Mental Health Courts: A Revolution in Judicial Policy and Process
PRESENTATION OUTLINE

- TRADITIONAL CASE PROCESSING IN THE COURTS
- THE MAJOR CHANGE IN OUR APPROACH AND REASONS UNDERLYING THAT CHANGE
- HOW MENTAL HEALTH COURTS WORK
- APPLYING THE PRINCIPLES OF MENTAL HEALTH COURTS TO NEW CRIMINAL JUSTICE REFORMS
LET US START FROM THE BEGINNING
WHAT IS THE TRADITIONAL PURPOSE, ENVIRONMENT AND OUTCOME OF ALL SENTENCING?

PUNISHMENT
WE USED THE “PAST” IN TRYING TO ADDRESS PRESENT CONDUCT AND DETER NEGATIVE CONDUCT IN THE FUTURE.

FOR MANY YEARS PUBLIC POLICY AND LAWS WERE WRITTEN TO EMPHASIZE AND ENHANCE PUNISHMENT.
WHAT IS THE RESULT OF THIS TRADITIONAL POLICY IN SENTENCING OPTIONS IN THE CRIMINAL JUSTICE SYSTEM?
SINCE PUNISHMENT WAS THE PRIMARY FACTOR:

(1) New offenses resulted in escalating numbers of jail and prison sentences each year;

(2) Violations of conditions of probation, and parole, resulted in escalating returns to custody each year.

(3) The cost of our prisons became equal to the cost of our entire Higher Education System.

(4) We could not build any more prisons.
AS PRESSURE GREW FROM UNCONTROLLABLE COSTS AND THE ORDERS OF THE FEDERAL COURTS FROM CONSTITUTIONAL CHALLENGES OUR POLICIES WERE DRAMATICALLY CHANGED

(1) The Governor and Legislature “realigned” offenders leaving prison and many of those with new convictions that previously resulted in “prison” to our local counties and jails.

(2) Violations of terms of supervision by these offenders are now a local responsibility rather than the State.

(3) Drug cases that were felonies became misdemeanors and a legislative movement began to decriminalize drug use.
WHAT, IF ANYTHING, CHANGED IN THE COURTS IN THE LAST 25 YEARS?
A number of Judges recognized that the system was not working and looked for an alternative.
What has not worked was abandoned, and the Judge assumes a new role and the Court accepts responsibility!
WE RETURN TO GOALS THAT WE HAD ABANDONED (REHABILITATION), AND RECOGNIZE THAT THE COURTS MUST TAKE ON A NEW ROLE:

- OBTAIN BETTER OUTCOMES
- PARTNER WITH LOCAL COMMUNITY TREATMENT AND SERVICES TO OBTAIN THOSE BETTER OUTCOMES
BE A LEADER!
THE JUDGE MUST ACCEPT RESPONSIBILITY FOR OUTCOMES!
There are three Important Roles that a Judge must accept to reach the goal of better outcomes:

- The Judge must be a convener
- The Judge must be a motivator
- The Judge must use practices that have been demonstrated to result in better outcomes (Treatment)

- PRINCIPLE: We will only improve outcomes when we value the individual offender before us and make rehabilitation a reality

- PRINCIPLE: Develop a Collaborative Court Model to put this goal into practice
DRUG COURTS WERE A SUCCESS, BUT WE EXCLUDED THE MENTALLY ILL

- “TOO DIFFICULT TO WORK WITH”
- “NO TREATMENT FOR THEM”
- “THEY AREN’T LIKE DRUG ABUSERS”
A NEW CHALLENGE: AND A GROUP OF JUDGES ONCE AGAIN CREATED ANOTHER COLLABORATIVE COURT

- MENTAL HEALTH COURTS THAT ARE NOW OFTEN CALLED BEHAVIORAL HEALTH COURTS

- THE DISCOVERY THAT OFTEN MORE THAN 50% OF THESE OFFENDERS USE STREET DRUGS AS WELL LED TO THE DISCOVERY BY THE COURTS IN THE 1990’S THAT THESE ARE REALLY CO-OCCURRING DISORDERS
HOW DOES A MENTAL HEALTH COURT WORK?
FIRST, WHO CAN BENEFIT FROM THESE SPECIAL COURTS?

