



**Delaware Supreme Court
Task Force on
Criminal Justice
and
Mental Health**

Updated Status Report

March 2013

**DELAWARE SUPREME COURT TASK FORCE ON CRIMINAL
JUSTICE AND MENTAL HEALTH**

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Justice, Supreme Court of Delaware

Hon. Jan R. Jurden
Judge, Superior Court of Delaware

Task Force Subcommittees and Chairs:

Communication, Collaboration, and Resource Allocation Subcommittee

Chair: Hon. Jan R. Jurden
Judge, Superior Court of Delaware

Education, Prevention, and Victims' Rights Subcommittee

Chair: Vivian L. Rapposelli
Judge, Superior Court of Delaware

Identification, Assessment, and Treatment Subcommittee

Chair: Dr. Carol A. Tavani, MD, MS, DF AP A
Executive Director, Christiana Psychiatric Services

Juvenile Subcommittee

Chair: Hon. Jan R. Jurden
Judge, Superior Court of Delaware

Mental Health Courts Subcommittee

Chair: Hon. Anne Hartnett Reigle
Judge, Delaware Court of Common Pleas

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Hon. Andrea Maybee Freud
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Hon. Alicia B. Howard
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I. Introduction

A. Importance of Addressing Criminal Justice Involved Individuals with Mental Illnesses

The frequency with which people with mental illnesses enter our criminal justice system and the particular issues they present once in the system are critical issues across the nation and in Delaware. Although estimated prevalence rates for mental illness vary from study to study, research has repeatedly demonstrated that correctional populations have higher rates of mental illness than the general populations. For instance, national statistics show that 24% of state prisoners had received a clinical diagnosis or treatment by a mental health professional within the past 12 months. When prisoners with symptoms of a mental disorder were also included, statistics show that 56% of state prisoners had a mental health problem.¹ Some estimates suggest that as many as two million men and women with mental health problems are involved with our country's community corrections, jail, and prison systems.² Furthermore, mental health problems are often compounded by co-morbid substance problems. For example, approximately 74% of state prisoners and 76% of jail populations with mental health problems also reported substance dependence or abuse.³ Research has found female inmates to have even higher rates of mental illness.⁴ An investigation of Delaware's correction system undertaken by the Civil Rights Division of the United States Department of Justice has highlighted how treatment of prisoners with mental illness has been exacerbated due to the high rate of prisoners with mental illness. By the early 2000s, it became increasingly clear that the criminal justice system had become the

¹ U.S. Department of Justice, Bureau of Justice Statistics, *Mental Health Problems of Prison and Jail Inmates* (September 2006) ("DOJ").

² National Institute of Corrections, *About Corrections & Mental Health Update* (November 2012).

³ *Ibid.*

⁴ Shelli B. Rossman et. al., *Criminal Justice Interventions for Offenders with Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn, New York* (April 2012).

primary response to inappropriate behaviors by the mentally ill, and that persons with mental illness were over-represented within the criminal justice populations.⁵ While remedial actions are being undertaken by the corrections system, many of those with mental illnesses would be better treated by diversion, rather than being incarcerated, especially since slightly over half (51%) of state prison inmates with mental health problems were incarcerated for non-violent offenses.⁶

B. Creation of the Delaware Supreme Court Task Force on Criminal Justice and Mental Health

In 2008, Delaware began on a course to confront the growing and complex issues presented by people with mental illness who become involved in the criminal justice system. Recognizing this growing problem, Delaware has made substantial efforts to divert appropriate defendants with mental illnesses from the criminal justice system and to ensure better treatment and handling of mental illnesses for those who do become involved with the criminal justice system. As a result of its efforts, Delaware was selected by the Council of State Governments (CSG) as one of only four states in the nation to participate in the Chief Justices' Criminal Justice/Mental Health Leadership Initiative. The goal of the initiative is to better understand and address the issues of diverting appropriate individuals with mental illness from the criminal justice system and the treatment of criminal justice involved individuals with mental illnesses.

To lead Delaware's efforts, Chief Justice Myron T. Steele formed the Delaware Supreme Court Task Force on Criminal Justice and Mental Health and designated Delaware Supreme Court Justice Henry duPont Ridgely as Chair of the Task Force. Superior Court Judge Jan Jurden joined Justice Ridgely as co-chair in the Winter of 2012. The Task Force has brought together representatives of the judicial, legislative, and executive branches of state government

⁵ See, Rossman.

