Working with People with Mental Illness Involved in the Criminal Justice System:

What Mental Health Service Providers Need to Know

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September 2003/Revised February 2004

This work was conducted under support to the SAMHSA-funded Technical Assistance and Policy Analysis Center for Jail Diversion, a branch of the National GAINS Center for People with Co-Occurring Disorders in the Justice System.

The suggested citation for this monograph is Massaro, J. (2004). Working with People with Mental Illness Involved in the Criminal Justice System: What Mental Health Service Providers Need to Know (2nd ed.). Delmar, NY: Technical Assistance and Policy Analysis Center for Jail Diversion.

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INTRODUCTION

Increasing numbers of people with mental illness are becoming involved with the criminal justice system, and unfortunately many providers are resistant to working with this "new" client. People with mental illness become involved with the justice system for many reasons, most relating to issues beyond their control. Serving this population is simply the right thing to do. It is also a surprise to many providers that they have been serving this population for quite some time. While the focus is on people *referred from the criminal justice system*, many people with criminal justice histories enter mental health service systems through typical referral channels such as crisis services, departments of social services, human service agencies, educational programs, families, and self-referrals.

Those who *are* referred from the courts, probation departments, jails, and police are not necessarily dangerous or violent. In some cases, the criminal justice involvement may signal a more serious illness or greater urgency for comprehensive services. However, *these individuals have similar needs to other individuals with mental illness on current case loads. Providing services to this population does not differ substantially from serving others and may prevent future arrest or incarceration.*

The recent report of the President's New Freedom Commission on Mental Health drew attention to the need to fundamentally transform the mental health system (New Freedom Commission on Mental Health, 2003). In creating the Commission, President George W. Bush directed its members "to study the problems and gaps in the mental health system and make concrete recommendations for immediate improvements that the Federal government, State governments, local agencies, as well as public and private health care providers, can implement." The Commission found widespread fragmentation in the mental health delivery system and concluded that the system is not oriented toward the goal of recovery for the people it serves. Individuals needing services often do not have access in their communities to state-of-the-art treatments and supports that have been proven effective.

People with mental illness involved in the criminal justice system have similar needs to other individuals with mental illness. Serving this population is simply the right thing to do.

The Commission's report outlined six goals that are the foundation for transforming the mental health system to be recovery oriented and consumer and family centered:

Goal 1. Americans understand that mental health is essential to overall health.
Goal 2. Mental health care is consumer and family driven.
Goal 3. Disparities in mental health services are eliminated.
Goal 4. Early mental health screening, assessment, and referral to services are common practice.
Goal 5. Excellent mental health care is delivered and research is accelerated.
Goal 6. Technology is used to access mental health care and information.

Within the context of Goal 2, the problems identified by the Commission included the overlap of program efforts and their funding sources, including with the criminal justice system; the high numbers of people with mental illness in jails and prisons; and the limited services available to people confined in correctional facilities. Among the Commission's recommendations to reach Goal 2 was to align relevant Federal programs to improve access and accountability for mental health services. The Commission further recommended "widely adopting adult criminal justice and juvenile justice diversion and re-entry strategies to avoid the unnecessary criminalization and extended incarceration of non-violent adult and juvenile offenders with mental illnesses. [The Department of Health and Human Services (HHS)] and the Department of Justice, in consultation with the Department of Education, should provide Federal leadership to help States and local communities develop, implement, and monitor a range of adult and youth diversion and re-entry strategies." (New Freedom Commission on Mental Health, 2003).

The Substance Abuse and Mental Health Services Administration (SAMHSA) of the Department of Health and Human Services (HHS) is charged with implementing appropriate steps to strengthen the mental health system based upon the Commission's goals and recommendations, under the leadership of the Center for Mental Health Services (CMHS). The process of transforming the mental health system will be comprehensive and ongoing, requiring the coordination and collaboration of Federal, State, local, and private agencies. Steps can be taken within communities now, however, to further the goals of the Commission.

The Technical Assistance and Policy Analysis (TAPA) Center for Jail Diversion, which is funded by CMHS, has created this publication to assist mental health service providers working within and across the mental health and criminal justice systems. This guide seeks to assist providers who serve individuals with mental illness involved with the criminal justice system by exploring three primary questions:

1. Who are providers serving?

Providers need to know if persons with mental illness involved with the criminal justice system have any special characteristics or needs, whether incarceration has had a significant impact on their lives or their illness, and whether criminal justice involvement signals increased risk.

2. What should providers know about the criminal justice system?

Providers should have some familiarity with criminal justice procedure and the kinds of experiences people with mental illness have within the criminal justice system. They should understand when and how to advocate for their clients and what opportunities are available to access treatment and avoid incarceration. When treatment is mandated, it is important to understand obligations to the courts, including those of the person to remain involved in treatment and those of the provider to report to the criminal justice system.

3. How can mental health service providers work together with criminal justice professionals to best meet the needs of persons with mental illness in the justice system?

It has been demonstrated that partnerships between mental health service providers and the criminal justice system can serve the best interest of people with mental illness. These partnerships involve communication and coordination. Providers need clarification regarding the types of information that can or should be exchanged with the criminal justice system and what strategies are available to overcome the challenges and obstacles to integrating mental health and criminal justice services.

WHO ARE PROVIDERS SERVING?

(National GAINS Center, 2002)

- 6.4 percent of men and 12.2 percent of women entering jail have a severe mental disorder, significantly higher rates than in the general population.
- Diagnoses for men include 2.7 percent schizophrenia/schizophreniform disorder, 1.4 percent mania, and 3.9 percent major depression.

Criminal justice involvement is often a result of the stigma of mental illness and a sign of weakness in the service delivery system.

- ***Likelihood of arrest -*** The probability of being arrested is greater for suspects exhibiting symptoms of mental disorders (Teplin, 1984).
- ***Bail -*** Many individuals with mental illness have no source of funds and may be detained because they cannot post even very low bail and are not offered release on personal recognizance (Health and Hospitals Corporation, New York City, 1998).
- ***More serious charges -*** Persons with mental illness will often be charged with more serious crimes than other people arrested for similar behavior (Hochstedler, 1987; New York State Office of Mental Health Forensic Task Force, 1991).
- ***Stiffer sentences -*** People with mental illness are charged, convicted, and sentenced more severely than other people accused of similar crimes (Hochstedler, 1987; Axelson, 1992; New York State Office of Mental Health Forensic Task Force, 1991).
- Persons with mental illness spend two to five times longer in jail than persons without mental illness (Criminal Justice/Mental Health Consensus Project, 2003).
- ***More fights, prison infractions and sanctions -*** In prison, people with mental illness are involved in more fights, more likely to be charged with prison infractions, and more likely to be sanctioned for prison infractions (Ditton, 1999).
- Persons with mental illness in state prison can be expected to serve 15 months longer than other inmates with similar charges and sentences (Ditton, 1999).

- Diagnoses for women include 2.0 percent schizophrenia/schizophreniform disorder, 1.4 percent mania, and 10.5 percent major depression.
- 72 percent of both male and female jail detainees with serious mental illness have a co-occurring substance use disorder.
- Only 33 percent of male detainees and 25 percent of female detainees who needed services for severe mental disorders reported receiving treatment in jail.
- Both male and female inmates report high rates of childhood abuse (Teplin et al., 1996; Weeks & Spatz-Widom, 1998).
- Approximately 30 percent of individuals entering jail were homeless during the year prior to incarceration in jail (Ditton, 1999).
- Nearly 50 percent of inmates in prison with a mental illness were incarcerated for committing a nonviolent crime (Ditton, 1999).
- Detention puts people with mental illness at high risk for suicide (Consensus Project, 2003).
- Parole data on persons with mental illness is limited; however, one study found a range from 1–11 percent of persons on parole have a serious mental illness (Boone, 1995).
- The structure of incarceration enables some individuals with mental illness to be overlooked while incarcerated, but they cannot withstand the pressures of returning to the community (Boone, 1995; Lamb & Weinberger, 1998; MacFarland et al., 1989).

CHANGING THE WAY THE CRIMINAL JUSTICE SYSTEM IMPACTS PEOPLE WITH MENTAL ILLNESS

In recent years, innovative approaches have been developing aimed at disrupting the cycle of arrest and re-arrest of persons with mental illness (sometimes referred to as "criminalization" of persons with mental illness). Police officers have received training in the appropriate response to persons with mental illness; jails have instituted programs for improved identification, treatment, and discharge planning for persons with mental illness; the courts have incorporated programs to divert persons with mental illness from the criminal justice system into treatment; and community correction programs have been working with mental health providers to create positive partnerships in responding to the needs of people with mental illness. This section will describe innovative approaches and how they may improve access to treatment and outcomes for persons with mental illness in the criminal justice system. It also describes the ways treatment may be impacted when it is mandated by the criminal justice system.[1]

The Challenge of Court-Ordered Treatment

Persons with mental illness who have been arrested may have an opportunity to avert incarceration through programs such as diversion and probation, which are described below. However, when an individual is charged with a criminal offense, he or she becomes subject to the authority of the criminal justice system. Opportunities such as diversion and probation are likely to include some form of

[1] It is important to distinguish criminal justice proceedings from other types of legal proceedings that may affect people with mental illness. Civil commitment to inpatient or outpatient psychiatric treatment, with which mental health service providers may be more familiar, involves an individual being ordered by a court to accept treatment for reasons unrelated to the alleged commission of a criminal offense.

treatment mandated, or ordered, by a criminal court. Court-ordered treatment may impact the relationship between treatment providers and individuals receiving treatment because of the continuing obligations of each party to the court. Mental health service providers should be aware of what each court requires in terms of the individual's participation in treatment and the provider's responsibility to report to the court. (See pages 39–40 for more about reporting to the court.) Providers who understand the experiences of people with mental illness involved in the criminal justice system and how treatment mandates may complicate the treatment relationship will more effectively be able to assist individuals who are ordered to receive treatment.

Treatment mandates may be imposed by a court at various points in a criminal proceeding, including when a judge makes a pretrial release decision or as a condition of sentencing following a guilty plea or finding. Treatment mandates are usually general enough to include a variety of treatment options. The type of treatment ordered by a court will depend upon the circumstances. Programs should work to actively involve the individual in developing his or her own treatment plan. One method some programs have used to involve the person receiving services in treatment planning is the creation of written crisis plans or advance health care directives that reflect the individual's treatment choices (Monahan et al., 2001).

Services that may be mandated by a criminal court include:

- psychiatric evaluations
- participation in a particular program or service (day or partial day programs, educational or vocational programs, substance abuse treatment, supervised living, and other service programs)
- compliance with prescribed medication (and testing to determine compliance)
- drug or alcohol testing

Individuals may face consequences for noncompliance with court-ordered treatment. Because the person is facing criminal charges, ultimately he or she may be returned to court and be sentenced to jail time. Some programs use what are known as "graduated sanctions." Graduated sanctions include a range of incentives and requirements that can be adjusted with the person's progress. For example, a curfew may be extended or curtailed; the frequency of meetings with the probation officer may be adjusted; or rewards, such as "time off" from the program, may be extended or withheld. Money, work time, housing choices, and hospitalization have all been used by criminal courts as leverage to encourage compliance with treatment mandates.

