

Position Statement 53: Mental Health Courts

Policy

Mental health courts have been created in numerous jurisdictions across the United States, largely as a response to the increasing number of defendants with serious mental health conditions (“mental illnesses”) who are caught up in the criminal justice system. Mental Health America (MHA):

- Supports the use of mental health courts to the extent that they reduce the number of persons with mental illnesses in the criminal justice system, reduce the number of persons with mental illnesses who are further stigmatized by a criminal conviction and reduce the number of persons with mental illnesses in prisons and jails.
- Supports the use of mental health courts which are part of a larger effort to divert persons with mental illnesses from the criminal justice system by improving mental health services and providing diversion at the earliest possible stage.
- Encourages jurisdictions to follow those mental health court models which use the least possible coercion.
- Opposes mental health courts which are intended or result in bringing more people with mental illnesses into the criminal justice system, whether as an effort to expand civil commitment through the coercion of criminal justice diversion and sentencing procedures or as a misguided panacea to “solve” homelessness and other social problems or make scarce treatment resources available to a subset of those in need. At the extreme, mental health courts run the risk of taking over a portion of the treatment system to the effective exclusion of civil commitment and its standards.[1](#)

Background

The presence of defendants with mental illnesses in the criminal justice system imposes substantial costs on that system and substantial harm on defendants. It is difficult, if not impossible, to provide humane and just treatment to persons with mental illnesses in prisons and jails.[2](#) Thus, Mental Health America strongly supports thoughtful efforts to reduce the number of defendants with mental illnesses in the criminal justice system and in prisons and jails. MHA's diversion policy states that case.[3](#)

To the extent that mental health courts are an effective mechanism for reducing the number of persons with mental illnesses in prisons and jails and subject to the concerns expressed in this policy, MHA supports the creation and evolution of mental health courts. MHA enthusiastically supports efforts to use new or existing criminal justice funding--federal, state or local--to provide community mental health services to persons with mental illnesses being diverted from prisons and jails through well-designed mental health court programs.

However, MHA is concerned that mental health courts have been used to criminalize persons with mental illnesses , for "lifestyle" offenses. Mental health courts are a highly inappropriate

way to treat homeless people and people with mental illnesses whose offenses flow from their troubled life on the street, and MHA strongly opposes the use of mental health courts for this purpose or with this effect.

There are many other successful and innovative ways to divert persons with mental illnesses from the criminal justice system, including the creation of law enforcement-mental health liaison programs, increased training of law enforcement personnel and a general improvement in the funding and effectiveness of community mental health services. In order to prevent the misuse of mental health courts, such courts should be but one part of a coordinated community effort to reduce the number of persons with mental illnesses in the criminal justice system.

There is a growing consensus that the “Sequential Intercept Model” and similar approaches understand the importance of removing persons with mental illnesses from the criminal justice system at the earliest possible stage.⁴ The model fully recognizes that “an accessible, comprehensive, effective mental health treatment system focused on the needs of individuals with serious and persistent mental disorders is undoubtedly the most effective means of preventing the criminalization of people with mental illness.”⁵ Since our failure to provide decent, recovery-oriented mental health services is a primary cause of the excessive number of people with mental illnesses in the criminal justice system, providing those services must be at the core of any solution. 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.

It is critical that Mental Health America, Mental Health Associations and other advocates work to promote diversion from the criminal justice system as the central mission of mental health courts, wherever they exist and by whatever name they are called. Advocates need to insist on mental health court standards that assure a minimally coercive and de-stigmatizing approach⁶ and leave civil commitment as the central standard for the authorization of coercion, when it is needed and justified, not the criminal courts. A criminal record should not be a cost of getting mental health treatment.

In 2000, the United States Congress authorized a mental health court demonstration program (P.L. 106-515). In doing so, Congress identified mental health courts as having the potential to address the criminalization of people with mental illness. Mental health courts are here to stay. But MHA is concerned that communities may rush to implementation without considering all of the components of an effective system to respond to the needs of persons with mental illnesses involved in the criminal justice system.

Mental Health America opposes any efforts to create or use mental health courts to expand the scope of the criminal justice system to persons with mental illnesses who would not otherwise be found in that system. In particular we oppose arresting persons with mental illnesses as a means of “solving” the problems of homelessness, loitering or other social issues which neighborhoods or communities may find distressing. These problems are usually caused by our society’s failure to provide decent housing, treatment for mental illnesses and supportive social services, and the solutions for these problems must come from a renewed commitment to providing these services. If, as the United State Supreme Court held , “[m]ere public intolerance or animosity cannot

constitutionally justify the deprivation of a person's physical liberty [in a mental hospital],”⁷ it is worse to use the criminal justice system for this purpose.

Increased reliance on the criminal justice system to provide treatment to persons with mental illnesses is almost certainly counter-productive. Adding the stigma of criminal charges and conviction makes it even harder for persons burdened with the substantial stigma of mental illness to find or maintain meaningful employment, find decent housing and pursue meaningful recovery. Unfortunately, even mental health providers often discriminate against persons with a criminal record. Thus, any mental health court which increases the number of persons with mental illnesses in the criminal justice system undermines good mental health services and is unlikely to be cost-effective.

