

## Courts

### Understand Their Perspective

To be successful in the court system, advocates must appreciate the different viewpoints of judges, prosecutors, defense attorneys, probation and pretrial services officials, and court administrators—and how each of these actors can influence case processing and disposition. When it comes to processing cases involving a defendant with mental illness, the same challenges frustrate each of these stakeholders, namely the lack of sufficient and timely information about defendants' mental health conditions and inadequate options beyond the traditional criminal justice process.

### Judges

- >> Judges rarely receive information about a defendant's mental illness before making decisions such as whether a defendant will be released before his/her trial, what level of bail will be set, and what sentence will be handed down.
- >> Many judges are willing to consider alternatives to traditional criminal sanctions, but most lack knowledge of the mental health resources available in the community. Without established relationships with mental health service providers, many judges feel uncomfortable recommending community treatment instead of jail or probation.

### Judges as Advocates

As an advocate searches for leaders in the criminal justice system to shepherd the development and implementation of new programs and policies, they will find that judges can be uniquely effective allies and leaders. The power of judges to spearhead systemic change is explained well by one judge:

**"When I was a public defender trying to address this problem, I called a meeting of all the key stakeholders, and no one came. When I became a judge I called the same meeting. Everyone was five minutes early."<sup>26</sup>**

But it is not just the ability to convene stakeholders that puts judges in a unique leadership position. Judges also determine how individual cases proceed, and whether alternatives to incarceration will be considered. In addition, judges, with the mandate of the court, have the ability to hold accountable other criminal justice agencies, and even non-criminal justice agencies such as mental health and substance abuse treatment providers. It is not surprising, then, that numerous judges have been at the forefront of change in their communities, and many of the most prominent national spokespeople on the need to address the influx of individuals with mental illness into the criminal justice system are members of the bench.



<sup>26</sup> Honorable Steven Leifman, Associate Administrative Judge, Miami-Dade County Court, Criminal Division, FL.



### *Prosecutors*

- >> Prosecutors are understandably likely to be skeptical of advocates' efforts to reduce the number of people with mental illness in prison or jail, particularly those charged with serious offenses; after all, they are responsible for protecting the public, and in most states, they are independently elected officials.
- >> While they are responsible for protecting the public, many prosecutors recognize that repeatedly cycling people with mental illness through jail for low-level crimes does little to improve public safety and diverts attention from more serious crimes.

### *Defense Attorneys*

- >> Defendants with mental illness tend to have few resources at their disposal and are typically represented by court-appointed defense attorneys.
- >> While many public defenders are keenly aware of a client's mental illness, in some cases a defender's enormous caseload may make it difficult to learn about elements of his/her client's background, such as their mental health history.
- >> Even when defense attorneys are aware of a client's mental illness, some may prefer not to bring that information before the court, as they may see it as detrimental to the case. For example, a defense attorney may feel it is in their

client's best legal interest to plead guilty and receive a minimal sentence for a low-level offense rather than agree to several months or even years of supervised treatment.

### *Probation and Pretrial Services*

- >> Some agency in every court, usually either probation or pretrial services, is charged with providing information to the judge to inform decisions such as pretrial release or sentencing. Without close collaboration with mental health service providers, and effective screening tools that target mental health issues, these agencies have enormous difficulty identifying the mental health needs of defendants or providing judges with options to supervise a defendant awaiting trial (other than jail).

### *Court Administrators*

- >> Court administrators are responsible for the overall functioning of the court; their interest in this issue stems, in part, from the number of low-level, repeat offenders with mental illness clogging court dockets and hampering efficiency.
- >> Court administrators may be open to new strategies for responding to defendants with mental illness, but are concerned about reallocating staff or adding new responsibilities for existing staff, especially in small jurisdictions.



## Explain Why Addressing the Issue Is in Their Interest

Improving the response to defendants with mental illness will appeal to different court officials for different reasons. Some of the arguments that advocates can use to encourage court officials to address this issue are described below:

### *Judges*

- >> **Get more just outcomes**—Judges are concerned first and foremost with seeing justice served. Repeatedly sentencing low-level offenders to short jail terms or probation, with no attention to the mental health conditions that are the cause for the involvement with the criminal justice system, often has little to do with serving justice, and everything to do with the status quo.
- >> **Improve efficiency**—Along with arbitrating over individual trials, judges are concerned with managing court dockets, and improving the information about and options available for defendants with mental illness will increase the efficiency and effectiveness of the entire court process.

