

# Mental

In 2008, more than two million adults were incarcerated in the U.S., nearly one percent of the entire population, according to a 2008 report by the Pew Center on the States. Equally grim is the economic toll. In 2007, states spent more than \$49 billion on prisons. And yet, says the report, all that expensive prison time has not reduced the crime rate.

More disturbing is the fact that a disproportionate number of offenders languishing behind bars shouldn't be there in the first place. Their crimes are a consequence of severe, untreated mental illnesses, such as major depression, schizophrenia and bipolar disorder.

Wouldn't treating these defendants' illnesses and keeping them out of prison perhaps contribute to a more humane, effective and less costly criminal justice system?

Today, more than 150 mental health courts operating in over half the states in the U.S. are answering that question with a resounding "yes." Since their inception in the late 1990s, mental health courts have been successfully keeping people with severe mental illnesses who have committed crimes out of prison. Mentally ill defendants are receiving community-based mental health treatments and close court supervision, and are being guided toward full reintegration.

## THE RISE OF MENTAL HEALTH COURTS

Mental health courts are the latest addition to a national movement toward "problem-solving" courts. The first of these were drug courts, starting in Florida in 1989, and soon after in New York. These courts kept addicts out of prison while successfully treating the addictions—the root causes of their crimes. Other problem-solving courts, using some of the principles

# Health Courts

Positive Changes in the Criminal Justice System for Consumers and Society

developed by the drug courts, soon followed—homelessness courts, domestic violence courts and, most recently, mental health courts.

Like other problem-solving courts, mental health courts seek to keep defendants out of prison while they address the underlying social and medical conditions that have led defendants to criminal behaviors. Upon "graduation" from the mental health courts, typically a 12–24 month program, the great majority of these defendants successfully move on, their criminal records expunged.

Mental health courts differ widely from state to state and even within states in how they're organized and how they operate, but they all share certain traits (see sidebar). Generally, mental health courts are team courts, made up of a state's attorneys, public defenders, judges, probation or pretrial officers and caseworkers from health departments. Also on the team are psychiatrists, counselors, psychologists, job counselors and social workers. Partnerships are formed between the courts and mental health institutions, including local clubhouses.

Gone is the traditional adversarial relationship between the district attorney and the defense attorney, as well as lawyers' traditional role as liaison between judge and defendant. Here, judges interact directly, and very personally, with mentally ill defendants, each of whom has voluntarily agreed to be in the program.

## A COURT GROWS IN BROOKLYN

One of the nation's most pioneering and respected models, the Brooklyn Mental Health Court, was started six years ago as a joint project of the New York State Unified Court System, the New York State Office of Mental Health and the Center

for Court Innovation, a private-public partnership that serves as a think tank for the legal system. Charles J. Hynes, District Attorney in Brooklyn, and public defender agencies gave strong support to the project.

"When we started the planning process, there were only a handful of mental health courts in the country," says Carol Fisler, Director of Mental Health Court Programs at the Center for Court Innovation. New York State Chief Judge Judith S. Kaye, who has been a leader in developing problem-solving courts, wanted New York's courts to provide a more meaningful approach to defendants with mental illness.

Today, New York has the most formalized statewide mental health courts in the country. Other states' mental health courts are controlled at the county or municipal level, creating a patchwork of differing systems. Even across New York State much variability exists.

"Mental health courts were originally misdemeanor courts," Fisler says, "but we're one of the few mental health courts that takes on violent felonies. The bottom line is, each court has to reflect the political will of its locality."

Including violent felony cases in mental health courts was a controversial position for New York to take. Society needs to be physically protected against violent felons, regardless of whether or not they were delusional or otherwise psychotic during their criminal actions. While the research is still preliminary, evidence so far indicates that mental health courts are working to keep society safe while helping defendants gain the treatments they need.

As Judge Matthew J. D'Emic, who presides over the Brooklyn Mental Health Court, wrote in an article in *Criminal Justice* in 2007, "... prior to the inception of mental health courts, judges, district attorneys, and defense lawyers had only two choices when faced with mentally ill defendants: plea or trial. Mental health courts offer a third option: treatment as an alternative to incarceration with safeguards for public safety. The preliminary research is promising."

## A DAY IN MENTAL HEALTH COURT

Defendants in the Brooklyn Mental Health Court have each pleaded guilty to a crime, an indication that they accept responsibility for the crime and a prerequisite for entering the program. Before their court appearance, they've already undergone psychiatric evaluation and received a diagnosis of mental illness. The district attorney, the defendant's attorney and the judge have all agreed to let the defendant, who must also agree, to enter the mental health court system. One important requirement of Judge D'Emic's court is that the victim of the crime must also consent to have the defendant participate in a mental health court and to have the opportunity to avoid prison and get well. Surprisingly, most victims agree.