Ensuring success when treatment is mandated

(Peters & Hills, 1997; National Mental Health Association, 2003)

It may be difficult for persons with mental illness to comply with the conditions imposed by a court, including adherence to mandated treatment requirements, particularly for those individuals with co-occurring substance use disorders. Providers should take steps to ensure the person's success and remain flexible and patient in this process.

- Assessment should be thorough to make appropriate matches to programs and services.
- Persons with mental illness and co-occurring substance use disorders require placement in integrated mental health and substance abuse treatment services.
- Clinical staff should closely monitor whether the person is responding to the course of treatment and make any necessary adjustments in the plan.
- At the earliest signs that the person is not following the plan, the court agency, clinicians, or case managers should work together with the person to identify any difficulties, make adjustments, and re-involve the person with the adjusted plan.

Diversion

"Diversion" or "jail diversion" refers to efforts to move people with mental illness who have been or may be charged with a crime out of jails and prisons by providing some type of mental health and substance abuse intervention that places people in treatment rather than in jail. The goal of diversion is to eliminate or reduce the time an individual is detained or incarcerated as a result of potential or pending criminal charges.

Diversion is designed to achieve several goals:

- Diversion can enhance public safety by making jail and prison space available for violent offenders.
- By providing judges and prosecutors with alternative dispositions, the incarceration of individuals with mental illness who might be served better outside of the justice system can be avoided.
- The social cost of providing inappropriate mental health services or no services at all can be avoided by diverting individuals with mental illness away from the justice system and toward the mental health service system.
- Diversion programs can improve access to appropriate community-based mental health services for those who have been underserved.

Criminal justice diversion programs intervene before arrest and before charges are filed by police (pre-booking) or after such charges are filed (post-booking diversion).

Pre-booking diversion programs focus on efforts by law enforcement to avoid charging a person with a crime, generally when the behavior is nonviolent and appears to be related to severe mental illness. These programs rely heavily on early intervention and effective interactions between police and community mental health services. These programs use a variety of strategies depending upon the circumstances of the community. These strategies include training police to intervene more effectively with persons with mental illness or utilizing specially trained mental health professionals within law enforcement (Steadman et al., 2001). The most widely used model for pre-booking diversion is the Crisis Intervention Team developed in Memphis, Tennessee. The model utilizes officers who are trained to assess and respond to situations involving persons with mental illness. The police are trained to assess and defuse situations and to transport individuals they suspect of having mental illness to a designated psychiatric emergency service (Steadman et al., 2001).

Post-booking diversion programs are located in arraignment courts, jails, holding pens, crisis triage centers, and community-based mental health centers. These programs screen individuals for mental health problems, evaluate them for diversion eligibility, and negotiate with courts and prosecutors for a disposition that includes mental health treatment (Steadman et al., 1994). Eligibility is generally based on documentation of a mental illness, the type of criminal charge, and other factors. Some diversion programs serve only people with low-level charges. Other programs, including the Nathaniel Project in New York, serve people with felony charges (National GAINS Center, 2002).

Once eligibility is determined, diversion program staff work with prosecutors, defense attorneys, and community-based mental health and substance abuse treatment providers to develop and implement a plan that involves the person with mental illness in an array of services. If the person agrees to the plan, he or she may be released on bail, charges may be deferred, or the plan may become a condition of reduced or dismissed charges. In some jurisdictions, an individual may plead guilty and sentencing may be deferred or the plan may become a condition of probation.

Services may include screening, assessment of mental health, presenting assessment information and options to the judge, negotiation for mental health and other support services, obtaining client agreement, obtaining agreement from the court, and supervision to insure that the person complies

with the conditions imposed by the court. Services frequently include case management or supervision services that assist with housing, medical, or financial assistance.

Probation and Parole

(Pahigian & Lambert, 2000; Massaro et al., 2002)

Probation is defined as "a sentence not involving confinement which imposes conditions and retains authority in the sentencing court to modify the conditions of sentence or to re-sentence the offender" (American Bar Association, 1970). Probation sentences can be applied to either misdemeanors or felonies (usually only first time felony offenses). The term "probation" also refers to the supervision of individuals sentenced to probation.

Parole refers to both the decision of a prison parole board to release an individual to the community after serving part of a prison sentence and the supervision of such individuals in the community.

Supervision by departments of probation or parole involves compliance with general or specific conditions imposed by a court or parole board. (See pages 34–35 for more information on the role of probation and parole officers.)

General conditions include restrictions and requirements regarding behavior. Restrictions may be made regarding:

- place of residence and person(s) with whom an individual might reside
- travel to specified areas (out of state, out of county)
- fraternization with persons with criminal records or involved in criminal activity (excluding accidental encounters or encounters at treatment or training programs)
- unlawful behavior
- ownership, purchase, or possession of firearms
- the use of alcohol or other drugs

Requirements might include:

- reporting to a parole or probation officer
- permitting visits by parole or probation officers to the person's residence or place of employment
- permitting search of the person's residence
- prompt and truthful replies to parole and probation officers

Special conditions are oriented to the needs of the individual and may include treatment requirements. Special conditions might include:

- curfews
- prohibitions for associating with specific individuals or going to specific places
- requirements for mental health, substance abuse, or family treatment
- participation in community-based corrections programs, work programs, training, or rehabilitation
- specific schedules of drug testing

Each department of probation or parole has specific guidelines regarding the consequences of failing to follow general and special conditions of parole or probation. These can range from institution of graduated sanctions by the probation or parole officer, a return to court, or a hearing by parole. This failure to comply with the conditions of probation or parole is generally referred to as a "violation of probation/parole."

Examples of special conditions that relate to treatment include:

- participation in an evaluation to determine the extent of mental health and substance abuse problems
- using recommendations described in the evaluation to develop with providers a plan of treatment and services for mental health and substance abuse problems and following that plan
- compliance with recommendations for evaluation and treatment by a psychiatrist, including taking prescribed medications
- refraining from the use of alcohol and other drugs, cooperating with drug testing, and participating in recommended self-help services
- providing the probation or parole officer with a general schedule of treatment related activities
- allowing communication between the probation or parole officer and treatment programs regarding attendance, progress, and compliance with program rules (Peters & Hills, 1997)

Service contracts can be useful tools to clarify the tasks of all parties and the benefits to the client. These can indicate what the providers and probation/parole officers will do to assist the person. For example, a service contract might state that the probation/parole officers and designated mental health case manager will:

- remain in weekly contact
- facilitate obtaining transportation to treatment
- work together in regard to housing: the case manager will find housing and contact the probation/parole officer to approve housing

Service contracts can be useful tools to clarify the tasks of all parties and the benefits to the client.

Mental Illness, Substance Abuse, and Risk of Violence

"Beliefs about the causes of mental disorder have shifted over the centuries, but the belief that mental disorder predisposes many of those suffering from it to behave violently has endured." (MacArthur Foundation Research Network on Mental Health and the Law, 2001)

The political and policy implications of the association between mental illness and violence are complex. Communities look for simple solutions to difficult problems, and the focus often falls on the potential dangers that individuals diagnosed with mental illness pose to society. Yet, research tells us that the vast majority of people with mental illness are no more dangerous than any other group in society and, in fact, are more commonly victims than perpetrators of violence (Link & Stueve, 1994; Criminal Justice/ Mental Health Consensus Project, 2003). In general, however, public perception is skewed by the media, which reflects and promotes stereotypes in news coverage, novels, and movies emphasizing a link between mental illness and violence (Mulvey, 1994).

Studies to date have shown an increased risk for violence among a small subgroup of individuals with mental illness compared to the general population, but the absolute risk posed by mental illness is small. Only a small proportion of the violence in our society can be attributed to persons with mental illness (Mulvey, 1994).

Co-occurring substance abuse represents a much greater risk for violence than does mental disorder alone (Steadman et al., 1998). The type and level of symptoms and disabilities are more important than diagnoses for understanding, treating, and preventing violent behavior in persons with mental illness.

In efforts to predict and treat violence, it is important to recognize that risk fluctuates over time. Risk is not a static personality trait. Violent behavior is a product of interactions between an individual, his or her environment, and current circumstances. The level of risk depends on many factors other than mental disorder that vary, thus increasing or decreasing risk of violence by persons with mental illness (Campbell et al., 1994). Appropriate legal protections for persons receiving various forms of community supervision are necessary so that individuals' rights are properly balanced with the community's right to safety (e.g., legal representation at hearings to change the conditions of community supervision).

When effective support services are available and used, persons with mental illness pose no greater threat to the community than other individuals. If these elements are not in place, a small number of individuals with mental illness may commit violent acts that will lead to their arrest (Dvoskin & Steadman, 1994).

A number of practices have shown considerable promise for helping the small group of persons with mental disorders who are violent. These include intensive case management programs (Dvoskin & Steadman, 1994), brief inpatient treatment or crisis stabilization services (Task Force on Homelessness and Severe Mental Illness, 1992), and self-help and mutual support programs.

When risk is present, an important component in reducing risk is for providers to form strong treatment alliances and partnerships with persons with co-occurring disorders that focus on wellness and recovery.

The MacArthur Foundation Research Network on Mental Health and the Law (2001) has reviewed and integrated the research about mental illness and violence. The following statement regarding mental illness and violence was drafted in collaboration with the National Stigma Clearinghouse.

"Mental disorder" and violence are closely linked in the public mind. A combination of factors promotes this perception: sensationalized reporting by the media whenever a violent act is committed by "a former mental patient," popular misuse of psychiatric terms (such as "psychotic" and "psychopathic"), and exploitation of stock formulas and narrow stereotypes by the entertainment industry. The public justifies its fear and rejection of people labeled "mentally ill," and attempts to segregate them in the community by this assumption of "dangerousness."

The experience of people with psychiatric conditions and of their family members paints a picture dramatically different from the stereotype. The results of several large-scale research projects conclude that only a weak association between mental disorder and violence exists in the community. Serious violence by people with major mental disorders appears concentrated in a small fraction of the total number, and especially those who use alcohol and other drugs. Mental disorders, in sharp contrast to alcohol and drug abuse, account for a minuscule portion of the violence that afflicts American society.

The conclusions of those who use mental health services and of their family members, and the observations of researchers, suggest that the way to reduce whatever modest relationship exists between violence and mental disorder is to make accessible a range of quality treatments, including peer-based programs, and to eliminate the stigma and discrimination that discourage, sometimes provoke, and penalize those who seek and receive help for disabling conditions.

ENGAGING PEOPLE WITH CRIMINAL JUSTICE INVOLVEMENT IN THE COMMUNITY

The Impact of Correctional Incarceration

(Rotter et al., 1999)

People with mental illness often have had numerous arrests and have spent significant amounts of time in jail or prison. While incarcerated, they learn attitudes, beliefs, and behaviors that are essential to safety in the incarceration setting. Upon entering mental health programs in the community, these same behaviors are considered to be maladaptive or they are misinterpreted as symptomatic. Behaviors displayed by people with histories of correctional incarceration are often learned survival skills that are difficult to relinquish, but not necessarily a sign of dangerousness.