Nevertheless, there are large numbers of persons with mental illnesses who are already in the criminal justice system, some of them facing serious sanctions including substantial prison time.⁸ Mental health courts are already playing an important role in convening criminal justice, mental health, substance abuse and other relevant social service agencies to facilitate diversion from the criminal justice system. And Mental health courts may serve to assure treatment for persons with serious mental illnesses convicted of crimes and divert them from incarceration, if not from conviction. Anything that keeps people with serious mental illness out of prisons and jails should be encouraged. Mental health courts can broker diversion and protect the vulnerable from being crushed in the gears of the criminal justice system.

Mental Health America’s qualified support for mental health courts is also predicated upon research which shows that a well-designed mental health court may:

- reduce recidivism among participants⁹
- improve mental health outcomes¹⁰
- reduce the length of incarceration for participants¹¹

Mental health courts are inherently coercive because defendants with mental illnesses agree to treatment with the threat of prosecution hanging over their heads. Mental Health America is committed to increasing autonomy and a recovery-based mental health system. We favor the reduction of coercion in the provision of mental health services. Thus, our support for mental health courts is predicated on the fact that even coerced treatment in the community is almost always better than the manner in which persons with mental illnesses are treated in prisons and jails. Nevertheless, every effort must be made to reduce the coercion used by these courts.

There are ways to reduce the coercion inherent in mental health courts. Since mental health courts are relatively new, there is not a great deal of research about the level of coercion involved in such courts. The research which has been conducted, however, is encouraging. A recent study of the Broward County Mental Health Court found that "the mean score on a self-report perceived coercion measure (0.69) was low in an absolute sense and...lower than almost any score on a comparable measure of perceived coercion previously reported in the literature."¹² This study emphasized that a key element affecting the perceived lack of coercion was the fact that participants could opt out and be returned to the courts which heard cases involving

defendants who were not identified as having a mental illness. Additionally, the study emphasized the importance of insuring that defendants were aware of this option.

Similarly, mental health courts were much less apt to use jails as a sanction for failure to comply with court-ordered treatment than were the drug courts after which they are modeled. [13](#)

MHA urges jurisdictions which chose to create a mental health court to follow those models which use minimal coercion.

Above all, mental health courts must avoid becoming a preferential point of entry for persons who have been unable to obtain community-based treatment, thus draining resources from an already underfunded community mental health treatment system. Treatment preference should not be given to persons accused of crimes over others who have not committed a crime, but who are still unable to access services. Mental health courts should never become a way to "jump the line" and get preferential access to existing resources.

Call to Action

State and local Mental Health America affiliates are in a strategic position in their communities to influence and guide the development and implementation of mental health courts in ways that safeguard the needs and rights of consumers. In order to avoid potential risks in establishing mental health courts, MHA advocates that state and local affiliates be involved in the development and implementation of mental health courts from very early on. To assist in this effort, the following guidelines have been developed to support mental health advocates and justice systems in shaping new mental health court initiatives and holding mental health courts accountable where they currently exist.

1. **Comprehensive mental health outreach** - Access to community-based mental health treatment services for all people needs to be improved, and should not depend on the existence of mental health courts. Equally effective services should be assured for the treatment needs of persons not accused of crimes. This requires an investment in outreach services to promote voluntary treatment as an essential complement to any mental health court program.
2. **Maximum diversion** - Pre-booking diversion should be assured for all persons accused of crimes for whom a voluntary mental health treatment plan is a reasonable alternative to the use of criminal sanctions. Timely and accurate mental health screening and evaluation is the single most critical element in a successful diversion program. Mental health courts may be helpful in assuring such diversion, but should never be the only way, or even the primary way, that it can occur.
3. **Meaningful diversion** - Meaningful diversion would require that when appropriate, no charges would be filed, and the individual is diverted directly to treatment without entering the criminal justice system. In the alternative, when charges must be filed, criminal proceedings should be deferred for a set period, usually not exceeding a year. Dismissal of criminal charges would then be guaranteed after a set period of successful treatment participation.

