

## What to Watch

*For links to many of the resources cited in this article, set your Web browser to [www.ncsconline.org/WC/Publications/KIS\\_CtFutu\\_Trends03\\_Watch.pdf](http://www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends03_Watch.pdf).*

### **Wasting Lives and Money: Criminal Justice and the Mentally Ill**

Within the “Crime Trends and the Courts” segment of the “Updates for 2002” of the *2002 Report on Trends in the State Courts*, the National Center touched in an example upon the problems associated with the mentally ill running afoul of the criminal justice system. Prisons have become the nation’s principal facilities for handling the mentally ill, but such institutions are ill-equipped for the tasks that this reality presents. For those with serious illnesses, including the mentally ill, prisons can be the worst place to be. For those working in law enforcement and the correctional system, the mentally ill present disciplinary challenges and physical risks that complicate efforts to deal with those offenders who truly belong behind bars. The situation is an unnecessary waste of lives that could be significantly improved through appropriate intervention and is an inefficient, ineffective use of justice system resources. Human Rights Watch describes the problems and lists its recommendations for politicians, institutional officials, and the public in the 2003 report *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*.

Leaders among the states are pushing a growing effort to resolve this problem. Significant efforts began with a small bipartisan working group of leading criminal justice and mental health policymakers convened by the Council of State Governments (CSG) in October 1999 and January 2000. The two meetings made it clear that the issue was far too complex to explore comprehensively in just two short meetings. Furthermore, the interests represented needed to be expanded considerably to reflect the cross-section of per-

spectives and professionals who have a significant stake in the issue.

To accomplish these goals, CSG partnered with six organizations: the Police Executive Research Forum (PERF), the Pretrial Services Resource Center (PSRC), the Association of State Correctional Administrators (ASCA), the National Association of State Mental Health Program Directors (NASMHPD), the Bazelon Center for Mental Health Law, and the Center for Behavioral Health, Justice and Public Policy. This partnership is called the Criminal Justice/Mental Health Consensus Project (<http://consensus-project.org/>).

In the course of its work, the Consensus Project issued a report in June 2002. The target audience of this report is those individuals who can be characterized as agents of change: state policymakers who can have a broad systemic impact on the problem and an array of practitioners and advocates who can shape a community’s response to the problem. The policy statements in the *Consensus Project Report* reflect that—from a person’s first involvement with the mental health system to initial contact with law enforcement, to pretrial issues, adjudication, and sentencing, to incarceration and reentry—there are numerous opportunities for agents of change to focus their efforts to improve the response of the criminal justice system to people with mental illness.

Among the states, the development of mental health courts<sup>1</sup> has been one example of efforts by multiple parties, including the courts, to resolve the societal problems posed by mental illness and the recognized inadequacies of the policies and systems that have produced the status quo. As Judge Lederman contends in her article in this edition of the

*Trends Report*, the role that courts can play in improving the mental welfare of those who come under their jurisdiction begins with the youngest of dependent children. There is no question that courts need to be at the table among the lead-

<sup>1</sup> See NCSC topical resources under Specialized and Problem Solving Courts, and Mental Health on CourtTopics at [www.ncsconline.org](http://www.ncsconline.org).

ers working to develop solutions for improving the lives of the mentally ill. How well the efforts of the Consensus Project and separate initiatives among the state courts will ultimately improve conditions in coming years will be worth watching.

—Kenneth G. Pankey, Jr.

## Changes Coming to Regulation of the Legal Field?

In the 2001 and 2002 editions of the *Report on Trends in the State Courts*, the National Center for State Courts drew attention to the impact of global agreements on the United States' traditional state-by-state regulation of the legal profession. In 2002 Kenneth Pankey noted that "[g]lobalization, particularly as manifested in expanding international trading agreements, presents challenges for state and American federalism."<sup>2</sup>

International treaties are one way in which the federal government may play an increasing role in the regulation of attorneys. Because treaties agreed to by the United States government are the "supreme Law of the Land,"<sup>3</sup> the federal government—or even international bodies<sup>4</sup>—may increasingly have a greater role in attorney regulation.

One such agreement is the General Agreement on Trade in Services (GATS), which "applies to measures by Members affecting trade in services,"<sup>5</sup> including legal services.<sup>6</sup> Because the United States is a member of the World

Trade Organization, GATS governs how lawyers are regulated in the United States.<sup>7</sup>

One question is, To what extent can the United States government impose a rule, or set of rules, on state bar regulatory bodies? Laurel Terry writes that "it is unclear what effect the GATS will have on U.S. state regulation of lawyers."<sup>8</sup> She notes that some believe that it is "extremely unlikely that the federal government could or would take over the states' job of regulating lawyers."<sup>9</sup> However, Terry raises several ways in which it is possible that GATS could require states to change their rules.<sup>10</sup> For example, some nations permit multidisciplinary practices (MDPs), which offer legal services as well as other services, such as accountancy services, while no U.S. jurisdiction—except the District of Columbia—permits this type of practice.<sup>11</sup> Terry "can imagine arguments that foreign lawyers might use to challenge, on the basis of the GATS, U.S. lawyer regulations that would exclude foreign lawyers who practice in an MDP."<sup>12</sup> As a result, U.S. or international law could require states that lose such a challenge to conform their regulations to GATS.

—Walter T. Latham, Jr.

<sup>2</sup> Kenneth G. Pankey, Jr., "Globalization and Federal Trade Policies," 2002 *Report on Trends in the State Courts* (Williamsburg, VA: National Center for State Courts, 2002), p. 49.

<sup>3</sup> "[A]ll Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land." U.S. Constitution, Art. VI.

<sup>4</sup> Laurel S. Terry, "GATS' Applicability to Transnational Lawyering and Its Potential Impact on U.S. State Regulation of Lawyers," *Vanderbilt Journal of Transnational Law* 34 (2001), p. 1001, quoting *General Agreement on Tariffs and Trade: Multilateral Trade Negotiations Final Act Embodying the Results of the Uruguay Round of Trade Negotiations, Annex 1B, General Agreement on Trade in Services*, Art. VI, § 4, *International Legal Materials* 33 (1994), p. 1173 [hereinafter GATS].

<sup>5</sup> GATS, Art. I, § 1.

<sup>6</sup> Terry, p. 999.

<sup>7</sup> Martha Neil, "Gearing Up for GATS," *ABA Journal* 18 (September 2003).

<sup>8</sup> Terry, p. 1075.

<sup>9</sup> *Id.*, p. 1075, citing Peter Jarvis, "Small World After All or Ball of Confusion? Some Thoughts on National Multijurisdictional Practice," *Vanderbilt Journal of Transnational Law* 34 (2001): 1169.

<sup>10</sup> Terry, pp. 1078-87.

<sup>11</sup> *Id.*, p. 1078.

<sup>12</sup> *Id.*, p. 1080.