⁶ See, DOJ.

with community leaders of nonprofit organizations, and others, both to help individuals with mental illness avoid contact with the criminal justice system and to develop ways to improve outcomes for people with mental illnesses engaged with the criminal justice system.

C. Charge of the Task Force

The Chief Justice's charge to the Task Force was as follows:

[T]o develop recommendations to policymakers to improve early identification, prevention and system-wide responses to persons with mental illness involved in the entry into the criminal justice system or re-entry into the community through inter-branch communication, collaboration and allocation of resources for the education of the criminal justice community, the identification of juvenile and adult defendants in need of mental health treatment, the enhancement of victim's rights and the referral, when appropriate, of defendants with mental illness to mental health courts established in each county for judicially supervised community-based treatment.

To carry out the work of the work of the Task Force, the following subcommittees were established:

- Communication, Collaboration, and Resource Allocation Subcommittee
Chair: Hon. Jan R. Jurden
Judge, Superior Court of Delaware
- Education, Prevention, and Victim's Rights Subcommittee
Chair: Dwight F. Holden
Chairperson, Delaware Board of Parole
- Identification, Assessment, and Treatment Subcommittee
Chair: Dr. Carol A. Tavani, MD, MS, DFAPA
Psychiatric Services, Christiana Care Mental Health Unit
- Juvenile Subcommittee
Chair: Hon. Jan R. Jurden
Judge, Superior Court of Delaware
- Mental Health Courts Subcommittee
Chair: Hon. Anne Hartnett Reigle
Judge, Delaware Court of Common Pleas

Each subcommittee has been tasked with addressing specific areas of concern related to criminal

justice involved individuals with mental illnesses and with developing concrete action plans to address those concerns. Subcommittees met regularly and report back to the Task Force.

D. The Strategic Plan

Since the inception of the Task Force, Delaware has embarked on numerous new initiatives based on a strategic plan which was developed by the Task Force in 2010 (the “Plan”). Applying the Sequential Intercept Model developed by Mark R. Munetz, M.D. and Patricia A. Griffin, Ph.D., the Plan identified a number of intercept points in the Delaware criminal justice system as opportunities for linking people to appropriate services and preventing further involvement with the criminal justice system. By setting specific objective, the Plan has provided a comprehensive blueprint for diverting individuals with mental illnesses, when appropriate, for improving outcomes for those with mental illness who are already engaged with the criminal justice system, for reducing criminal justice costs, and for improving public safety and public health. To guide implementation, the Plan recommends that each objective should be evaluated at regular intervals to identify obstacles, successes, and areas for improvement.

Over the course of the past two years, stakeholders from across the criminal justice system (including the courts, law enforcement, state agencies and community service providers) have worked together to identify individuals with mental illnesses and provide efficient and responsive treatment to individuals either in the community or, where diversion is not appropriate, in the criminal justice system. Nearing the end of the second year of the Plan, the subcommittees, at the direction of Justice Ridgely, completed a review of the progress made to date on the objectives identified under the Plan. The subcommittees were asked to identify progress on work completed to date and to note additional recommendations for the next steps in the areas of concern assigned to each subcommittee and consistent with the charge of the Task

Force. The reports from the subcommittees are set forth below.

II. The Subcommittee Reports

A. Communications, Collaboration and Resource Allocation Subcommittee

Achievements:

