



Future Trends in State Courts

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Broward's Mental Health Court: An Innovative Approach to the Mentally Disabled in the Criminal Justice System

The Honorable Ginger Lerner-Wren, Presiding Judge, Broward Mental Health Court, Broward County, Florida

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An ever-increasing trend throughout our nation is that jails have become mental institutions of last resort. According to a Special Report published July 1999 by The U.S. Department of Justice, an estimated 283,800 mentally ill offenders were incarcerated in our Nation's jails and prisons.^[1] This trend, known as the criminalization of the mentally ill, has resulted from a number of precipitating social, legal and political factors.

While the area of mental disability law is growing and evolving at a rapid pace, local jails and state prisons have, in effect, replaced long-term psychiatric institutions.^[2] As a result of the "Civil Rights Revolution" and its expansion to include mentally disabled persons, particularly those residing in dangerous living conditions in both state hospitals and state schools for the mentally retarded, the U.S. Supreme Court and federal courts have expanded the rights of the mentally disabled, resulting in a well-intentioned and theoretically sound policy of deinstitutionalization.^[3] The expansion of legal rights, both through litigation and legislation, together with changes in clinical treatment approaches and new and more effective anti-psychotic medications, has made recovery and community-based living possible, yet these remain tragically out of reach for the majority of Americans who suffer from severe and chronic mental disabilities.

The paradox, however, has been that the expansion of legal rights has come without adequate funding of community-based treatment, services, and housing. Restrictions on managed care, shrinking state and local budgets, and the privatization of government-run mental health programs have lead to a narrowing of the population receiving publicly funded mental health services. The targeting of specific populations has created wider gaps in the mental health system, causing more individuals to have

fewer or no services. In the years following the movement to deinstitutionalize the mentally ill, the nation's streets, jails and prisons have increasingly become the residences of persons with serious mental disorders, co-occurring substance disorders, and related challenges-- rather than community-based treatment programs and facilities as intended. Untreated mental illness in our communities has a direct relationship to homelessness, increased substance abuse, quality of life offenses and, at times, more serious crime. Often, law enforcement officers having little training with which to distinguish those in psychiatric crisis from those committing some type of volitional offense find jail the least burdensome repository for persons acting bizarrely in public. With no mechanism to help distinguish true violators from those who are simply in the throes of mental illness, the cycle of decompensation in jails, stabilization, and release onto the streets with no treatment, perpetuates a vicious revolving door in and out of the criminal justice system.

According to the U.S. Department of Justice, mentally ill defendants are expected to serve 15 months longer than non-disabled inmates in prison. For the mentally ill, nonviolent offender without appropriate treatment and supports, life is reduced to the endless revolving between jail cells and local psychiatric crisis units. It is a life filled with alienation, hopelessness, humiliation, and suffering.

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A Community Ready for Change

In 1994, a high-profile criminal case in Broward County involving a mentally disabled young man, a scathing grand jury report relating severe shortfalls in Broward's community mental health system, and tragic deaths in the county jail prompted the creation of a local ad hoc criminal justice task force lead by Circuit Judge Mark A. Speiser. Major stakeholders in the criminal justice system and consumer and mental health provider community came together as a working group to identify points in the criminal justice system which could be streamlined to improve the administration of justice for defendants who suffer from major mental disorders and related disabilities. Participants on the task force included the Broward Public Defender's Office, State Attorney's Office, Sheriff's Office, County Governmental staff, local members of the National Alliance for the Mentally Ill (NAMI), and community mental health and substance abuse providers, including Henderson Mental Health Center and Nova Southeastern University.

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Broward's Mental Health Court

Through ongoing meetings of the task force, Assistant Chief Public Defender Howard Finkelstein advocated the creation of a specialized court to target this population. In what was described by Howard as a "leap of faith," Chief Circuit Judge Dale Ross entered an administrative order in May 1997 creating the nation's first Mental Health Court as a specialized subdivision of the County Criminal Court. The mission of the Mental Health Court is to better address the unique and complex needs of the mentally disabled misdemeanor defendant arrested for nonviolent offenses. The Court is uniquely designed to rapidly intercept and divert those defendants arrested with nonviolent petty misdemeanor charges from the jail and into appropriate treatment facilities/hospitals wherever possible, without compromising public safety.

Goals of the Court

- To create a courtroom with a high degree of sensitivity to the specialized needs of this population.
- To expedite the mentally ill defendant through the criminal justice system without compromise.
- To assure that the mentally disabled defendant does not languish in jail because of their illness and if in need of emergency psychiatric treatment, that the individual is able to obtain it without compromise of individual substantive legal rights.
- To balance the defendant's individual rights, treatment considerations, and public safety.
- To apply a therapeutic approach to the processing of offenders to better assist them and family in the recovery process and in assuming personal responsibility for their comprehensive health needs and to help reduce the stigma of mental illness.
- To better ensure and oversee the coordination, effectiveness, and accountability of both the delivery of community based treatment and services and compliance with treatment by the individual defendant.
- To reduce the contact of the mentally ill with the criminal justice system by creating a bridge between the community and jail system

Unique and innovative features of the court include the following:

- The Court is a voluntary, part-time court that convenes on a daily, "as needed" basis with referrals coming from various sources, including family members, lawyers, jail staff, magistrate judges, and other county criminal court judges.
- The Court wholly adopts and applies the principles of Therapeutic Jurisprudence-- a legal construct that advances the Courts' role as an active therapeutic agent in the recovery process.
- The Court acts as a coordinator and integrator of treatment, services, and housing using a multidisciplinary approach, with clinical and treatment recommendations being made on an ongoing basis for those working with the Court.
- The Court makes every effort to take a pre-trial and non-punitive/therapeutic approach to cases in an effort to promote the assumption of personal responsibility and personal empowerment of the Court participant. The goal, of course, is to create safer, more secure communities, reduce or eliminate recidivism, and promote the quality of life of the participant and public at-large.

The Mental Health Court Team

The success of the operations of Broward's Mental Health Court is directly linked to the support and tireless efforts of both the internal court staff and the external supportive services provided by a wide array of community-related agencies and treatment facilities. The strength of the operations of the Court and the swift response time to assess cases each day and divert defendants to treatment facilities is due to the dedicated and shared vision of the community and criminal justice system partners. However, it should be noted that this innovation is not without limitation. The Court is not a substitute for desperately needed community resources but does represent an effective, albeit limited diversion strategy for a targeted population of defendants.

At this writing, Broward's Mental Health Court has seen over 1400 defendants. In 1998, the Florida Legislature appropriated funds to establish a transitional residential dual-diagnosis treatment facility, "The Cottages in The Pines," to house and treat homeless and at-risk-of-homelessness defendants participating in the Court. The Department of Justice, Bureau of Justice Assistance, has funded a trauma-based gender-specific program through Nova Southeastern University dedicated to treating women with co-occurring disorders. The Court, with its therapeutic approach, has become a model for jurisdictions across the nation and has become a venue where visitors come from all over the world to observe the proceedings.

Broward's Mental Health Court received the 1999 Florida Circuit Conference of Judges award for innovation and has been featured on National Public Radio and Good Morning America. Judge

Lerner-Wren and the Mental Health Court have been showcased at the White House Conference on the Mentally Ill. Currently, federal legislation is pending to support the development of diversionary mental health courts throughout the country.

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[1] U.S. Department of Justice, Bureau of Justice Statistics Special Report, **Mental Health and Treatment of Inmates and Probationers**, July 1999.

[2] Perlin, *Mental Disability Law, Civil and Criminal*, 1989, 1998.

[3] *Id.*

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