The culture of correctional facilities

While each correctional facility is unique in its specific purpose and structure, life within all of them develops into a culture of incarceration. This culture often spills into the "street culture" (Rotter et. al., 1999).

As in any culture, a set of values, attitudes, beliefs, and behaviors develops in correctional facilities. A complex sociology develops with an economy, language, daily routines, and hierarchies of power. The person entering a correctional facility as an inmate must adapt to this new culture, following the formal and informal rules of both the department of corrections and the inmate population. In order to adapt to the new culture, an individual must employ a wide range of cognitive and interpersonal skills—skills that may be impaired in individuals with mental illness (Rotter et al., 1999). Each person's experiences during incarceration will be shaped by a wide variety of factors, including:

- severity and nature of the mental illness
- coping skills and adaptative capacity
- supports within the facility
- supports from the community
- access to effective treatment

Over time, the person learns a code of conduct and rules of behavior. Again, each facility will have its own unique codes, and facilities for men differ from facilities for women. This code of behavior typically revolves around five themes:

- respect
- strength and weakness
- minding your own business
- communication
- trust

In a facility for men, acting respectfully toward others is paramount for survival. The code of respect is coupled with codes around strength and weakness. An inmate cannot allow someone to act disrespectfully toward him. Retaliation for any sign of disrespect is necessary to demonstrate that he is not weak. Minding your own business instructs the individual to keep to himself and not to become involved with others. To do so might incur a debt that would be very difficult to repay. It follows that communication between inmates, particularly about personal information, is usually limited. The experience of incarceration teaches the individual not to trust anyone.

While the same codes are evident in correctional facilities for women, adherence to these codes is much less rigid. Weakness

The person entering a correctional facility as an inmate must adapt to this new culture, following the formal and informal rules of both the department of corrections and the inmate population.

is somewhat more tolerated, and there is less violence. Women tend to have different environmental and interpersonal needs, with greater needs for privacy and a greater need for relatedness with other people.

A black market economy, extortion, gambling, and drug trafficking are found in most correctional facilities.

Disadvantages for people with mental illness

From outside the prison system, mental health providers often develop assumptions that inmates can avoid the directives and consequences of the inmate code by turning to corrections officers. For a wide variety of reasons, this is generally not the case. In the same respect, providers often assume that people with mental illness in jail or prison will be housed separately and protected from the general population, but access to segregated housing and specialized housing units is limited.

People with mental illness in correctional facilities enter a stressful environment with diminished capacity for coping and adaptation, making it difficult for them to ascertain the rules of behavior dictated by either corrections or the inmate code. They are not necessarily protected by the correctional system. If the mental illness becomes apparent, the inmate code defines the person as weak and not deserving of respect. As a result, people with mental illness are frequently victimized in prison, with victimization taking many forms. It may be economic (having commissary items stolen) or involve being forced to perform chores, accept blame for an infraction, or even assault another inmate. Victimization may include physical or sexual abuse as well.

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Accessing Services

Accessing mental health services in correctional facilities

While correctional facilities are legally and ethically bound by a duty to protect and a duty to treat, the adequacy of mental health services may not meet professional guidelines (Center for Mental Health Services, 1995). Less than half of states or localities provide the comprehensive services acknowledged as minimal standards of care by regulatory commissions.

Even when treatment is available, many people with mental illness will refuse treatment. In jail and prison, people refuse

treatment not only for typical reasons such as denial of the illness, but because it may identify them as weak and target them for victimization. When the person seeks treatment in jail or prison, this information generally becomes common knowledge. For example, an announcement on a public address system may instruct all persons with medical or psychiatric appointments to line up. In addition, many psychiatric medications have sedating effects. People with mental illness are sometimes afraid that this will interfere with the vigilance necessary to remain safe in jail or prison. Finally, keeping appointments for psychiatric services will interfere with opportunities for other programs, activities, or recreation (Rotter et al., 1999).

Accessing services in the community

When persons with mental illness return to their communities from prison or extended jail stays, they experience a dramatic culture shock and the intense stress of re-adaptation. The order, rules, and routines of jail and prison no longer provide structure, and the person must meet his or her own basic needs of food, shelter, clothing, and medical services. Street drugs are widely available, while community-based mental health, substance abuse, and social services may be limited or difficult to access. Many service providers are not inclined to accept individuals with correctional histories into programs because of concerns regarding safety and risk.

After extended or repeated stays in correctional facilities, persons with mental illness often adopt the codes of conduct that can be crucial to survival in jail and prison. When the person behaves in a like manner in a mental health treatment program, these incarceration behaviors are interpreted very differently. Whereas correctional facilities dictate that a person should not trust others, should mind one's own business, should always appear strong, should demand respect, and should keep personal information private, mental health service settings encourage the exact opposite. Providers may misinterpret learned behavior as isolation, denial, increased illness, or lack of motivation. Incorrect interpretations will often lead to inappropriate solutions. For example, if a person always tries to be alone, rarely makes comment, or appears hypervigilant, the provider may assume that this behavior reflects increased depression or other symptoms, accompanied by paranoia. A logical approach would be to report this information to the prescribing psychiatrist who may in turn increase the dose of medication. However,

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medication will not help with behavior that is dictated by culture (Rotter et al., 1999).

Gender differences

When returning to the community, the prison codes for demanding respect, establishing a reputation of strength, and minding one's own business are strongly held by most men. These prison codes of conduct often result in behaviors by men that appear aggressive or threatening. Pressing issues for men include independence (which often affects housing choices), self-support (employment), and relationship issues. It is difficult for men to focus on treatment plans before these needs are met.

The greatest concerns for women returning to the community center around children and relationships with partners. Women often experience a great deal of shame, a sense of desperation, and intense fear of losing their children. The most pressing issues for women relate to parenting, housing, family violence, and employment (National GAINS Center, 2001). Women may find it extremely difficult to focus on treatment plans that do not speak to their most pressing concerns of children and partners. Meeting these needs can allow women to better focus on recovery.

An issue that is often overlooked in both men and women with criminal justice histories is trauma. People with mental illness involved in the criminal justice system have high rates of physical and sexual abuse. Trauma experienced prior to incarceration is often compounded by victimization in jail or prison. Trauma and underlying shame must be addressed in treatment. Left untreated, trauma and shame can contribute to relapse.

Facilitating recovery and rehabilitation

Rotter et al. (1999) suggest that providers view many of the challenges to engaging people with mental illness and criminal justice involvement in the context of developing "cultural competence." To develop cultural competence, it is important to understand behavior within the context of the "culture." Providers should become familiar with the kinds of life experiences associated with criminal justice involvement in order to understand how these experiences shape attitudes, beliefs, and behaviors.

The codes of jails and prisons often become the codes of life on the streets. Providers should try to develop some "cultural competence," by incorporating an awareness of these codes. They can begin by offering respect and expecting respect. When the person is not comfortable divulging personal information, developing a dialogue with peers, or trusting anyone, providers should consider that these behaviors may originate from culture rather than illness.

It is important to inquire about the person's experiences in jail or prison. It can also be helpful to provide a forum for people with mental illness and criminal justice histories to talk about their experiences. When providers have difficulty understanding why a person is behaving in a particular fashion, they should politely ask him or her about it. Providers should communicate a sincere desire to understand the person's choices and a sincere desire to help.

While programs cannot and should not abandon structure and rules, and should continue to hold people accountable for their behavior, alternative strategies for engaging people in mental health services can be implemented.

Mental Health and Other Service Needs of Persons with Mental Illness and Criminal Justice System Involvement

People with mental illness and criminal justice histories require the same services as other individuals with mental illness. There may, however, be a need for more intensive and comprehensive services. The needs of people with mental illness involved in the criminal justice system underscore the importance of comprehensive, continuous systems of care. Services such as intensive case management and assertive community treatment can help to reduce the risk of increased symptoms, relapse to substance abuse, and recidivism.

Michael Steinbacher (1999) of the SPECTRM Project at the Bronx Psychiatric Center in New York shared these anecdotes about a therapy group for men released from prison directly to the hospital.

During group, a man who was very symptomatic became confused and decided to leave group. On his way out of the room, he stepped on another person's brand new sneakers leaving a black smudge. Later it was discovered that the owner of the new sneakers had assaulted the other person. When confronted about his behavior he replied, "What was I to do? I knew he didn't mean it, but he disrespected me in front of all those people. He didn't even apologize. I had no choice but to retaliate. If I didn't, others would see me as weak and I would be the one that got assaulted. He should have at least apologized."

A few weeks later, a group member made a serious suicide attempt. The group was angry at group leaders, blaming them for not responding to the person's symptoms. The group leaders admitted that the staff had not been aware of the symptoms and asked why the group did not let staff know that the person was in trouble. Group members looked confused, stared at the floor, and were silent. Finally, one member said, "It was his business. I don't mind other people's business."

People with mental illness in the criminal justice system require individualized treatment and service plans focused on recovery and individual choice, provided in the least restrictive environment. A comprehensive plan should include:

- housing that is safe and appropriate
- supported education, job training, and employment
- healthcare and preventive services
- treatment for mental illness and co-occurring substance use disorders (including cognitive therapies)
- psychosocial rehabilitation services
- peer support
- intensive case management

(National Mental Health Association, 2003; Massaro et al., 2002)

Each person should receive a *comprehensive evaluation* of all treatment needs that can be developed into an *individualized treatment plan*. All treatment and ancillary services should be *culturally relevant*. *Medications with proven efficacy* should be provided within a complete medication management program.

Psychotherapy and rehabilitation should include:

- a special focus on engaging people with criminal justice involvement into services
- evaluation and integrated treatment for co-occurring substance use disorders
- treatment for special issues such as trauma, anger management, and domestic violence
- family treatment services to mediate conflicts, re-engage the family in a supportive role, enhance parenting skills, and resolve child visitation or custody issues

- training in wellness self-management to encourage individual choice and empowerment
- re-adjustment to community living for those returning to their communities from prison and jail

One of the keys to ongoing recovery is a solid network of support. This network can be enhanced by providing case management services and family psychoeducation programs with linkages to peer supports and self-help/mutual-help programs. All services should be provided within a continuous, integrated system of care.

THE CRIMINAL JUSTICE SYSTEM AND MENTAL HEALTH SERVICE PROVIDERS

Criminal justice involvement often interrupts the treatment process. However, familiarity with the details of the justice system can increase the provider's awareness of opportunities to advocate for persons with mental illness who become involved in the criminal justice system. Working with the justice system, mental health providers can facilitate access to the appropriate services to promote recovery and rehabilitation.

The criminal justice process—also called criminal procedure, criminal process, or simply the criminal justice system—is the process through which crimes are investigated, guilt of individuals determined, and punishment imposed. This section provides information to help clarify the criminal justice process, the roles of criminal justice participants, the experiences of persons with mental illness moving through this process, and opportunities for mental health providers and others to advocate for essential services.