It's Tuesday in Brooklyn—mental health court day. Earlier in the day, Lucille Jackson, project and clinical director of the Brooklyn Mental Health Court, met with Judge D'Emic in his chambers to go over the eighty or so cases to be heard today. They range from the serious to the very serious: arson, assault, theft, drug dealing, and so on.

"These are pitiful cases," says Jackson, a licensed clinical social worker. "It's not that there hasn't been a crime, there has,

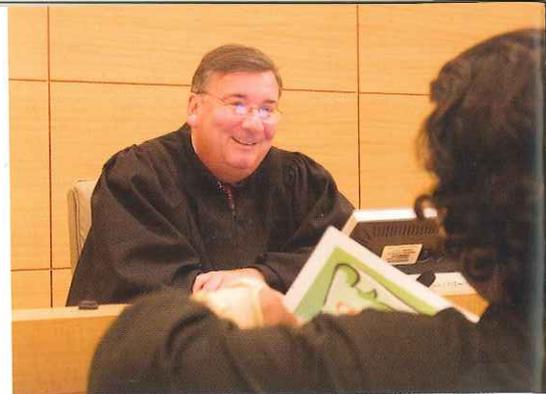
## What distinguishes a mental health court?

- A team approach that involves information sharing among judges, attorneys, probation staff, and mental health professionals
- Screening and assessment of the problem(s) occurs early in the criminal justice process
- Diversion from traditional criminal justice processing into treatment
- Early intervention in the criminal justice process
- An emphasis on problem solving and developing interventions/treatment to reduce the likelihood of reoffending
- A focus on continuity of care with treatment tailored to fit individual needs and circumstances
- A strong focus on supervision
- Defendants' understanding that the primary focus of the mental health court is on treatment and not adjudication of their case
- Understanding by mentally ill defendants that their participation in the mental health court is voluntary
- More personal interaction between the judge and the mentally ill defendant than in a traditional court
- The use of rewards and sanctions

[www.ojp.usdoj.gov/BJA/evaluation/psi\\_courts/mh1.htm](http://www.ojp.usdoj.gov/BJA/evaluation/psi_courts/mh1.htm)

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Judge Matthew J. D'Emic, presiding over the Brooklyn Mental Health Court, awards a certificate of progress.



but they're still pitiful. Our first priority is to try and get these people home, and that's even if they have substance-abuse disorders."

It's a typical courtroom every other day of the week. But today, being Tuesday, this court functions very differently.

People of every class and race are now assembled in the gallery quietly talking to one another. Many family members of defendants are present, and thus a sort of court community has been formed.

Judge D'Emic calls the court to order and suddenly shouts out, "How is everyone today?"

"Fine, fine, Judge, doing okay, fine," come the answers. One voice rings out louder than the others: "I'm enjoying my freedom very much, Judge."

"Great. Glad to hear it," says Judge D'Emic.

Project and Clinical Director Jackson is in constant motion. She confers with Judge D'Emic at the bench, moves on to speak quietly with a family member, then to a court officer, to an attorney, a defendant and so on.

Judge D'Emic keeps case after case running smoothly, but informality prevails.

The judge, who has studied with mental health professionals to become more familiar with mental illnesses and treatment options, personally interacts with each defendant and their lawyer, discussing progress. If this is a defendant's first appearance in the court, brief legal proceedings put the mental health court apparatus into motion.

Judge D'Emic questions defendants entering the court for the first time. "Do you plead guilty?" "Yes." "Are you guilty?" "Yes." "Did anyone force you to plead

guilty?" "No." "Did you on December 20, 2006 cause bodily harm to \_\_\_\_\_ with a dangerous weapon?" "Yes." "Do you understand that if you don't follow your treatment program you could go to prison?" "Yes."

In the Brooklyn Mental Health Court, about 40 percent of the cases are violent felonies. Amazingly, some eligible defendants choose to stay out of the mental health court, preferring to do their time. Jackson explains that some defendants and their families believe there is less stigma attached to imprisonment than to mental illness.

Defendants appear regularly in court so the judge can check, in coordination with Jackson and her team of social workers, the defendants' adherence to a treatment regimen and community-based services. The length of time between their court appearances can gradually be lengthened—from once a week to once a month or longer—if the regimen is followed. If not, defendants' lapses can result in various punitive actions and ultimately imprisonment.

Judge D'Emic is affable, firm and decisive. Defendant after defendant enters the docket, each a central player in what usually is a heart-wrenching story. But, thanks to the mental health court and its dedicated team, it's also a story of hope.

More than 80 percent of defendants successfully graduate the program. Along the way, defendants receive certificates of progress marking their completion of one of four phases of the program. When Judge D'Emic awards a certificate, the whole courtroom erupts in thunderous applause. The recipients' faces glow with pride and joy. **RT**