- (1) A Medication Transfer Worksheet should now be available in each courtroom in Superior Court. The subcommittee is working towards all courts utilizing the form so that medication is continued upon incarceration. Communication between the courts and various stakeholders has been critical in achieving this goal.
- (2) The Superior Court Mental Health Court in New Castle County successfully expanded their program to include a diversion model.
- (3) The subcommittee made significant advances in the area of education of judicial officers and criminal justice practitioners including the following:
 - a. Kevin A. Huckshorn, Director of the Divisions of Substance Abuse and Mental Health and Marc D. Richman, Ph.D., Assistant Director for Community Mental Health and Addiction Services Division of Substance Abuse and Mental Health-State of Delaware, presented at the Superior Court Judicial Retreat in the Spring of 2012;
 - b. Dr. Clarence Watson, Psychiatrist, Delaware Psychiatric Center, presented at the Superior Court Judicial Retreat in the spring of 2012 on Mental Illness: A Primer for Judges. The presentation included information on signs, symptoms and medications;
 - c. David Mee-Lee, M.D., a world renowned expert on co-occurring disorders, spoke to the Superior Court on August 28, 2012 and the Court of Common Pleas Drug Diversion Program Staff on August 29, 2012 and presented at the Family Court Joint Meeting on Sept. 13, 2012
 - d. Dr. Mee-Lee, DSAMH's Marc Richman, Ph.D., and Director Huckshorn presented at the statewide Judicial Retreat in October 2012;
 - e. Georgiana Staley provided instruction on a Mental Health module at the basic probation officer training in the Fall of 2012;
 - f. Chief Welch and Vinnie Fabber made presentations to the Superior Court Judge on September 5th, 2012 about Connections programming within the prison;

g. Georgiana Staley is coordinating training for the Medical Examiner's office in effective communication to victims.

(4) The Information Sharing Order which was created to provide critical information about an individual's treatment history as that individual moves within the criminal justice system is being honored by most mental health and substance abuse institutions without any issues;

(5) Care packages are being made for homeless individuals with mental illness.

Priority Recommendation: Previous crisis intervention training was successful. Training of police and probation officers in crisis-intervention should occur on an annual basis.

Priority Recommendation: A recidivism study for the general population does not exist. The Subcommittee recommends that a recidivism study be completed with the assistance of the Criminal Justice Council and/or a research organization. Recidivism studies should be completed for all problem-solving courts. This may be best achieved through the creation of a separate committee consisting of judicial officers and relevant judicial staff that could consider system wide efficiencies and data sharing options that would allow for a more effective use of limited resources and forum to discuss the most effective data collection methods to target recidivism rates.

Priority Recommendation: Explore and develop peer support for justice involved individuals with mental illness. The AOC should coordinate the feasibility of peer supports with the Council of State Governments and the Division of Substance Abuse and Mental Health.

Recommendation: A working group should be established to create a mental health file in DELJIS. DHSS information needs to be loaded into DELJIS for the purposes of issuing a gun permit and for SWAT situations. The working group should consist of Director Huckshorn and/or Marc Richman, Debbie Gaulchuck, Ilona Kirshon and DELJIS staff.

Recommendation: Explore Medicaid payment for peer supports. Currently, Medicaid will not pay for peer support.

Recommendation: Mental Health Courts operating without diversion models should explore implementing diversion models.

Recommendation: Form a subcommittee consisting of Judge Jurden and Georgiana Staley to develop a resource toolkit for Mental Health Court participants upon graduation.

Recommendation: Provide access to JIC's Case Management System to the Justice of the Peace Courts because Mental Health/Problem-Solving Court information could provide critical information to the Judges when making bail decisions. Additionally, early identification of potential mental health issues is important as the defendant proceeds through the system.

Recommendation: Family Court will explore medication access and formulary issues with juveniles.

B. Education/Prevention/Victim's Subcommittee

Achievements: The subcommittee did not discuss any achievements.

Recommendation(s): The subcommittee believes that a new chair of the subcommittee should be appointed and the subcommittee should focus on the following areas:

- (1) Educating the general public on mental illness as a medically treatable illness;
- (2) Educating victims in the ability to access mental health treatment services; and
- (3) Educating individuals on the dangers of use of drugs and alcohol with mental health issues.

C. Identification, Assessment, and Treatment Subcommittee

Achievements:

- (1) Creation of a transition plan including maintaining appropriate medications when a patient returns to the Department of Corrections' custody from the Delaware Psychiatric Center.
- (2) Development of standardized information for primary care consultation. Dr. Tavani worked with Dr. Mark Borer on the adaptation of the primary care consultation for the Department of Correction.
- (3) Dr. Tavani will be presenting at the Family Court Judicial Retreat in September 2012 on mental health issues.

Recommendation: Review the formularies at both the Department of Correction and the Division of Substance Abuse and Mental Health to ensure that the formularies match. A study should be completed to determine if participants who receive medication upon release to the community are less likely to recidivate versus participants who do not receive medication.