Types of criminal offenses

While each state has variations in its definitions for specific crimes, the severity of a crime is generally indicated as a felony, misdemeanor, or infraction. For some offenses designated as misdemeanors, a repeat of the offense may allow for a felony charge. In some jurisdictions, the prosecutors or judges can determine if the particular circumstances of a criminal act qualify it as a more serious crime. For example, the basis of injury to the victim may determine whether an assault is considered a misdemeanor or a felony. Whether or not diversion services will be available may be determined by the level of offense.

Understanding the Path of a Case and Opportunities for Intervention

People with mental illness become involved in the criminal justice system for many reasons. Often it is because the police are called to a scene where a person with mental illness is disturbing the public or perhaps acting in a threatening way. If the police do not have reasonable options available to connect the person to a mental health service provider, the person may be arrested and wind up in the custody of the criminal justice system. Sometimes the person with mental illness is acting in a high risk manner because he or she has not been able to gain access to appropriate mental health services. The person may be under the influence of alcohol and drugs, which exacerbate other symptoms. He or she may steal to get basic needs met.

As the person comes in contact with the criminal justice system, he or she faces many disadvantages. He or she also may be at risk for victimization and may become cut off from necessary mental health services and medication.

TYPE OF OFFENSE	EXAMPLES	TYPICAL PUNISHMENT
Felonies—the most serious kinds of charges; severity may be designated by a "class" of felony	Grand larceny, sale of illegal drugs, rape, or murder	Generally, more than one year in a state prison or penitentiary; nonviolent first felonies may receive probation
Misdemeanors—less serious crimes; severity may be designated by a "class" of misdemeanor	Criminal mischief, reckless endangerment, petit larceny. (Some offenses designated a misdemeanor for the first count become felonies for the second offense.)	Generally, punishable in county jail up to one year; may receive probation
Infractions—the least serious of criminal charges (also called violations or petit crimes)	Disorderly conduct, loitering, appearance in public under the influence of a narcotic, harassment	Monetary fine and/or short jail stay

(Feinman, 2000; Pahigian & Lambert 2000)

Path of a Case[2]

(Feinman, 2000; Pahigian & Lambert, 2000; Barr, 2001.)

The table below presents the various stages along the path of a case in the criminal justice system. At the top of each page, the stage of criminal procedure is indicated, followed by the "location," that is, where the "action" is taking place. The left column, "Criminal Procedure," specifies step by step, what happens from the time of arrest, through prosecution and sentencing. Each page describes what happens at a particular stage along the path of a case. The stages may not occur in the precise order presented in the chart in every jurisdiction, however, as local procedures vary. The center column, "Defendants/ Persons with Serious Mental Illness," discusses the impact on the person with mental illness. The right column, "Criminal Justice Participants/*Advocacy*," describes the criminal justice staff most prominently involved at that stage. This column also includes comments on attitudes and beliefs that may be held about people with mental illness by criminal justice professionals. They may have incorrect information about mental illness and misinterpret the behavior of people with mental illness. In *italics* are actions that a mental health provider might take to facilitate the individual's access to treatment in jail or upon release. Family members, advocacy programs, and other interested individuals may also advocate on behalf of the individual. Mental health service providers must generally have permission to communicate with criminal justice professionals in the form of a written release of information signed by the person with mental illness.

[2] This general information applies to all jurisdictions. However, there may be additional details or idiosyncrasies that apply to specific counties and states.

COMPLAINT

LOCATION: Site of disturbance		
CRIMINAL PROCEDURE	**DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS**	**CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY***
Complaint Someone in the community makes a complaint or a police officer observes questionable behavior.	Once arrested, the person is referred to as the "arrestee." Persons with mental illness may have difficulty in providing explanations or presenting their side of the story. Some may also have difficulty in controlling anger, frustration, and fear. Some individuals will have difficulty with being restrained or confined.	**Police Officers (and perhaps mobile crisis teams)** When police officers receive a complaint or observe what they consider suspicious activity, they investigate. Officers' primary motivations are the safety of the community and fellow officers. If the police ascertain that the problem is primarily related to the person's mental illness, they may have discretion or be authorized by statute to choose to involve the person in mental health services rather than charge the person with a crime. If there are cooperative relationships in place, such as a mobile crisis team or a pre-booking diversion program, the police may refer the person to the program to facilitate linkage to services. (See page 6.)

ARREST

LOCATION: Crime scene

CRIMINAL PROCEDURE	DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS	CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY*
Arrest When a citizen makes a complaint or officers observe a potential criminal situation, they must investigate. An investigation can result in an arrest, that is, the suspect of the crime is taken into custody **Rights** Information offered by a suspect, or information obtained by police before a formal arrest is made, can be used against the person. Miranda rights* are not relevant until a formal arrest is being made. After an arrest the police can search the person. Anything illegal (such as marijuana or other drugs, drug paraphernalia, an item that could be used as a weapon) found upon search can be confiscated and additional charges may be made. **Before a suspect taken into custody can be questioned, he or she must be informed that he or she has a right to remain silent, that anything said can and will be used against the individual in court; that he or she has the right to consult with an attorney during interrogation and that if the person is indigent, a lawyer will be appointed to represent him or her (Feinman, 2000).*	Symptoms may lead to aggressive resistance (the person becomes afraid and strikes out in perceived self-defense). If the person is under the influence of alcohol or drugs, he or she will have less impulse control and is likely to have higher levels of aggression. The person with mental illness is unlikely to have supporters. It can be easy for peers to "plant evidence" on a person who is confused (have the person with mental illness hold the drugs or weapon). Depending upon symptom severity, it may also be difficult for the person to understand his or her rights during the process of police investigation, questioning, or arrest. It may also be difficult to follow directions.	**Law enforcement officers** When police officers determine that community safety is at risk or a crime has been committed, an arrest can be made. Police often have misconceptions about people with mental illness. In the absence of obvious disturbance in thinking, officers may overlook the possibility of mental illness and/or interpret behavior as a lack of cooperation. In situations where there is a problem between a person with mental illness and another person, officers may believe the person who does not have a mental illness. When a person is identified as mentally ill or emotionally disturbed, even reasonable anger and fear may be interpreted as illness. Law enforcement officers may assume that persons with mental illness are more likely to be violent and may be more aggressive in the arrest process. *An advocate at the scene may support the person with mental illness or ask the police not to arrest the person. Advocates can offer to accompany the person to a hospital or crisis unit for evaluation.*

BOOKING / PRETRIAL DETENTION

LOCATION: Holding pens/Jail

CRIMINAL PROCEDURE	DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS	CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY*
Pretrial detention The person may be taken directly to a judge for an initial appearance or will be confined to a holding pen or jail. **Booking** refers to the procedure in which a jail records information about a person taken into custody by law enforcement and placed in the jail's custody. 1) The suspect's name and the crime for which he or she was arrested are recorded. 2) A photograph is taken of the person, the "mug shot." 3) The person's personal property is taken and held by police. In some places, the person's clothing is also taken. 4) Fingerprints are taken. 5) A full body search is conducted. 6) The police check for other warrants. 7) Health tests, mental health tests, and suicide screening *should* also be given. In most states, a free telephone call is allowed after booking.	The person may be isolated—for some this increases symptoms while for others it decreases stimulation. The person may be placed in a cell with one or more predatory individuals and be at risk for victimization. Sometimes holding pens are very crowded and very noisy. High tension and anger can create an atmosphere of threat and danger. Some persons with post-traumatic stress disorder (prior victims of physical or sexual abuse) have extreme difficulty being confined and/or searched. The person's property is confiscated; medications and medical attention may not be available, particularly if the person has not been identified as having a mental illness. The booking process is experienced by many people as a humiliating or traumatic event.	**Corrections officers (CO's)** CO's may be more sympathetic to other offenders than to persons with mental illness. CO's often lack understanding about the person's difficulty in processing information, that is, in understanding directions, rules, or consequences. Unusual behaviors by the person with mental illness may inspire fear, anger, and annoyance in other detainees or officers. *Advocates can inform jail personnel that an individual has a mental illness and requires medication, treatment, and/or suicide watch. The advocate can request that the jail health or mental health staff talk with the person arrested and ask that he or she sign a release form allowing them to speak with his or her current providers. Jail health and mental health programs may refer the person to an advocacy or diversion program.*

BAIL / PRETRIAL RELEASE

LOCATION: Court

CRIMINAL PROCEDURE	DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS	CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY*
Bail Bail is property or money given as surety that persons released from custody will return at an appointed time. A judge determines at the initial appearance or arraignment if the person should be: • released on bail • released under his or her own recognizance (ROR'd) • released with conditions imposed • held in jail without bail (remanded) The judge's decision regarding bail is often based on: • seriousness of the crime • perceived risk of flight • the person's background and ties to the community If bail is set, it may be paid (posted at any courthouse) during business hours and at the jail at any time. *NOTE: The protocol for setting bail varies from place to place. It may be set at the initial appearance (which may also be the arraignment) or at a separate bail hearing.*	People with mental illness rarely have the money to post bail or someone who will post bail for them.	**Judge, prosecutor, possibly defense attorney** It is often assumed that persons with mental illness are high risk. *Pretrial services or jail diversion programs can provide information and pose options to the court to assist in the pretrial release decision and the possible setting of conditions of release. If conditions are imposed, individuals must be monitored—generally by pretrial services or jail diversion program staff. Mental health providers must obtain a signed release from the individual before providing information to pretrial services or jail diversion staff.* *If bail is set, someone must pay the bail or obtain a bond. (A bond company provides the full amount to the court, which is returned when the individual returns to court. Family, friends, or advocates must pay a fee for this service, and the person must return to court.)*

ARRAIGNMENT / FIRST APPEARANCE

LOCATION: Court

CRIMINAL PROCEDURE	DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS	CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY*
The person is brought before a judge in court (often a low level magistrate), generally within 24 hours. This may be referred to as an initial appearance or an arraignment. The person is informed of the charges and formally accused of the crime. The person is made aware of his or her rights. If the person is indigent, an attorney may be assigned. Decisions regarding pretrial release may be made. (See Bail/Pretrial Release, page 21.) *Crimes are classified according to degree: infractions (or violations), misdemeanors, and felonies. (See page 16–17.)* **Specialty Courts** Depending on the nature or circumstances of the crime, the person may be arraigned and/or prosecuted in a specialty court such as a drug court, mental health court, or domestic violence court. (See pages 32–34.)	The person is taken before a judge, and the charge is read. The person may or may not understand the charges. People with mental illness often try to figure out what the best response will be rather than being straightforward. If the person becomes confused, he or she may be unresponsive. The person may have difficulty communicating so that he or she is understood. Seldom are persons with mental illness accompanied by family, friends, or advocates.	**Judge, arresting officer, prosecutor, and defense counsel** **Deferred Prosecution** The prosecutor may offer, and the judge may approve, deferred prosecution of the charges if the person agrees to participate in a treatment or diversion program for a specified period of time and to successfully complete all program requirements. Charges may be dropped or reduced upon successful completion of the program. *Advocates should not talk to the prosecutor but can encourage defense counsel to request the prosecutor to consider deferred prosecution/diversion.* *An advocate may provide the defense attorney with information about the person's mental illness and the supports available to the person in the community. If possible, the advocate can offer to take responsibility for monitoring the person. Advocates should not promise more than they can deliver.*

PRELIMINARY HEARING

LOCATION: Court		
CRIMINAL PROCEDURE	**DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS**	**CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY***
For felony charges, the person may have a preliminary hearing. At this point the judge reviews the evidence to determine if there is sufficient evidence to hold the person.	The person usually remains in jail.	**Judge, prosecutor, defense attorney** The judge hears the arguments, the prosecutor accuses, the defense counsel can present evidence (although he or she rarely does).

