



**National Association
of Mental Health
Planning and
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NAMHPAC Policy Statement

Mental Health Courts

Statement of Policy

Mental health courts have been authorized around the country, as an outgrowth of drug courts, seeking to deal with the reality of co-occurring mental illness of people whose substance abuse and criminal acts have brought them into the criminal justice system. This policy does not support or oppose mental health courts but points out the dangers of overuse of criminal courts to compel mental health treatment and the role of planning and advisory councils in monitoring and improving mental health courts where they exist.

NAMHPAC, planning and advisory councils and other mental health advocacy organizations should work together with government to ensure that mental health courts do not lead to greater criminalization, stigma and fragmentation. It is critical that planning and advisory councils work to promote meaningful diversion from the criminal justice system as the central mission of mental health courts, by whatever name they are called. Planning and advisory councils need to insist on mental health court standards that assure a non-coercive and de-stigmatizing approach and leave civil commitment as the central standard for the authorization of coercion when it is needed to assure appropriate mental health treatment. This policy suggests some standards that can be applied.

Rationale for this Policy

Mental health courts can play a role in convening criminal justice, mental health, substance abuse and other relevant social service agencies to facilitate diversion from the criminal justice system. Mental health courts should not act routinely as mandators of treatment using criminal sanctions to coerce compliance, imposing the stigma of criminalization in addition to the stigma of involuntary mental health treatment. They should focus instead on diversion.

It must be conceded that when diversion is not possible, mental health courts may serve to assure treatment for persons with serious mental illness convicted of crimes and divert them from incarceration, if not from conviction. However, the risk is that mental health courts actually defeat diversion in favor of a kind of indefinite criminal probation of persons with mental illness accused of crimes, which would be an unjust outcome.

Above all, mental health courts must avoid becoming a preferential point of entry for persons who have been unable to obtain community-based treatment, thus draining resources from an already underfunded community mental health treatment system. Treatment preference should not be given to persons accused of crimes over others who have not committed a crime, but who are unable to access services. Mental health courts should never become a way to “jump the line” and get treatment.

At the extreme, mental health courts may become a preferred means of access, with mental health judges granting treatment preference to persons accused of crimes over others. In addition, unless citizens are vigilant in monitoring the development and implementation of mental health courts, court processes are likely to lead to even greater criminalization, stigma and fragmentation. Already, people with mental illness stay in jail two to three times longer than others charged with the same offenses.

NAMHPAC is on record in support of diversion from the criminal justice system of all persons accused of crimes for whom voluntary mental health treatment is a reasonable alternative to the use of criminal sanctions, at the earliest possible phase of the criminal process, preferably before arraignment. (cite to diversion policy). NAMHPAC is skeptical of mental health court initiatives which risk further criminalization of persons with mental illness and which may compete with diversion programs. NAMHPAC recommends that planning and advisory councils carefully evaluate mental health courts against the standards established in this document.

The danger is that in the hope of improving access to scarce treatment resources, mental health courts will, in the end, increase coercion and stigma. There is also the risk that they will fail to effectively triage available treatment resources to achieve the best overall public health outcomes. The basic problem is that the courts cannot run the mental health system from their limited vantage point and cannot provide the resources needed to fill the gaps. Therefore, mental health courts risk inappropriate intervention of the criminal justice system, with no real improvement in treatment outcomes. At best, they may effectively determine individual needs and advocate for good individual treatment. At worst, they risk further criminalizing people with mental illnesses and fragmenting the mental health and criminal justice systems.

Background

The concept of mental health courts has been promoted in order to respond to the increasing number of people with mental illness entering the criminal justice system. The failure of American society to make good on the promise of community-based care is one of the reasons for this increase. America has never committed the resources necessary to provide adequate community mental health services for people who are at risk of commitment to or being discharged from institutions (including hospitals and jails). Additionally, lack of education contributes to the prejudice, stigma and discrimination against persons with psychiatric disabilities. Increased enforcement, especially of misdemeanor offenses, has criminalized symptoms of mental illness and co-occurring substance abuse disorders.

In 2000, the United States Congress authorized a mental health court demonstration program (P.L. 106-515). In doing so, Congress identified mental health courts as having the potential to address the criminalization of people with mental illness. Without a framework of values to guide the development of mental health courts, communities may rush to implementation without considering all of the components of an effective system to respond to the needs of persons with mental illness involved in the criminal justice system. This policy seeks to provide such a framework.

Principles

Minimizing the use of coercion is fundamental to effective mental healthcare and treatment and recovery from mental illness, and the most coercive entry point for mental health treatment is the criminal justice system. The United States already incarcerates people at the highest rate in the western world, and we have effectively institutionalized many persons with mental illness in correctional facilities.

Criminal courts rarely address mental health issues in sentencing decisions. Corrections systems are assigned the classification/diagnosis, as well as the treatment responsibility, once there has been a criminal conviction, with deferred sentences and probation after a plea as a gray area of court involvement. However, probation and other forms of post-conviction court involvement, including deferred sentences contingent on mental health treatment, are really only alternatives to incarceration, not alternatives to the use of criminal sanctions.

Communities must develop services that meet the comprehensive needs of mental health consumers. It is essential that any mental health court program bring additional treatment resources to the community, rather than depleting already limited existing resources. In addition to significant increases in public investment, services must be integrated across public and private agencies to address the full range of consumer needs. Individual treatment plans should be focused on consumer recovery and choice and should include: mental and physical healthcare, case management, housing, supportive education, substance abuse treatment, and psychosocial services in the least restrictive environment possible.