- THE SERIOUSLY MENTALLY ILL
- THE MENTALLY CHALLENGED
- THOSE FOUND INCOMPETENT TO STAND TRIAL
- PAROLEES WHO FAIL WHEN RELEASED FROM PRISON DUE TO MENTAL ILLNESS
- VETERANS RETURNING FROM OUR CONFLICTS
- THE HOMELESS
- THOSE WHO SUFFER FROM SEVERE OR LIFE-ENDING MEDICAL ISSUES
ASSESSING CLIENTS FOR TREATMENT

- THOSE CLIENTS WHO NEED THIS INTERVENTION ARE MENTALLY ILL OFFENDERS WHO ARE THE GREATEST RISK AND HAVE THE HIGHEST NEEDS

- LOW RISK AND NEED OFFENDERS DO NOT NEED THE HIGH LEVEL OF TREATMENT, SERVICES AND ACCOUNTABILITY THAT MENTAL HEALTH COURTS OFFER
THE CONFOUNDING FACTOR OF SUBSTANCE ABUSE

- Nearly all indigent mentally ill offenders are also street drug users.
- Untreated mental illness is a risk factor for the development of substance abuse.
- Substance use can exacerbate a pre-existing mental illness.
- Substance use can induce mental illness.
- BOTH CONDITIONS MUST BE TREATED = BEST PRACTICE requires full assessments of all co-occurring disorders of offenders who are mentally ill.
THE CONFOUNDING FACTOR OF CRIMINOGENIC FACTORS

- CRIMINAL HISTORY, ANTISOCIAL ATTITUDES, THINKING, PATTERNS AND FRIENDS AND ASSOCIATES, AS WELL AS FAMILY ISSUES

- THESE ISSUES MUST BE ADDRESSED AS WELL

- AND, AGAIN, A GOOD ASSESSMENT MUST CONSIDER THESE FACTORS25
WHAT IS THE ROLE OF THE JUDGE THAT IS SO DIFFERENT FROM “REGULAR COURT”? 
OUR ROLE

- THE GOAL IS TREATMENT, SERVICES AND IMPROVEMENT
- LISTEN
- MOTIVATE
- USE EVIDENCE BASED PRACTICES
WHAT A JUDGE MUST DO WITH EACH DEFENDANT:

- WE must confront the “stigma”
- WE MUST BUILD HOPE.
- WE must “engage” the defendant and we must listen
- WE must build trust.
- WE must learn new techniques to communicate.
A Judge Who Spends 3 Minutes Talking to Each Client Motivates Change and Doubles Cost Savings

Source: Marlowe, NPC Research 2010
NEXT,

A Judge Who brings Community treatment and services together and JOINS WITH them in solving problems and building a new system will obtain better results for offenders.
IT TAKES A TEAM
AND A LOT OF PLANNING
IT TAKES A TEAM!

- A Judge to lead with a “full time” commitment
- Mental Health AND Drug and Alcohol staff in the courtroom and next to the Courtroom
- Strong positive participation by District Attorney and Public Defender
- Strong collaboration with Custody mental health and all Judges in the Court
- Probation Officers and Parole Agents with special training
- Case Managers who care
- Innovative community treatment providers including faith based and County Mental Health Clinical Staff
- Parents and family
- A defendant who is willing and courageous to be open to change
HOW DO YOU ASSEMBLE THIS TEAM?

- CALL A MEETING AND MAKE CLEAR THE COURT IS MOVING FORWARD
- LISTEN AND RESPECT EACH TEAM MEMBER
- WORK TOGETHER WITH THE SAME GOAL: ENGAGE, RETAIN, RE-ENGAGE THE OFFENDER IN TREATMENT WHILE PROTECTING PUBLIC SAFETY
WHAT MAKES THIS TEAM CONCEPT WORK?

A. Less confrontation/more gentleness, and unlimited patience

B. Constantly reinforcing the need for positive behavior through frequent court appearances

C. Requirements are simple – include medications, stay in housing, and follow treatment program. SMALL STEPS ARE WHAT MATTER.

D. Lower the bar on definition of success!!
WHAT MAKES IT WORK!

- Medications must start in jail and follow the defendant into community treatment without interruption.

- Treatment must be immediately available on release.

- Appropriate housing must be immediately available on release.

- Drug Testing is essential.