DETENTION UNTIL CASE DISPOSITION

LOCATION: Jail

CRIMINAL PROCEDURE	DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS	CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY*
Detention until case disposition In some cases, the person is held in county jail until a mental health evaluation can be made for a pretrial release or deferred prosecution determination. It is possible that the person will undergo a competency evaluation as well. This evaluates whether or not the person is able to participate in his or her own defense. (See page 29.)	Jails are as unique as the communities in which they are located. In rural areas with low populations, the person with mental illness may experience isolation and few services. In locations with higher density populations, the person may be crowded into a cell with other people, many of whom may be predatory in nature. Jails are harsh environments with concrete, steel, and low lighting. They may be very hot or very cold. The anticipation of outcomes creates a high stress atmosphere that can generate a dangerous environment. The person with mental illness is at high risk for victimization. He or she may also be cut off from the mental health services available in the community. (See more about jail on page 34.)	**Corrections officers, jail health/ mental health staff** Some jails provide comprehensive mental health services, while others have consulting mental health providers who visit on an as needed basis. Jails have a constitutional duty to protect and a duty to treat. The most significant concerns are preventing violence and suicide. *If the individual is being held in jail, providers should be sure to contact established programs such as jail diversion.* *If there is no established program or protocol, advocates can visit or contact the person with mental illness or work with family or other supports to obtain the necessary permission and release forms. Providers can then contact jail health or mental health services, and a clear and succinct summary of pertinent treatment information should be made available to jail health and mental health staff.*

PLEAS AND PLEA BARGAINS

LOCATION: Court		
CRIMINAL PROCEDURE	**DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS**	**CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY***
Most cases are resolved without going to trial The prosecuting attorney and the defense attorney may discuss the possibility of a plea bargain. Plea bargaining can take many forms: • The prosecutor may offer to ask the judge for a reduced sentence if the person pleads guilty. • The prosecutor can offer to allow the person to plead guilty to a lesser charge. • Reduced sentencing may include conditions for treatment. The judge will make final decisions about sentencing and must approve all plea bargains.	The person with mental illness often believes that there is no hope of success at a trial and often accepts a plea bargain regardless of circumstances. Persons with mental illness don't usually have the resources to take a case to trial. The person with mental illness is often satisfied with anything that will get him or her out of jail. At the same time, he or she may have difficulty with the conditions accompanying release.	**Judge, prosecutor, defense attorney** The judge and prosecutor will have the safety of the community as their first priority. Judges and prosecutors may believe that persons with mental illness are a greater risk for violent behavior and that persons with mental illness respond poorly to treatment or probation. The defense attorney's priority is the best interests of his or her client; he or she will be seeking reduction of charges and consequences. *Some advocates may see pressuring the person into treatment as in the person's "best interest," whereas the defense attorney may believe that the least severe charge and the shortest sentence are in the person's "best interest."*

GRAND JURY

LOCATION: Court		
CRIMINAL PROCEDURE	**DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS**	**CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY***
Felony crimes are generally presented to a grand jury by a prosecutor. (Some state to state differences exist.) The grand jury determines if there is sufficient evidence to prosecute the individual. Thereafter, the person will be arraigned in court and enter a plea. Conditions of bail may be reviewed, and plea bargaining may take place at the arraignment.	Persons with mental illness rarely go to trial except in high profile cases. They usually do not have the resources or the supports for a thorough defense.	**Judge, grand jury, prosecuting attorney, defense counsel** The grand jury, like the trial jury, brings lay people into the decision-making process.

TRIAL

LOCATION: Court		
CRIMINAL PROCEDURE	**DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS**	**CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY***
Determining guilt A judge or a jury will decide whether or not the prosecutor has proven guilt beyond a reasonable doubt. In felony and serious misdemeanor cases, the defendant has a right to a jury trial. If this right is waived, the case can be tried to a judge (called a bench trial). **Beyond the trial** If found guilty, the defendant has a right to appeal, that is, request that a higher court review the trial for errors. The person may have a right to a new trial if errors are found. Appeals can be taken beyond the highest state courts to federal courts if the defendant contends that there has been a constitutional error.	The person with mental illness has little choice but to trust counsel. If dissatisfied, he or she may ask the judge to assign new counsel. There are some legal defenses that can be used by persons with serious mental illness such as *not guilty by reason of insanity (NGRI)*. NGRI is rarely used because it is extremely difficult to prove and is rarely successful. (See page 29.)	**Judge and/or a jury, prosecuting attorney, defense attorney, court clerks, court recorders, bailiff and others** (See pages 30–31.)

SENTENCING

LOCATION: Court		
CRIMINAL PROCEDURE	**DEFENDANTS/PERSONS WITH SERIOUS MENTAL ILLNESS**	**CRIMINAL JUSTICE PARTICIPANTS/ *ADVOCACY***
Sentencing If convicted, the person is sentenced by the judge. Judges are given guidelines by the legislature for sentencing and may have discretion in regard to how sentences will be imposed. The judge usually requests that the Department of Probation prepare a report (pre-sentence investigation report) containing information about the person's background and the circumstances of the crime; the sentence depends on a variety of factors, including the person's background. In addition, the court may allow or require *victim impact statements*. Sentences may include jail or prison terms, probation, conditional discharge, unconditional discharge, restitution, and fines. Sentences of probation often have a jail sentence as well that is waived if the person meets the conditions of probation.		**Judge, probation officer** The probation officer prepares a report to the court. This report can in fact be requested by the judge much earlier in the criminal process. *Advocates once again have an opportunity to affect outcomes by providing information to the probation department that the person has positive ties to the community, has been engaged in treatment, will have the support of mental health services, or can be monitored successfully.* *If a person is sentenced to probation, mental health providers may have an opportunity to facilitate involvement in treatment.* *If the person is sentenced to a jail or prison term, mental health providers should look for opportunities to help him or her access treatment. When it is time for the person to be released from incarceration, re-entry planning should involve treatment and case management services.*

Criminal Procedure Issues Relevant to Persons with Mental Illness

Competence to stand trial refers to whether a person's mental state *at the time of the criminal justice proceeding* is incapacitating. In many jurisdictions, a defendant who is seriously mentally ill can be declared incompetent to stand trial under the following circumstances:

- the person with mental illness is determined to be unable to understand the charges against him/her, and
- the person is unable to participate in his or her own defense due to the mental illness

Depending upon the nature of the crime, charges can be dropped and the individual hospitalized until the hospital determines that he or she can leave. With more serious offenses, the charges may be deferred, and the person may be sent to a hospital until he or she can participate in his or her defense (Feinman, 2000; Barr, 2001).

The **insanity defense** takes into consideration the defendant's mental state *at the time he or she committed the alleged criminal offense.* Also referred to as Not Guilty by Reason of Insanity (NGRI), this defense has engendered much controversy. The requirements to establish an insanity defense vary from state to state. In general, the defense posits that:

- the person was mentally incapable of understanding that his or her actions were wrong, or
- the person was not capable of understanding the consequences of his or her actions (Feinman, 2000; Bergman & Berman-Barrett, 2003).

The insanity defense is seldom used because it is a difficult defense to prove and is seldom successful when it is used. In many states, an individual who successfully argues an insanity defense will be committed to a secure hospital until it is determined that he or she is no longer a threat. Hospitalization is generally for a long period of time.

COMPONENTS OF THE JUSTICE SYSTEM

This section outlines the components of the justice system and the tasks and responsibilities of service providers.

Criminal Justice Professionals

(Pahigian & Lambert, 2000; Bergman & Berman-Barrett, 2003)

Law enforcement

Law enforcement and police officers are generally the responsibility of a branch of government that also determines the size of the force and its range of authority. County level law enforcement is usually a sheriff and sheriff's department. The county sheriff may be an elected official as might a city commissioner of police. On the state level, law enforcement officers are referred to as state police or state troopers. State troopers and county deputy sheriffs are generally highly trained and qualified. Each state has its own requirements for officers.

The primary responsibility of law enforcement is the safety of the community; each law enforcement agency can only enforce laws within their geographic boundaries.

Tasks of law enforcement officers usually include:

- investigation of crimes
- making arrests
- testifying in court
- responding to any community complaint
- responding to problems, including "emotionally disturbed persons"

Most law enforcement agencies provide a wide variety of protective and support services to their communities. Some law enforcement agencies offer a variety of protective and support services to their

communities. Some participate in diversion programs for persons with mental illness.

Pretrial services

Pretrial services that facilitate diversion may be available. These services may be staffed by individuals with advocacy and mental health backgrounds. Pretrial service programs provide information and options to the court for pretrial release decisions and supervise persons in the community to insure compliance with conditions of release imposed by the court.

Judges

Judges can be elected or appointed officials. Some judges are assigned to hear only misdemeanor cases, pretrial motions, or handle preliminary hearings. A magistrate might have authority to set bail, conduct arraignments, and issue search and arrest warrants, but not to conduct trials.

Typical tasks of judges include:

- conducting hearings
- ruling on pretrial issues (such as preliminary hearings and motions)
- determining how cases will be tried
- ruling on legal procedure (such as whether evidence is permissible)
- conducting bench trials (where the judge decides on the defendant's guilt or innocence)
- providing juries with instructions about the law and deliberation
- determining sentencing of convicted persons according to legislative sentencing guidelines

Courtroom clerks

Courtroom clerks are officials of the court. They provide assistance to the judge. Tasks might include:

- determining if the parties are present in the courtroom
- assisting in preparing bench warrants for those who do not appear
- preparing and maintaining the court docket (times and schedules of trials and hearings)
- administering oaths to witnesses, jurors, or interpreters
- marking and maintaining custody of exhibits entered into evidence
- managing court documents for the judge—indictments, bail orders, and other documents for a given case file

Law clerks

Law clerks can be lawyers or students who assist the judge. Tasks might include:

- conducting research into legal issues and assisting with legal questions before or during a trial
- assisting in drafting findings and conclusions for a judge

Bailiffs

Bailiffs are court officials who maintain courtroom order. The bailiff may also be a deputy sheriff. Primary tasks may include:

- removing disruptive spectators
- instructing attorneys where to stand when addressing the judge
- escorting juries to and from the jury room or jury box
- escorting defendants from holding cells into the court

Court reporters

Court reporters have been replaced in some jurisdictions by audio recordings. A court recorder has limited, but important, tasks such as:

- recording every word said during a court proceeding

- reading back testimony of a witness or a statement of an attorney upon request
- transcribing this information for the judge and for others upon request

Interpreters

Interpreters are provided by the courts for individuals who have difficulty understanding English or for people who are deaf. In some locations, interpreters must be certified as courtroom interpreters.