### *Prosecutors*

- >> **Reduce future crime**—Improving the response to defendants with mental illness can improve public safety by ensuring that all defendants receive

the services they need to help prevent their repeat involvement in the criminal justice system.

- >> **Improve public safety**—Prosecutors can pursue alternative strategies for defendants with mental illness without threatening public safety, and can allow resources to be devoted to prosecuting violent crime and other priorities.

### *Defense Attorneys*

- >> **Help defendants receive needed services**—Defense attorneys are, above all, advocates for their clients, and most will support initiatives that seek to ensure that their clients receive much needed treatment and other supports.
- >> **Get more just outcomes**—Similar to judges, many defense attorneys agree that a jail sentence—with no attention paid to the mental illness underlying criminal behavior—is not an appropriate or effective response for some individuals who have committed low-level offenses.

### *Probation and Pretrial Services*

- >> **Provide more useful information**—Identifying the mental health needs of defendants and proposing options for community treatment provides much needed information for other court professionals.



### Court Administrators

- >> **Make better use of resources**—Providing services targeted towards defendants with mental illness can decrease their repeated involvement in the court system, which will free up resources for other court priorities.
- >> **Improve court functioning**—Defendants with mental illness struggle to navigate the court process and are more difficult for court employees to serve. Reducing their involvement in the courts will improve court functioning in general.

### Propose an Initiative

Much improvement can be made in the court process for defendants with mental illness simply through better communication between different court agencies and the mental health system. In addition, many courts have launched specific initiatives to improve their response to individuals with mental illness.

- >> **Training**—Many judges, attorneys, and probation officers are unaware of the prevalence of mental illness among defendants and lack even a basic understanding of the types of illnesses, available treatments, and alternative court-response strategies. These gaps in knowledge are an important target for any advocacy initiative in the courts.
- >> **Jail diversion programs**—A judicial decision that pretrial release or probation is more appropriate than incarceration, jail diversion entails removing defendants from the traditional criminal justice process and placing them in some form of treatment or support. Every community uses diversion differently. Some attempt to divert defendants at their first hearing before the court. Others wait longer, until more information about the defendant’s mental health needs and available services is gathered (see sidebar, “Language Matters”).

#### Language Matters

Advocates should be aware that the language they use to describe new initiatives to potential criminal justice partners makes a difference. Prosecutors, judges, or other community leaders particularly sensitive to the impact a policy shift may have on public safety (and the political risks involved in supporting such a shift) may be immediately wary of a program labeled as “jail diversion.” Advocates should therefore talk about increasing the availability of “sentencing options” and information to judges and prosecutors (which is likely to be received positively) and avoid talking about initiatives in terms, such as jail diversion, that might be mistakenly interpreted as enabling defendants to avoid jail or prison simply because they have a mental illness (which is likely to be received negatively).



>> **Mental health courts**—Mental health courts are a specific form of diversion using specialized court dockets that hear only cases involving defendants with mental illness; eligible defendants allow their case to be transferred to mental health court, where they agree to some form of community treatment and supervision for a period of time in exchange for having their charges reduced or dismissed. Mental health court participants generally report to the court on a regular basis. More than 100 jurisdictions nationwide have established mental health courts, with dozens more being planned, and advocates have often helped to spur their creation.

>> **Improved information sharing**—Court personnel need information about the mental health needs of defendants; the sharing of this information, however, is complicated and controversial. Advocates should work with court officials to understand what kind of mental health information they need, to whom that information should be provided, and how the information can be shared while respecting the privacy rights of defendants.



### **BUREAU OF JUSTICE ASSISTANCE MENTAL HEALTH COURTS PROGRAM**

The Consensus Project, in its role as technical assistance provider for the Bureau of Justice Assistance Mental Health Courts Program, provides a variety of resources both for people working in established mental health courts and representing communities considering developing such a court. A series of policy briefs addresses the development and sustainability of a mental health court and other key aspects of court operation. The document “Essential Elements of a Mental Health Court,” developed by a panel of experts with input from practitioners, promotes best practices by identifying what makes a mental health court successful. Consensus Project staff also provide technical assistance by coordinating national mental health court conferences, conducting on-site training, and maintaining a call-in center and Web site. For more information and access to Mental Health Court Program resources, visit <http://consensusproject.org/mhcourts/>.

