqualify offenders from participation in the program. However, the principal consideration should be assuring that careful consideration is given to diversion of persons with serious mental and substance use conditions despite their charges, which may be more reflective of stigma than the real severity of the offence.

There are two major kinds of jail diversion programs: pre-arrest and post-arrest.

Pre-Arrest ("Pre-Booking") Diversion Strategies

Pre-arrest strategies typically focus on the law enforcement officers that are often the first point of contact with persons with mental or substance use conditions in crisis. Since their initial interactions with persons with mental or substance use conditions are so critical to determining the situation's outcome (i.e., whether or not an individual is to be jailed), pre-arrest jail diversion strategies rely heavily on helping police become knowledgeable regarding the nature of mental and substance use conditions, provide tools to de-escalate crisis situations and provide options for treatment alternatives to incarceration that are available in the community.

Examples of pre-arrest strategies include: police training to recognize the signs of mental illness and substance use; deployment of a mobile crisis response team that provide assistance and support to police and the individual; and transportation to treatment rather than jail. Culturally competency is a critical component of such training, to avoid the unequal treatment that comes from stereotyping racial and cultural groups.

Post-Arrest ("Post-Booking") Diversion Strategies

Post-booking diversion programs are the more common type of jail diversion program in the United States. After formal charges have been filed, post-booking programs screen individuals to determine the presence of mental or substance use conditions; negotiate with prosecutors, attorneys, courts and mental health providers to dispose of the case without additional jail time; and link the individual with mental health treatment as a condition of a reduction in charges, deferred prosecution or dismissal.

Mental health courts are an example of a post-booking jail diversion program. Mental health courts hear cases involving persons with mental health conditions who have been charged with non-violent crimes. They divert these individuals away from jail or prison by negotiating a treatment program that might include group or day services, psychotropic medication, case management or inpatient hospitalization in order to restore defendants to stable functioning in their communities.

Diversion Works

Studies show that diversion of persons with mental and substance use conditions accused of misdemeanor crimes into appropriate, community-based mental health treatment programs allows for better long-term results for offenders. A collaborative program between the U.S. federal prison system and community healthcare providers in Baltimore was studied for recidivism among released inmates. This is one of the few studies that looked at both pre- and post-booking recidivism. The rate of violation of probation, parole, or supervision was 19% after participation in a diversion program while this same group of offenders had a violation rate of 56% before their current release. Researchers believe this result is attributed in part to the close working relationship between the clinical team and the probation officer as well as clinicians being able to gain a better understanding of the community supervision system. This new cooperation between the contracting agencies would allow all treatment options to be exhausted before sanctions are deemed necessary. A more recent study has reiterated this finding and

shown that program participants incurred less jail days, hospital days, and number of arrests post-program participation compared to one year prior to arrest.

Dismissal of Charges

Mental Health America believes that successfully completed pre-booking and/or post-booking diversion programs should provide for dismissal of criminal charges. In the case of post-booking diversion, jeopardy of re-involvement in the criminal justice system should be limited in accordance with the criminal justice standards in that jurisdiction. As a guideline, conditions of deferred prosecution, deferred sentence or probation ordinarily should not exceed one year.

Implementing Effective Diversion Strategies

Timely and accurate mental health screening and evaluation is the single most critical element in a successful diversion program. More treatment resources are desperately needed. Communities must develop services that meet the needs of mental health and substance use consumers. In addition to significant increases in public investment, services must be integrated across public and private agencies. Individual treatment plans should be focused on consumer recovery and choice and should include: mental and physical healthcare, case management, appropriate housing, supportive education, integrated substance abuse treatment, and psychosocial services, in the least restrictive environment possible.

Coalitions

Diversion programs also require the development of community coalitions, including but not limited to partnerships between criminal justice, mental health and substance abuse treatment agencies. Criminal justice and corrections agencies should be encouraged to develop new sources of funding to expand diversion programs. Coalitions should also be reflective of the diverse make-up of the community. Joint mobile outreach services such as crisis intervention teams are a key element in successful partnering between mental health, substance abuse treatment and law enforcement agencies, with effective diversion to an appropriate treatment plan the critical measure of success. Consumers of mental health and substance abuse services and family members affected by mental illness or substance use need to be included in such coalitions to assure that the real barriers to effective mental health and substance abuse treatment in that community are addressed.

These community coalitions need to reach out to all criminal justice system personnel to ensure that comprehensive culturally competent training is provided at all levels to deal with issues of mental illness and substance use, wherever and whenever they occur. Mental health associations should reach out to or create such coalitions whenever possible. Effective diversion from the earliest point of contact with the criminal justice system of a person with a serious mental illness or serious emotional disorder should be a centerpiece of all mental health planning, with the aim of promoting recovery from mental illness and as an end to all unnecessary use of criminal sanctions.

Effective Period

The Mental Health America Board of Directors approved this policy on June 8, 2008. It is reviewed as required by the Mental Health America Public Policy Committee.

Expiration: December 31, 2013

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