Jurors

Jurors are the individuals who compose the jury. These are lay people, randomly selected from the area local to the court. People are drafted by using voter registration lists or from motor vehicle records. Tasks of jurors typically include:

- evaluating evidence in a trial
- rendering verdicts
- making decisions based on the evidence as to whether or not the person is guilty of the crime beyond a reasonable doubt

Jurors do not comment on legal questions and do not decide upon sentencing except in some capital cases.

Parties to a case

Parties to a case include the government, who prosecutes the case (referred to either as "the people," "the state," or the prosecution), and the person accused of the crime (referred to as the "defendant").

Legal representatives

Legal representatives in criminal court are the individuals who speak for either the defense (defense counsel) or the government (prosecutors) and are referred to as attorneys, counsel, counselors, or lawyers. These individuals must be licensed to practice law. While an individual may represent him or herself, a friend or family member cannot provide legal representation.

Prosecutors are sometimes called district attorney, state's attorney, county attorney, or city attorney.

Defense counsel may be assigned to the defendant because he or she cannot afford an attorney. A *public defender* may be employed by a government agency or nonprofit organization such as a legal aid society. Counsel may also be assigned from a list of private attorneys. Public defenders and private assigned counsel may be very qualified for the job, but often they have heavy caseloads and may not be as available as the defendant might wish.

Typical tasks of attorneys include:

- presenting evidence and arguments in court
- making objections to evidence presented by the opposing counsel
- interviewing witnesses
- surveying crime scenes
- arranging for scientific tests and expert testimony
- conducting legal research
- drafting motions (requests to the court)
- counseling defendants about their options
- negotiating plea bargains or settlements

The Court System

While the criminal justice process has few variations from state to state, the court systems of each state have greater variations. Each state has some unique terminology and procedures in order to meet the laws and specific needs of the state.

Jurisdiction of a court may be limited, for example, to traffic violations, infraction of city ordinances, or low level crime. These courts might have titles such as municipal court, justices of the peace, police justices, or magistrate court. Courts of special jurisdiction might include responsibility for the probate of wills, as in the "probate court." Other courts may be given more general trial jurisdiction, such as a "superior

court" or "circuit court." Beyond this level are courts to which a defendant can appeal a case, "appellate courts." Each state also has a court of last resort, frequently called "supreme court" or "general court."

The court systems in most states separate civil from criminal matters. Criminal matters refer to violation of criminal laws including infractions, misdemeanors, and felonies as described earlier. Civil matters can include issues related to property, business, families, or other matters relating to civil law.

Specialty courts

Specialty courts can include any courts that have evolved to resolve certain issues in an efficient or targeted way. Treatment courts are a type of specialty court. These courts have evolved in an effort to promote *therapeutic jurisprudence*. This refers to the extent to which legal procedures, including the roles of judges and attorneys, attempt to create some therapeutic impact (Petrila, 2003). Judges and attorneys assume the role of promoting the psychological and physical well-being of the defendant. The court process attempts to reduce anti-therapeutic consequences to persons subject to legal proceedings. Therapeutic approaches have been employed by drug courts, mental health courts, juvenile courts, and domestic violence courts.

Drug courts

Drug courts were one of the earliest treatment court efforts. They were developed as a joint response by the court and the community to the overwhelming volume of drug-related cases. The focus was to meet treatment needs, respond to addiction as a disease, and to reduce recidivism. Drug courts use a team approach in the processes of decision making, evaluation, and development of treatment and service plans. Drug courts may have services specifically attached to the court or may utilize services existing in the community. Drug courts in the United States have many common elements including:

- judicial supervision of community-based treatment
- a designated judge for hearing drug court cases
- identification and referral to treatment of eligible defendants as soon as possible after arrest
- regular hearings to monitor progress and compliance

[Specialty courts] have evolved in an effort to promote therapeutic jurisprudence. This refers to the extent to which legal procedures, including the roles of judges and attorneys, attempt to create some therapeutic impact.

- the use of graduated sanctions and rewards to increase individual accountability
- drug testing
- specific treatment program requirements monitored by a judicial officer
- case dismissal or a reduced sentence upon completion of the program

(Petrila, 2003)

Mental health courts

Mental health courts have been evolving rapidly; however, there is no single model for mental health courts. A variety of services attached to the judicial system to serve persons with mental illness have been called mental health courts. Currently, there are no evidence-based conclusions about effective structures or interventions.

Steadman et al. (2001) recently described the existing mental health courts:

- All persons with mental illness identified for referral to community-based services on initial booking are handled on a single court docket.
- A courtroom team approach is used to arrive at recommended treatment and supervision plans, with a specific person designated to insure implementation of the plan.
- Judges often require assurances of existing appropriate treatment slots prior to ruling.
- The courts provide a mechanism for appropriate monitoring under the aegis of the court, with possible criminal sanctions for noncompliance, such as re-instituting continued charges or sentences.

If the goal of mental health courts is to provide access to services to a previously underserved population, it is imperative that services be expanded to meet this need rather than simply giving priority to this population at the expense of services to those persons with mental illness not involved in the criminal justice system.

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Juvenile courts

Juvenile courts are used by many jurisdictions to handle issues of juvenile delinquency and juvenile dependency. Juvenile

delinquency courts handle cases of children charged with crimes or offenses, while juvenile dependency courts fulfill the role of intervening in families where children are neglected or abused.

Domestic violence courts

Domestic violence courts are specialized courts dedicated to intervening in family violence. These courts are often separated as civil or criminal courts, but sometimes the domestic violence court will serve combined civil and criminal cases. Domestic violence courts often have attached services or referrals for victim assistance and treatment of perpetrators and victims.

In contrast, *family courts* are civil courts that hear cases relating to family issues. Family courts are not considered specialty courts but handle similar or related issues. Some family courts deal only with the custody and support of children. Others address the protection of children, adolescents, and senior citizens from physical or other abuse. Some family courts also have jurisdiction over problems of domestic violence and juvenile delinquency.

Correctional Facilities

(Pahigian & Lambert, 2000)

Jails

Jails are the primary detention facilities for counties and cities. They usually fall within the responsibility of the county sheriff's department and are run according to the determinations of local county government. Each county varies in its regulations and procedures, length of stay, population, physical plant, and available services. Local jails are as different as the communities in which they are located.

Primary purposes and responsibilities of jails include:

- holding or detention; keeping the person jailed until decisions about guilt or innocence are made; or keeping individuals on a temporary basis, until transferred to another facility
- providing incarceration for sentenced inmates, generally for up to one year
- maintaining the health and well-being of inmates
- some jails provide programs for alternatives to incarceration

Prisons

Prisons are correctional facilities that house people convicted of felony crimes with sentences that exceed twelve months. Many prisons are operated on a system of levels of security—maximum, medium, and minimum. Maximum security prisons are highly structured places with tight security and are easily recognized by the multiple razor wire fences that surround them. Generally, inmates are in single cells along "galleries" or "tiers." Medium and minimum security prisons are often converted from other institutions like schools or psychiatric facilities. The structure is somewhat more relaxed, and inmates are likely to live in dormitory settings.

Primary purposes and responsibilities of prisons include:

- incarceration and rehabilitation of persons convicted of crimes
- maintaining the health and well-being of inmates

Community Corrections and Probation or Parole Officers

(Pahigian & Lambert, 2000; Massaro et al., 2002; Center for Mental Health Services, 1995)

Probation

Probation Departments are county-run agencies responsible for services to the family and criminal courts and for supervising persons sentenced to probation.

Probation can be defined as "a sentence not involving confinement which imposes conditions and retains

authority in the sentencing court to modify the conditions of sentence or to re-sentence the offender" (American Bar Association, 1970). Probation sentences can be applied to either misdemeanors or felonies (usually only first time felony offenses). Probation also refers to the supervision of individuals sentenced to probation. (See page 7 for information about the conditions of probation.)

Probation officers generally have dual roles as peace officers and as social workers. They link individuals to a variety of treatment, rehabilitation, employment, or social services; offer guidance, direction, and motivation to persons on probation; and provide basic counseling to help the person avoid future criminal behavior.

Typical services or responsibilities of probation departments include:

- supervision
- investigations and court reports for criminal court, family court, or specialty courts
- restitution—ensuring that the person on probation pays a fine or completes community service

Some probation departments also conduct programs providing services as an alternative to incarceration (ATI programs).

Parole

Parole refers to both the decision of a prison parole board to release an individual to the community after serving part of the sentence and the supervision of the individual in the community. *Not all states have parole options.*

Parole departments have the primary responsibility of supervising people released from prison to the community. These agencies may also have the responsibility for determining who will be released from prison and when (operating within legislative guidelines). Parole departments are charged with protecting the community, reintegrating former inmates into the community, and creating opportunities for offenders to become productive law-abiding members of the community. Each state has unique guidelines for the operation of parole supervision and requirements of parole officers. Some states give parole officers the authority to carry weapons and make arrests.

Some responsibilities and services might include:

- keeping in regular contact with persons on parole
- linking persons on parole to services necessary for health, mental health, and well-being
- coordinating delivery of services
- helping motivate and guide the person on parole
- investigating alleged incidents of the person's noncompliance with the restrictions and mandates of parole (this may include mental health treatment)

(See pages 7–8 for more information on probation and parole.)

WORKING WITH THE CRIMINAL JUSTICE SYSTEM TO FACILITATE RECOVERY AND REHABILITATION

Advocating for Essential Services

Advocating for persons with mental illness in jail

If a person has been charged with a crime and is held in jail, mental health providers and advocates may be able to facilitate access to services in jail or upon release. Advocates and mental health providers must first determine if a client is being held in the jail. This is a matter of public record and can generally be determined through a telephone call to the jail.

If there is an established program or linkage to outside services, advocates should be sure to go through proper channels. Advocates and mental health service providers are guests within the correctional facility and must follow the rules, regulations, and decisions of correctional authorities. Security needs require the sheriff's department to maintain strictly organized procedures.

If there are no established programs or protocols, advocates or providers can visit or contact the person with mental illness to obtain a signed written authorization to release information (generally referred to as "a release" or "release form"). Then they can contact jail health or mental health services. A clear and succinct summary of pertinent treatment information, including diagnosis, medications/dosages, and suicide risk should be made available to jail health or mental health staff. Providers and advocates should be sure to offer contact information and assistance in re-entry planning without interfering with established programs.

Sometimes family members or friends will ask providers to contact jail mental health services. Due to confidentiality statutes, the mental health provider will not be able to provide information to the jail about the person's mental illness without obtaining appropriate releases from confidentiality. If the provider cannot contact the person with mental illness in the jail, a family member or friend may be able to contact the jail and express their concerns about the person and suggest that jail staff obtain a release of information to contact the mental health providers.