Mental health courts may act as a catalyst in developing a more comprehensive, community-based mental health system because state and local corrections are often incapable or unwilling to pay more attention. Mental health courts may be able to get the attention of other agencies that they do not control, to promote real and enduring systems change. In this capacity, the court convenes criminal justice, mental health, substance abuse and other social service agencies and community resources to respond to the needs of the persons before the court.

Guidelines and Call to Action

State planning and advisory councils are in a strategic position to influence and guide the development and implementation of mental health courts in ways that meet the needs and

safeguard the rights of consumers. In order to avoid potential risks in establishing mental health courts, NAMHPAC calls upon planning and advisory councils to be involved in the development and implementation of mental health courts from very early on. To assist in this effort, the following guidelines have been developed to support mental health advocates and justice systems in shaping new mental health court initiatives and holding mental health courts accountable where they currently exist.

1. **Comprehensive mental health outreach** – Access to community-based mental health treatment services for all people needs to be improved, and should not depend on the existence of mental health courts. Equally effective services should be assured for the treatment needs of persons not accused of crimes. This requires an investment in outreach services to promote voluntary treatment as an essential complement to any mental health court program.
2. **Maximum diversion** – Pre-booking diversion should be assured for all persons accused of crimes for whom a voluntary mental health treatment plan is a reasonable alternative to the use of criminal sanctions. Timely and accurate mental health screening and evaluation is the single most critical element in a successful diversion program. Mental health courts may be helpful in assuring such diversion, but should never be the only way, or even the primary way, that it can occur.
3. **Meaningful diversion** – Meaningful diversion would require that when appropriate, no charges would be filed, and the individual is diverted directly to treatment without entering the criminal justice system. In the alternative, when charges must be filed, criminal proceedings should be deferred for a set period, usually not exceeding a year. Dismissal of criminal charges would then be guaranteed after a set period of successful treatment participation.
4. **No Requirement for a Guilty Plea** – A guilty plea should not be required to enter a mental health court program. This requirement precludes diversion from the criminal justice system at the earliest possible point in time and further criminalizes a person because of his or her mental illness. As indicated above, the preferred method is to hold charges in abeyance until the successful completion of the treatment program.
5. **Voluntary/Non-coercive** – While the threat of criminal charges influences any decision, participation in any mental health diversion program should involve the same level of voluntary choice required of a criminal plea. No one should have to decide whether or not to accept diversion until the terms and the nature of the proposed treatment plan have been fully discussed and documented.
6. **Least restrictive alternative.** – All persons participating in diversion programs should be treated in the least restrictive alternative manner available, and all unnecessary institutionalization should be avoided. Jails are generally an inappropriate place for persons waiting for diversion as jail experiences tend to exacerbate underlying symptoms of mental illness. Long jail stays should be avoided in all diversion cases.

7. **Right to refuse treatment** – The qualified¹ right of a person with mental illness accused of a crime to refuse a particular treatment, including a particular medication, should be protected in a manner at least as protective of the consumer as the civil commitment process. A process should be established to review treatment refusals of persons diverted from the criminal justice system so that any decision to reinstate charges is made in an informed manner after all reasonable alternatives have been exhausted.
8. **Advocate/Counselor** – In addition to competent legal counsel in any criminal case, an experienced counselor, who may be a peer or other non-lawyer counselor, independent of any treatment facility, should be available to help the accused person to reach an informed decision. This person should also serve as an advocate to ensure that necessary services that have been mandated as part of a treatment plan are provided in a timely and appropriate manner.
9. **Confidentiality** – Networking to find an appropriate treatment setting, without safeguards, could compromise client confidentiality. Systems must be put in place to ensure confidentiality from the time that a person enters a mental health program.
10. **Cultural competence** – Cultural competence is essential to treatment success. NMHA believes that services must be tailored to the specific needs of communities and individuals in order to effectively address public health problems.
11. **Community coalitions** – The development of community coalitions, including partnerships between criminal justice, mental health and substance abuse treatment agencies, is essential to successful diversion programs. Such coalitions also should be involved in the creation and oversight of mental health courts. Consumers of mental health services and family members affected by mental illness need to be included in all such coalitions to assure that they address the real barriers to effective mental health treatment in that community.
12. **Comprehensive outreach and training** – Community coalitions need to reach out to all criminal justice system personnel and ensure that training is provided at all levels to deal with issues of mental illness, wherever and whenever they occur.
13. **Co-occurring disorders** – In addition, persons with co-occurring disorders, and especially substance abuse, must be treated in an integrated way, so that substance abuse is not an impediment to diversion.
14. **Convening role** – The focus of mental health courts should be on convening prosecution, probation, treatment and social services agencies to promote interagency collaboration in the interest of the individual. The focus should not be on the use of criminal sanctions to compel treatment.
15. **Consolidation and coordination of cases** – Cases should be consolidated to assure that the individual is the focus rather than the case. Centralized, coordinated case management and a single treatment plan are needed to avoid fragmentation, with or without a mental health court.

¹ Washington v. Harper, 494 U.S. 210

16. **Handling relapses in the court setting** – Relapses are inevitable during the recovery process. But an individual’s time under jurisdiction of the mental health court should not be extended as a result of relapses.
17. **Evaluation** – Timely monitoring of court processes, waiting lists, and consumer outcomes are essential to ensure that mental health courts are responding appropriately to persons with mental illness, that waiting lists are kept to a minimum, and that treatment providers are held accountable for consumer outcomes.

EFFECTIVE DATE

This policy was adopted by the NAMHPAC Board of Directors on March 11, 2005.