Recommendation: Educate the medical community about issues facing justice involved individuals with mental illness.

Recommendation: Increase information sharing between the Mental Health Court subcommittee and the Identification/Assessment/Treatment subcommittee.

D. Juvenile Subcommittee

Achievements:

- (1) The Juvenile Subcommittee has identified issues with children and possible areas of improvement.
- (2) The Juvenile Subcommittee developed an interdisciplinary working subcommittee.
- (3) Members of the Juvenile Subcommittee trained Justice of the Peace Court Judges on Mental Health Issues. The training focused, in part, on the interplay between truancy and mental health issues.

Priority Recommendation: Include a representative from DSAMH to the subcommittee.

Priority Recommendation: Investigate the feasibility of a youth transition program in order to fill the gap of, what appears to be, a lack of services for young adults (Ages 16-21) who transition into the adult system. To accomplish this, the following steps should be taken:

- Create a working group to look at the feasibility of this program and other model programs that include general medical care, reentry and mental health.
 - Key stakeholders on this committee would include, but not be limited to, representatives from the Department of Education (Secretary's Office), Division of Disability Services, Division of Substance Abuse and Mental Health, the Department of Services for Children, Youth, and their Families (DDCYF), the Department of Correction and a representative from a youth agency.
 - The working group should explore the possibility of identifying a designated transition team for youth transitioning to the adult system.

Priority Recommendation: Crisis Intervention training should include modules on juveniles and developmental disabilities.

Recommendation: Improve communication between the DDCYF, the Department of Correction and the Department of Health and Social Services in an effort to better improve the transfer of records when children transition from the youth correctional/mental health system to the adult correctional/mental health system.

- Explore creating a memorandum of understanding between these agencies to address this issue.

Recommendation: Improve communication/collaboration with the Department of Education – to improve responses by school and court to justice involved youth with mental health issues.

Recommendation: Meet with the Division of Developmental Disabilities Services to discuss services available for justice involved youth with mental health issues.

Recommendation: Study and identify a comprehensive screening and assessment that can be used statewide for developmental disabilities.

- Create a working group consisting of Dr. Fank, Dr. Mensch and Dr. Kramer to investigate the development of a screening and assessment tool.
 - The working group may want to solicit advice from DDCYF, the Criminal Justice Council and/or an educational institution.
 - The screening instrument should be well-defined with appropriate metrics.

E. Mental Health Courts Subcommittee

Achievements:

- (1) Statewide expansion of Mental Health Court in Superior Court, Family Court and the Court of Common Pleas is complete.
- (2) Best practices training has been offered to all judicial officers and mental health court staff.
- (3) Continue to build relationships with stakeholders to increase communication and cooperation.

Priority Recommendation: Information sharing between stakeholders is still an issue. The ability to flag and follow a litigant with a mental illness as they proceed through the system is still not possible. Additionally, system efficiencies could be enhanced with cross-court communications. Finally, recidivism data is lacking which limits the ability to assess and evaluate current programs. The Judicial branch should consider the creation of a problem-solving court committee to include other courts to explore information sharing and technology needs. This new committee will explore the creation of a searchable state data system that can cross check mental health history with the current criminal justice database. Additionally, the committee should look to complete a recidivism study which would provide performance based measures to evaluate the effectiveness of programming and offer potential solutions targeted at increasing system-wide efficiencies.

Recommendation: Provide training to Justice of the Peace Court staff which will allow them to identify and recognize individuals demonstrating signs of mental illness at the early stages of court involvement.

- Dr. Gerard Gallucci, Medical Director, DHSS will assess the potential of creating a train-the-trainer model which could provide court personnel with a basic understanding of the

issues faced by litigants with mental illness and effective ways of interacting with this population.

III. Conclusion

The Task Force has made great progress and achieved many of the objectives set forth in the Strategic Plan. The hard work of the subcommittees brings Delaware closer to achieving the important goals stated by the Chief Justice in his charge to the Task Force. The subcommittees have undertaken an analysis of the work completed to date and made additional recommendations to the Task Force for consideration and approval. These next steps are critical in reducing contact between individuals with mental illness and the criminal justice system and in developing ways to improve outcomes for people with mental illnesses engaged with the criminal justice system.