Another strategy is to plan in advance. Providers should always give persons with mental illness a business card and instruct them to request to have the provider contacted in case of any emergency.

Planning for possible involvement with the criminal justice system is strongly advised, particularly for those individuals who have had prior involvement. Providers can assist persons with mental illness in developing an emergency or crisis plan, advance directive, or wellness self-management plan. These are all plans that can be made in advance of a crisis situation (including arrests). The plan will spell out what the person with mental illness prefers. It can specify what he or she will do and how, what provider staff will do, and perhaps how family members can offer help or support. Information release forms to communicate with family members can specify the nature of the information to be exchanged and a time limit. These plans should be reviewed and revised regularly.

Diversion programs generally enter the process by first offering their services to the person with mental illness. If the individual agrees to participate in the diversion program, he or she will generally sign a release for the program to contact providers.

Once release forms are signed by the individual allowing the mental health provider to communicate with jail mental health staff, judges, defense attorneys, diversion programs, probation departments, and/or ATI programs, the mental health provider can assist the individual in obtaining services.

Working with defense attorneys

Most defense attorneys working with persons with mental illness do not have any specialized training in mental health. They may not recognize that the person has a mental illness and may not ask. They do, however, need information about the defendant's mental illness and the supports available to him or her in the community. The defense attorney is the advocate's best source of information about the defendant's case (Feinman, 2000; Barr, 2001).

The defense attorney may have a different perspective than family or providers about the best interest of the defendant. The attorney may not agree to recommend treatment in lieu of a sentence unless the length of the treatment intervention is proportionate to the sentence that would otherwise be imposed (Barr, 2001). For example, perhaps the person is charged with a crime that will easily be reduced to one that only involves a brief jail stay of a few days or weeks. Providers may wish to take the opportunity to coerce the person into treatment. However, if the treatment

requirement is for a substantially longer period of time than the potential sentence (e.g., 12 months), the attorney may not recommend this approach. The attorney may be concerned that if the person fails to fulfill the treatment requirement, he or she may be subject to the reinstatement of charges or have a more severe penalty imposed.

Providers and advocates should keep lines of communication open. They should offer assistance, and keep an open mind regarding the attorney's point of view.

Keys to successful advocacy

(Barr, 2001)

Be prepared

- It is generally important to respond quickly. Keeping a list of the names and telephone numbers of contacts within criminal justice agencies, local law enforcement, jail mental health, the public defenders office, the probation department, and any advocacy programs, is helpful.
- Providers and advocates should have pertinent information about the person such as identification number, arrest number, date of birth, social security number, and correct name on hand when making contacts with professionals in the criminal justice system.

Be persistent

- Contacting professionals in the criminal justice system is often difficult and trying. Extensive time in court, heavy caseloads, and extensive bureaucratic details often make it difficult for them to return telephone calls or give the advocate much time.
- Providers and advocates should leave telephone messages that clearly and completely communicate all necessary information.

Follow up regularly

- Providers and advocates should be sure to get confirmation that all information was received.
- It is important to get to the point quickly with each contact.
- It is useful for providers and advocates to write down the name and telephone number of each person with whom they speak on a person's behalf.

Practice diplomacy

- Providers and advocates should be polite.
- They should learn to be good negotiators.

A common goal

At times it may seem that providers of mental health services or advocates are in adversarial roles with professionals in the criminal justice system. In fact, everyone is working toward the common goal of increasing safety and well-being for everyone. The main difference is that mental health providers focus on the person's mental health as the greatest concern. Defense attorneys have the person's legal interests as their main concern. Jail staff will be concerned for each inmate's safety. Law enforcement, probation, and parole must balance concerns for the individual with the safety of the community. Working together, these goals can be met.

Traditionally, mental health providers have kept a distance from the criminal justice system. Many feel that contact with the justice system will compromise the level of trust that can be developed with persons with mental illness. In fact, evidence is emerging in support of partnering with the justice system. The following sections discuss various aspects of partnerships with the criminal justice system that can help to create continuous integrated networks of care.

Concerns About Partnering with the Criminal Justice System

Mental health providers may be reluctant to partner with the criminal justice system on the behalf of individual clients or through cross-system collaboration. Mental health providers have a range of concerns about partnering with the criminal justice system. Providers are concerned that the person with mental illness may see the provider in the same light as police officers, that is, as authority figures seeking to gain control over them. Some providers fear that such partnerships may diminish trust and compromise the person's right to confidentiality. These concerns are reasonable and should be addressed.

At the same time, partnerships with the criminal justice system may provide important opportunities to assist persons with mental illness, to protect access to mental health services, to support accountability, and to prevent subsequent arrest and incarceration.

Can partnering with the criminal justice system be in the person's best interest?

When mental health and criminal justice systems have cooperative relationships, persons with mental illness have much to gain. Such partnerships can create diversion and re-entry programs that help to:

- avoid jail time
- reconnect people to supports and services
- provide additional opportunities for coordination of services
- create and maintain the boundaries and structure that allow many people with mental illness to focus on their recovery

By diverting people with mental illness out of the criminal justice system toward treatment, several problems can be alleviated for the criminal justice system. These include:

- jail overcrowding
- burgeoning court dockets
- the cost of providing expensive medication and treatment services within the jail
- limited space for more serious felons

Partnerships with the criminal justice system may provide important opportunities to assist persons with mental illness, to protect access to mental health services, to support accountability, and to prevent subsequent arrest and incarceration.

Partnering with the criminal justice system can be advantageous for mental health providers as well:

- coordination and cooperation can help minimize the impact of treatment interruption
- continuous treatment provides opportunities for greater stability and fewer crises
- mandated treatment provides an additional source of motivation for treatment adherence

Reporting by Mental Health Providers Regarding Treatment Mandates

Mental health service providers who work with persons mandated to treatment may be asked to make reports. Reports may be requested by the supervision component of a diversion program or the probation department so that they in turn can report back to the court. In some cases, providers may be asked to report directly to a court. Parole officers may also request some type of report to provide to the parole agency or board.

It is important that mental health service providers come to an agreement with criminal justice professionals about the kinds of information that will be provided. It is also important that people mandated to treatment understand the nature of the information to be disclosed. While a complete exchange of information is not necessary, the criminal justice system often requires information about the person's participation and progress in treatment, including:

- Does the person keep treatment and other service appointments?
- Does the person actively participate in treatment?
- Is the person making progress?
- To what degree has the person complied with abstinence from alcohol and other drugs?
- Have there been any crisis situations and how were they handled?

People with mental illness and criminal justice involvement require a wide range of services. With multiple settings, services can become fragmented, with providers either duplicating services or working at cross purposes. The person in treatment can easily become overwhelmed with the number of different services, rules, routines, paper work, and appointments. Communication between service providers can be crucial to the person's success in mental health and addiction recovery and in avoiding recidivism. Often this recovery process is facilitated by providing case management services.

Communication and confidentiality

Mental health providers must obtain permission from the person with mental illness to release information in order to communicate with other service providers and criminal justice agencies. Each agency may have different requirements, language, and forms for release of information. All release forms must comply with state and federal laws. Releases are generally required whenever communication is necessary with any service provided outside the scope of a given agency, such as:

- housing programs
- case management services
- peer advocacy programs
- medical services
- detoxification programs
- drug treatment programs
- child protective services
- departments of social services

Releases are also necessary when communicating with the criminal justice system, including:

- diversion programs
- probation departments
- parole departments

- community corrections programs
- jail health or mental health services

A release of information should be narrowly tailored. It must specify the following:

- person receiving services
- program or person releasing the information
- person/persons or program to whom the information will be released
- purpose for providing the information
- specific nature of the information to be released
- length of time the permission is valid

Reporting regarding an individual's use of alcohol or drugs can take many forms. It is important to clarify in advance with criminal justice agencies and people mandated to treatment what such reporting will entail. For instance, a provider may report that an individual is "treatment compliant" but not provide specific details about the nature of the individual's treatment or participation. Alternatively, treatment providers may be asked to report any use of alcohol or drugs, even if the individual continues to participate in treatment.

Mental health providers may be required by law to report a person's danger to self or others or child abuse and neglect.

Mental health providers sometimes become frustrated when criminal justice professionals must withhold information. For example, a case manager may make a great effort to get housing for a particular individual, only to find out that the parole officer does not approve the housing arrangement and will not provide an explanation. The explanation may be that the proposed residence is in close proximity to the residence of a victim—information that the parole officer cannot legally disclose.

Communication can be facilitated if the nature of information to be disclosed, the mechanisms that allow for communication, and the constraints of agency policy are made clear to all parties.

Promising Practices to Help Meet the Challenges of Developing Partnerships

Each community has a unique constellation of service agencies, with strengths and weaknesses in delivering services to people with mental illness. Therefore, the partnerships created in a given community *must* reflect the community's specific needs and resources. Efforts to develop cooperative relationships often surface many obstacles and challenges, but across the country, human service and criminal justice professionals have been developing creative solutions and strategies to meet those challenges. Some of these strategies are briefly described below.

Memoranda of understanding (MOU) or interagency agreements

When agencies have identified the policies and procedures that encumber effective service delivery, it may be possible to intervene through formal agreements between agencies. Memoranda of understanding are formal agreements between public service agencies regarding cooperative efforts. These agreements can include provisions that facilitate communication. They can include agreements about the wording of release forms, the processes of obtaining releases, and the general areas that will be covered by releases so that staff are aware of what they can discuss. (Agreements must always meet state and federal requirements for confidentiality.) Agreements can also fulfill many other functions, such as defining referral processes. These types of agreements have been very successful in some locations. In New York State, the Office of Mental Health developed a cooperative relationship with the Division of Parole using a memorandum of understanding. Since this agreement was complex, the process involved passage of a mental hygiene law and a corrections law. Other types of agreements may be accomplished at the local level with less formality (Massaro et al., 2002; Center for Mental Health Services, 1995; Steadman et al., 1995).

Cross training

Bringing together a variety of human service providers and criminal justice professionals to receive training on a topic of mutual interest can be a very effective way to begin to develop partnerships. Each agency will receive the same information in regard to the issue focused on in training and participants will have an opportunity to develop collegial relationships. Both formally and informally, workers begin to develop greater understanding of each agency's:

- policy, procedures, and mandates
- technical language
- challenges in working with specific populations

Treatment teams/coalitions

Interagency agreements can establish teams of selected individuals to monitor the progress of a specific group of service recipients. For example, a cooperative venture between a probation department, drug abuse treatment program, mental health program and housing program came together to work with a group of women at high risk for relapse and recidivism. In order to participate in this joint program, the women were required to sign releases at each agency to facilitate communication. Supervisors or designated staff from each agency met once a week in a team meeting to discuss the progress of each woman and to mediate some of the challenges that arose between services. Treatment teams can provide a vehicle to:

- share information about treatment participation
- identify potential crises or review crisis management
- develop sanctions and responses to incidents that include therapeutic elements
- update treatment and supervision plans
- ensure proper communication with the courts

(Peters & Hills, 1997)

Treatment teams can also promote cross training, while coalitions identify gaps in services and facilitate continuous integrated services.