- IMMEDIATE intervention is necessary on decompensation. Place a Clinic in the Court!
REMEMBER THAT THESE COURTS AND THIS MODEL CAME INTO EFFECT YEARS BEFORE CRIMINAL JUSTICE REFORM BY THE GOVERNOR, THE LEGISLATURE AND THE VOTERS HAD BEEN ENACTED
HOWEVER, AT THE SAME TIME THAT ALL OF THESE REFORMS WERE TAKING PLACE, WE ENCOUNTERED A NEW PROBLEM:

A DRAMATIC INCREASE IN THE NUMBER OF MENTALLY ILL CRIMINAL OFFENDERS IN OUR COURTS, OUR JAILS, OUR PRISONS AND OUR STATE HOSPITALS.
Percentage of Jail and Prison Inmates With Serious Mental Illness

Blue = Actual  Red = Trend

Year
1900 1920 1940 1960 1980 2000
0 0.05 0.1 0.15 0.2 0.25

Percentage
TRACKING THE INCREASE

- NEARLY 45% OF STATE PRISONERS ARE MENTALLY ILL – AN INCREASE OF 150% SINCE YEAR 2000

- NEARLY 36% OF INMATES IN OUR COUNTY JAIL ARE MENTALLY ILL – A 60% INCREASE

- MOST ALARMING – THE SERIOUSNESS OF MENTAL IMPAIRMENT, SUBSTANCE ABUSE AND CRIMINOGENIC FACTORS IS INCREASING DRAMATICALLY IN THIS OFFENDER POPULATION
OUR STATE HOSPITALS

- 53% increase in admissions per month
- 55% decrease in average length of stay
- 102% increase in patient waitlist
ONE ANSWER TO THE GROWING NUMBER OF MENTALLY ILL OFFENDERS:

- Take the model of mental health courts to scale (they generally operate with small numbers of offenders);
- Organize a number of calendars to place the defendant based on risk and need;
- At the county level adopt the MH court model as a means to implement new criminal justice policy reforms directed at mentally ill offenders.
MENTAL HEALTH DIVERSION

AN EXAMPLE OF A MAJOR POLICY CHANGE THAT CAN BE A SUCCESS IF MENTAL HEALTH COURTS GROW AND COURTS AND COUNTIES WORK TOGETHER IN IMPLEMENTATION
THE LEGISLATION

- AB 1810 as a budget trailer bill established the structure of the program.
- Diversion permits the offender to be treated outside of the court process and if successfully completes diversion, the charges are dismissed.
NEARLY ALL MENTALLY ILL OFFENDERS ARE ELIGIBLE, AND NEARLY ALL OFFENSES ARE ELIGIBLE, INCLUDING SERIOUS AND VIOLENT OFFENSES

DIVERSION PERMITS THE OFFENDER TO BE TREATED OUTSIDE OF THE COURT PROCESS AND IF SUCCESSFULLY COMPLETES DIVERSION THE CHARGES ARE DISMISSED

THE DEFENDANT MUST SHOW THAT HE OR SHE IS ELIGIBLE
THE MENTAL HEALTH DIVERSION PROGRAM BORROWS MUCH FROM THE MENTAL HEALTH MODEL

⊙ COUNTY MUST HAVE SUFFICIENT TREATMENT RESOURCES
⊙ THERE MUST BE A TREATMENT PLAN
⊙ THOSE DIVERTED NEED TO BE MONITORED
⊙ REVIEW HEARINGS MUST TAKE PLACE
⊙ THE PERIOD FOR DIVERSION IS ONE TO TWO YEARS
⊙ A JUDGE MUST MONITOR AND DETERMINE CHANGES IN THE TREATMENT PLAN
THE CHALLENGE

☐ BRING THE COURTS, CRIMINAL JUSTICE, BEHAVIORAL HEALTH, PROBATION, CUSTODY MENTAL HEALTH TOGETHER

☐ RECOGNIZE THAT THE TERMS OF THE STATUTE REQUIRE ALL OF THE STAKEHOLDERS TO WORK TOGETHER TO DEVELOP A PROGRAM WITH SUFFICIENT TREATMENT CAPACITY, PROTOCOLS AND AGREEMENTS TO ASSURE SUCCESSFUL IMPLEMENTATION.
WHY WE MUST WORK TOGETHER

- Diversion presents a real opportunity for the courts and counties to work together to stop the accelerating criminalization and institutionalization of the mentally ill.

- The court cannot do this alone, nor can the counties.
WHEN THE CHALLENGE IS GIVEN TO ALL OF US, IT CANNOT END IN A COURTROOM

–WE MUST ALL WORK TOGETHER IN HELPING THOSE WHO ARE THE MOST VULNERABLE, AT THE HIGHEST RISK, AND HAVE THE GREATEST NEEDS AND THE LEAST RESOURCES
AND IT IS ALL ABOUT BUILDING HOPE

- Maintain hope in the deepest parts of your heart. Treat everyone with “dignity, respect and … hopefulness”
THANK YOU!