

## Discussion Group:

## Interventions with the Court System

During the National Drug Court Conference in 2014, Doug Marlowe, J.D., Ph.D., stated that Drug Courts and Mental Health Courts are working. A report by the Human Services Department to the New Mexico Legislative Finance Committee on May 16, 2013 found that: "All of New Mexico's drug court programs have resulted from local initiatives. As of October 2012, 25 counties in New Mexico have at least one drug court program, while eight counties do not have any problem-solving courts. There are five mental health courts in Aztec, Santa Fe, Bernalillo, and Albuquerque, where there are two locations. Recent closures of specialty courts have occurred in Taos, Hobbs, and Alamogordo because of budget cuts. From FY09 to FY12, federal and state funding for the drug courts and the problem-solving courts decreased by 24 percent, from \$12.3 million to \$9.3 million. Most of the reduction in funding was from the state general fund and the program absorbed those cuts in several ways, mostly by cutting their treatment contracts and reducing capacity." After researching Mental Health Courts, information is limited; however, best practices (Walters, Cheesman & Gibson, 2010. National Centers for State Courts) have been developed and are being applied to current Mental Health Courts across the United States, including the Bernalillo County Metropolitan Courthouse.

New Mexico is a geographically and culturally diverse state with a population of 2.1 million, 26.5% of who reside in Albuquerque, Bernalillo County (U.S. Census Bureau, 2010). Albuquerque is the largest city in New Mexico and is the seat of Bernalillo County, comprising of 545,852 of the County's 662,564 residents (U.S. Census Bureau, 2010). The total workforce in Bernalillo County in 2010 was 301,661: 279,439 employed and 22,222 unemployed. The unemployment rate was 7.4 percent compared to 7.3 percent statewide and 6.2 percent in the nation.

In 2013, the New Mexico Sentencing Commission published a report on the *Effect of Mental Health Diagnoses on Length of Stay in Two New Mexico Detention Facilities*. The conclusion was that "while having a psychotic diagnosis increases length of stay (121 days), the primary driver of length of stay is charge category, with arrestees charged with a Violent charge spending 286 more days when all others variables held constant." (Freeman, Adams & Chapel, 2013).

The Bernalillo Metropolitan Mental Health Specialty Court was awarded a BJA/SAMHSA grant to enhance treatment and recovery support services available to persons with behavioral health disorders participating in either the DWI/Drug Court or the Mental Health Court (MHC). Currently, the Mental Health program is reviewing performance measures, best practices, and using new tools to screen individuals for trauma informed care. The RANT (Risk and Assessment Needs Tool) will be implemented toward the beginning of October 2014 to address the risk and needs of the defendant. The MHC Specialty Court began in 2003 by the Honorable Kevin Fitzwater and since 2010, Judge Linda Rogers has been the presiding Judge. There are approximately 100 mental health defendants participating in the Bernalillo County Metropolitan Mental Health Specialty Court Program, with three probation officers. The average caseload is 90 per Mental Health Specialty Court Probation officer, as they have pretrial cases referred to Mental Health Court and oversight of sentenced cases with supervision by a mental health officer. Case management is a viable part of the program, connecting defendants for the first time to a diagnosis, medication management, therapy and financial services. This assists by giving defendants diagnosed with a mental health disorder the tools they need to treat the diagnosis while out of custody.

The Mental Health JSP at the Second Judicial District Court attempts to connect the individuals with appropriate community services including case management, psychiatric services, counseling services,

housing assistance and accessing appropriate benefits. Community members suffering from serious mental illnesses that impact their behavior, may have contact with law enforcement and end up being charged with a criminal offense. The most frequent charges around those with mental health illness are domestic violence against a parent or care giver and substance abuse issues or problems related to chronic and pervasive substance abuse. The primary modality is case management coupled with treatment monitoring. The program attempts to intervene with seriously mentally ill defendants who have escalated criminal behaviors to a place where they are being charged with felonies. This reflects not only the severity of the crimes being committed but also reflects on the significant dysfunction of this population. As a result of the felony charges, there is a longer period of jurisdiction on these defendants and a better opportunity to stabilize these individuals for greater periods of time which increases the likelihood of long term success.