Bringing together a variety of human service providers and criminal justice professionals to receive training on a topic of mutual interest can be a very effective way to begin to develop partnerships.

Boundary spanners

A community can identify one or more "boundary spanners" to facilitate partnerships. These individuals facilitate communication and monitor cooperative efforts (Steadman et al., 1995).

Dedicated or specialized case loads

It may also be possible to identify specific staff at each agency to work with a given population. For example, a group of staff people at each agency (community mental health center, mental health case management program, and probation department) might be given the sole responsibility of working with individuals with co-occurring psychiatric and substance use disorders on probation. The designated population could be defined by a variety of parameters (such as age, gender, severity of offenses, severity of illness, or severity of substance use disorder). These staff would be given smaller caseloads in order to provide more intensive services and supervision. Staff working with dedicated caseloads should have specialized training and be given an opportunity to develop expertise in meeting the multiple needs of the identified population (Peters & Hills, 1997).

Coordinated agency crisis management

As part of a cooperative venture, mental health services might develop a plan with a criminal justice program (jail, probation, ATI) for managing psychiatric or other crises. Coordinating plans to manage crises can eliminate duplication of services and working at cross purposes. (Individual crisis plans should be developed by the person with mental illness and service providers.)

Joint efforts to establish conditions of behavior and consequences

Community corrections programs and mental health service providers can work together to decide upon special or specific conditions of probation or parole that relate to treatment and mental health service programming. This effort can include a joint discussion regarding appropriate sanctions for behaviors that violate service program rules or conditions of probation

As part of a cooperative venture, mental health services might develop a plan with a criminal justice program (jail, probation, ATI) for managing psychiatric or other crises. Coordinating plans to manage crises can eliminate duplication of services and working at cross purposes.

or parole. By developing graduated sanctions, the team can avoid "all or none" positions and strive to develop sanctions with a therapeutic impact.

When a person has been sentenced to probation or offered parole with conditions for mandated treatment, there are a variety of ways for providers and probation/parole officers (PO's) to proceed. Some of the strategies listed below can help with the development of a plan that best meets the person's needs and satisfies his or her obligations to the courts. These same approaches may apply to providers and diversion program monitors or supervisors.

- Most programs have rules and requirements. When programs specify consequences for rule violation, such as program dismissal, probation, or parole, officers can reinforce that program dismissal will result in probation or parole violation. This leverage can serve as one source of external motivation until internal motivation can be developed.
- When a treatment program protects an individual from the natural consequences of his or her behavior (for example, sanctions regarding general or specific conditions), it may foster irresponsibility and dependence. If probation/parole determines that the provider has been protecting the individual, it may damage the relationship and decrease the likelihood that probation/parole will consider future advocacy efforts of the mental health provider for that client or for other clients.
- Providers can encourage clients to inform their PO's when they are facing difficulties that may interfere with probation/parole obligations.
- Providers can assist PO's when individuals have not complied with program requirements and when they are in clear violation of probation/parole obligations. (The person will eventually be arrested or violated; providers can help the person by having someone intervene before the situation gets worse.) For minor infractions, providers can work with PO's to negotiate lesser sanctions.
- Both programs and community-based correctional services often require urine testing for drug use and/or breathalyzer testing for alcohol use. Community corrections and treatment programs can work together to determine the best process for testing and the best course of action if a person relapses. Relapse does not have to result in program dismissal or probation/parole violation. Graduated sanctions may be employed. This is best done as a cooperative venture.
- Joint home visits may sometimes be appropriate, particularly in localities where case management services are limited and case managers visit clients unaccompanied.
- In areas where it is difficult for the person to obtain transportation, meeting PO's at the treatment setting can save a great deal of time and energy. It not only makes it easier for the person to comply with meeting requirements, but it also saves the officer from tracking people down for missed appointments and rescheduling.
- With the cooperation of probation/parole, mental health providers have additional support when advocating for the person in obtaining other services (such as housing, health care, or vocational).

Providers Partnering with People with Mental illness

(Lawner, 2003; Howie-the-Harp Advocacy Center, 2003; SPECTRM Project, 1999)

People with mental illness who have been involved in the criminal justice system face the challenges of relapse to drugs and alcohol, managing symptoms of mental illness, histories of trauma, and layers of stigma. Many have lived for long periods of time in hospitals, jails, or prisons. Others have been victimized while living on the street. In order to engage people in services and facilitate recovery, providers must understand these experiences and the obstacles to developing therapeutic relationships. Partnerships begin with listening.

One of the most important sources of information about how to work with people with mental illness, co-occurring substance use disorders, and criminal justice involvement is often overlooked. That source is the people who have lived through these experiences. Listening carefully, particularly to those who have succeeded in recovery, will reveal a number of key issues:

- Recovery and maintaining wellness is possible.
- Recovery is a process with many gains and losses along the way.
- The best way for a provider to motivate people with mental illness is to take an interest in them as individuals.
- People with mental illness should be asked what they want and need in order to grow and to be well. Although providers may have an opinion about what is in the best interest of the person with mental illness, the individual will ultimately make those decisions.
- People with mental illness must be given the opportunity to make their own choices, even if those choices seem ill-advised.
- Providers can teach the skills to help the person accomplish personal goals.
- Hope is key to recovery. Providers can encourage that hope.

One of the most important sources of information about how to work with people with mental illness, co-occurring substance use disorders, and criminal justice involvement is ... the people who have lived through these experiences.

"I often felt that providers looked at me like I was different from them, less of a person. It took a long time for me to trust providers. I understand now that many of them just didn't have a clue about the kinds of experiences I have had in my life that have to do with my mental illness or drug problems."

"When you're in jail or prison or living on the street, you learn ways to survive. When you get out of that situation, you still act the same. And that just doesn't work in programs. You all (providers), just need to be patient and give us time. It is gonna take much longer for us to change from those jailin' behaviors."

"The jail house is no place to be. People get cut. People lose their commissary. There is no help for you in the jail house."

"I'm not signing that treatment plan! I just can't do all this stuff. You might just as well put me back in jail now." (A woman who knew that the proposed requirements were beyond her abilities.)

"The most important thing is to feel like someone respects you. Now providers may be friendly and all, but I wouldn't give them the time of day. But this one guy, he just said good-morning to me every day and treated me like a person. Eventually, I did finally say good-mornin' back."

"My current therapist is the first person who believed in me. Even though I kept messing up. Even when all I would do was sleep on the couch in day treatment. She believed in me, and then one day I started to believe in myself."

"The thing that made a difference for me was my one case manager. In the past, when I would get mad and start cussin', providers would always tell me to stop using bad language and start 'acting appropriately.' But this one case manager, she would let me express myself in my own way, and she helped me a lot. She hasn't been my case manager for years, but we still talk about once a month and I know that she will help me if I need it."

Partnerships with people with mental illness who have become involved in the criminal justice system can take many forms. People with mental illness can and should play a significant role in the planning and delivery of services, including but not limited to:

- assessing service needs and gaps in services
- participation in community coalitions
- input on safety procedures
- involvement in staff training
- delivering advocacy services
- organizing support programs and delivering support services
- providing case management

Partnering with families

The problems of people with mental illness who have become involved in the criminal justice system can create serious strain within families. Sometimes families are a source of additional stress, but more often they are a key source of support. Family members have long-term experience with the person with mental illness. They can often provide insight about what is helpful, what is not helpful, and what is important to their family member with mental illness.

Families of persons with mental illness have been a major impetus in the development of crisis intervention teams, diversion services, and mental health courts. They have become essential agents of change, lobbying for laws that protect persons with mental illness and enhance services for those involved in the criminal justice system.

Family members and family associations should be invited to the table when developing coalitions and planning services and procedures. They have a strong voice that is heard in communities across the nation.

SUMMARY

Providers of mental health services and criminal justice professionals face the growing challenge of providing services to people with mental illness in ways that help to avoid the cycle of arrest and incarceration. The innovative approaches that are emerging to meet these challenges become most effective when implemented through community coalitions and partnerships between the mental health and criminal justice systems. Mental health providers can prepare for these partnerships by learning about the needs and experiences of people with mental illness in the justice system, understanding criminal justice procedure, and exploring opportunities to assist individuals with mental illness who become involved with the criminal justice system.

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The TAPA Center

The TAPA Center was funded by the Center for Mental Health Services (CMHS) of the Substance Abuse and Mental Health Services Administration (SAMHSA) via the Targeted Capacity Expansion (TCE) Grants for Jail Diversion Programs to address the **T**echnical **A**ssistance and **P**olicy **A**nalysis needs of communities in developing programs to divert people with mental illness from jail into community-based treatment and supports.

The TAPA Center for Jail Diversion is a branch of the National GAINS Center. As such, it prioritizes jail diversion within the GAINS Center, which focuses on people with co-occurring disorders at all points of contact with the criminal justice system.

Visit the TAPA Center website for links to numerous resources: www.tapacenter.org

Contact information for the resources in this document:

RESOURCE	ADDRESS/PHONE	WEBSITE/EMAIL
Bazelon Center for Mental Health Law	Bazelon Center for Mental Health Law 1101 15th Street, NW, Suite 1212 Washington, DC 20005 202.467.5730	www.bazelon.org
Center for Alternative Sentencing and Employment Services	CASES 346 Broadway, 3rd Floor New York, NY 10013 212.732.0076	www.cases.org
Center for Mental Health Services	PO Box 42557 Washington, DC 20015 800.789.2647	www.mentalhealth.samhsa.gov
Criminal Justice/Mental Health Consensus Project	Council of State Governments/ Eastern Regional Conference 40 Broad Street, Suite 2050 New York, NY 10004 212.482.2320	www.consensusproject.org
National GAINS Center for People with Co-Occurring Disorders in the Justice System	Policy Research Associates, Inc. 345 Delaware Avenue Delmar, NY 12054 800.311.GAIN	gainscenter.samhsa.gov

Howie T. Harp Advocacy Center/Forensic Peer Specialist Program	2090 Adam Clayton Powell Blvd. 12th Floor New York, NY 10027 212.865.0775	
MacArthur Foundation Research Network on Mental Health and the Law		www.macarthur.virginia.edu/mentalhome.html
National Alliance on Mental Illness / New York State	NAMI NYS 260 Washington Avenue Albany, NY 12210 518.462.2000	www.naminys.org
National Mental Health Association	2001 North Beauregard Street 12th Floor Alexandria, VA 22311 703.684.7722 Resource Center 800.969.NMHA	www.nmha.org
SPECTRM Project	Bronx Psychiatric Center 1500 Waters Place Bronx, NY 10461-2796 718.862.4746	SPECTRM@EROLS.COM
Urban Justice Center	Urban Justice Center Mental Health Project 666 Broadway 10th Floor New York, NY 10012 646.602.5600	www.urbanjustice.org