4. **No requirement for a guilty plea** - A guilty plea should not be required to enter a mental health court program. This requirement precludes diversion from the criminal justice system at the earliest possible point in time and further criminalizes a person because of his or her mental illnesses. As indicated above, the preferred method is to hold charges in abeyance until the successful completion of the treatment program.
5. **Voluntary/Non-coercive** - While the threat of criminal charges influences any decision, participation in any mental health diversion program should involve the same level of voluntary choice required of a criminal plea. No one should have to decide whether or not to accept diversion until the terms and the nature of the proposed treatment plan have been fully discussed and documented.
6. **Least restrictive alternative** - All persons participating in diversion programs should be treated in the least restrictive alternative manner available, and all unnecessary institutionalization should be avoided. Jails are generally an inappropriate place for persons waiting for diversion as jail experiences tend to exacerbate underlying symptoms of mental illnesses. Long jail stays should be avoided in all diversion cases.
7. **Right to refuse treatment** - The qualified right of a person with mental illness accused of a crime to refuse a particular treatment¹⁴, including a particular medication, should be protected in a manner at least as protective of the consumer as the civil commitment process. A process should be established to review treatment refusals of persons diverted from the criminal justice system so that any decision to reinstate charges is made in an informed manner after all reasonable alternatives have been exhausted.
8. **Advocate/Counselor** - In addition to competent legal counsel in any criminal case, an experienced counselor, who may be a peer or other non-lawyer counselor, independent of any treatment facility, should be available to help the accused person to reach an informed decision. This person should also serve as an advocate to ensure that necessary services that have been mandated as part of a treatment plan are provided in a timely and appropriate manner. MHA affiliates and other consumer advocacy groups may take on this important role.
9. **Confidentiality** - Networking to find an appropriate treatment setting, without safeguards, could compromise client confidentiality. Systems must be put in place to ensure confidentiality from the time that a person enters a mental health program.
10. **Cultural and linguistic competence** - Cultural and linguistic competence is essential to treatment success. MHA believes that services must be tailored to the specific needs of communities and individuals in order to effectively address public health problems.
11. **Community coalitions** - The development of community coalitions, including partnerships between criminal justice, mental health and substance abuse treatment agencies, is essential to successful diversion programs. Such coalitions also should be involved in the creation and oversight of mental health courts. Consumers of mental health services and family members affected by mental illness need to be included in all such coalitions to assure that they address the real barriers to effective mental health treatment in that community.
12. **Comprehensive outreach and training** - Community coalitions need to reach out to all criminal justice system personnel and ensure that training is provided at all levels to deal with issues of mental illness, wherever and whenever they occur.

13. **Co-occurring disorders** - In addition, persons with co-occurring disorders, and especially substance abuse, must be treated in an integrated way, so that substance abuse is not an impediment to diversion.
14. **Convening role** - The focus of mental health courts should be on convening prosecution, probation, treatment and social services agencies to promote interagency collaboration in the interest of the individual. The focus should not be on the use of criminal sanctions to compel treatment.
15. **Consolidation and coordination of cases** - Cases should be consolidated to assure that the individual is the focus rather than the case. Centralized, coordinated case management and a single treatment plan are needed to avoid fragmentation, with or without a mental health court.
16. **Handling relapses in the court setting** - Relapses are inevitable during the recovery process. As such, an individual's time under jurisdiction of the mental health court should not be extended as a result of these relapses.
17. **Evaluation** - Timely monitoring of court processes, waiting lists, and consumer outcomes are essential to ensure that mental health courts are responding appropriately to persons with mental illness, that waiting lists are kept to a minimum, and that treatment providers are held accountable for consumer outcomes.

Effective Period

The Mental Health America Board of Directors approved this policy on September 12, 2009. It is reviewed as required by the Public Policy Committee.

Expiration: December 31, 2014

1. MHA is committed to rigorous civil commitment standards. See Position Statement No. 22: "Involuntary Mental Health Treatment."
2. "Ill Equipped: U.S. Prisons and Offenders with Mental Illness" Human Rights Watch (October, 2003).
3. Position Statement No. 52, "In Support of Maximum Diversion of Persons with Serious Mental Illness from the Criminal Justice System."
4. "Use of the Sequential Intercept Model as an Approach to Decriminalization of People with Serious Mental Illness" Munetz & Griffin, 57 *Psychiatric Services* 544.
5. *Id.* at 545.
6. The criminal justice system is inherently coercive, since the alternative to diversion is a criminal trial and possible sentence. Position Statement No. 22: Involuntary Mental Health Treatment, articulates the appropriate standards:

Mental Health America believes that involuntary treatment in an in-patient setting should only occur as a last resort and should be limited to instances where persons pose a serious risk of physical harm to themselves or others and to circumstances when no less restrictive alternative will respond adequately to the risk. For involuntary treatment to be used, stringent procedural safeguards and fair and regular review are essential.

7. *O'Connor v. Donaldson*, 422 U.S. 563 (1975)
8. "Mental Health Problems of Prison and Jail Inmates" U.S. Dept. of Justice, Bureau of Justice Statistics (Sept. 2006)
9. McNiel and Binder, "Effectiveness of Mental Health Courts in Reducing Recidivism and Violence" 164 *American Journal of Psychiatry* 1395 (2007).
10. Cosden, et al. "Evaluation of a Mental Health Treatment Court with Assertive Community Treatment" 21 *Behavioral Sciences and the Law* 415 (2003).

11. Boothroyd et al. "The Broward County Mental Health Court: Process, Outcomes and Service Utilization" 26 International Journal of Law and Psychiatry 55 (2002).
12. (The score was compared to the scores of both voluntary and involuntary inpatients and involuntary outpatients.) Poythress, N. et al., "Perceived Coercion and Procedural Justice in the Broward County Mental Health Court," 25 Int. J. of L. & Psych. 517 (2002).
13. Griffin, et al, "The Use of Criminal Charges as Sanctions in Mental Health Courts," 53 Psych. Services 1285 (Oct. 2002)
14. *Washington v. Harper*, 494 U.S. 210