**There were three main areas of discussion regarding the behavioral health population: competencies, statutes and warrants.**

**The first area of discussion was regarding competence to stand trial.** At the Second Judicial District Court, competency cases are addressed by each Judge. The working group for Intervention with the Courts, discussed that this population would benefit from one presiding judge and one back-up judge. The group stated that each judge may view the statutes differently. For defendants in custody the competency cases are processed more quickly. If the defendant is out of custody, it takes longer to get the defendant to the evaluation and back to court.

- During the discussion group on August 8, 2014, a suggestion was made to have the forensic evaluation completed no more than two weeks from the order date and the report to be completed in 45 days from the evaluation. Delays can range from 60 to 90 days and up to six months, at which time an attorney could argue the evaluation is too old. This change would involve a statute or rule change and more evaluators to complete the evaluations.

The evaluations at Metro Court have scheduled times. They are set within one week for defendants in custody and within two weeks for defendants out of custody. The reports are received one week later. At times, a defendant will fail to report for their evaluation and a bench warrant will have to be issued, unless their attorney has been in contact with them. Pending the written report from the psychologist, some of the defendant's at Metro are placed on pretrial services, which enables them to be referred for services. Defendants found competent may be referred to Mental Health Court for recovery services and a dismissal. If the case is a Driving While Intoxicated charge, the defendant will plead guilty and be on supervision for one year in the MHC.

- Metro's MHC Public Defender will continue to refer competency defendants in custody at the Metropolitan Detention Center to the University of New Mexico's Fast Track. The goal of this process is to connect those defendants found incompetent to services prior to release.

Also discussed, defendants found incompetent, being released from jail and the victim being informed of the release, but not having protection from the law. A restraining order could be filed; however, it would not be an effective way of changing the behavior of a person who does not appreciate the content of the order or the consequences of violating it due to the defendant not being competent.

- If changes were to occur, it would need to be addressed by the Legislature.

A request was made during the topic of competencies to have IQ tests performed on defendants who may likely be developmentally disabled or have a traumatic brain injury.

- Funding would need to be increased at Metro Court to have the evaluators address this request.

**The second area of discussion was regarding statutes and city codes.** Misdemeanor charges could have defined jail days and increase the jail time for subsequent charges. Conversation centered around city codes, as they are easier to accomplish the changes. Pan Handling, Urinating in Public and Drinking in Public were discussed as common charges that effect individuals living with mental illness. Also, this population fails to appear in court due to being homeless and not feeling presentable for Court, not having a place to put their only possessions if they go to court, not trusting the judicial system and not being competent. Failure to appear in court may result in a warrant being issued; which causes suspension of their driver's license, inability to secure housing and other services that affect their quality of life. If defined days (in terms of jail terms imposed) were given to the charge(s), warrants would not have to be issued, licenses would not be suspended, and housing could remain intact or enable them to secure housing if they did not have any housing

**The third area discussed was warrants involving individuals living with mental illness.**

This group of individuals does not have the money to pay the fees and may end up in jail longer.

Warrants stop defendants from securing housing, their license is suspended and employment is not secured without a license.

- A suggestion was to have a Crisis Engagement Team (proposed via Behavioral Health Task Force working group) called by the police officer to connect the defendant with a case worker, who will connect the individual to recovery services and housing. This would be a point of intervention and end a citation being issued, which more than likely, would end up in warrant status.
- Defendants with quality of life warrants can be referred to Metro's Homeless Court, they will be screened, the warrant will be pulled if they qualify and the defendant will be connected to a case worker to connect the defendant to services.

Stopping the cycle of recidivism, connecting the defendant to the needed treatment and community services is the beginning of this humanitarian effort.

Working group:

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Nancy Koenigsberg, Disability Rights New Mexico- Legal Director

Sub group:

Judge Linda Rogers, Bernalillo County Mental Health Program Judge

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