Behavioral Health Roundtable

Meeting Summary
October 13, 2023

Attendees

Fred Baggett
Stella Bailey
Pam Barlow
Emily Barnes
Chris Bazzle
Marvin Blount
Ryan Boyce
Heather Brewer
Sean Callen
Eddie Caldwell
Kim Callahan
Gail Carelli
Robert Carpenter
Lori Cole
Lisa Coltrain
Lauren Costello
Julie Cronin
Ziev Dalsheim-Kahane
Marie Evitt
Allison Gilbert
Tracy Ginn
Andrew Gregson
Morgan Gunter
Polly Handrahan
Kody Kinsley
Juliana Kirschner
Ernie Lee
Steve Leifman
Kevin Leonard
Emily Mehta
Lee Miller
Lindsey Moore
Megan Moore
Paul Newby
Regina Parker
Steve Peters
Meagan Pittman
Asia Prince
Rick Schwermer
Mike Silver
Lindsey Spain
Alexia Stith
Marvin Swartz
Saarah Waleed

Meeting Intention

The behavioral health roundtable provided an opportunity for leadership to learn about national tools, best practices, and policy recommendations for the state courts, to share about developments already underway in North Carolina, and discuss whether additional efforts would be helpful.

Director Ryan Boyce welcomed everyone to the meeting and identified the goal of catching mental health issues at the very front end to lessen the chances of individuals appearing in front of the court as a victim or defendant. Covid has exacerbated the mental health crisis that many are experiencing in our society. Mental health issues are overwhelming for the police, schools, and other organizations that support the well-being of our children and families. Director Boyce has discussed the possibility of IVC reform and streamlining capacity restoration with Secretary Kinsley and his team.

Chief Justice Paul Newby shared that the Judicial Branch is looking at ways to expand treatment courts and appreciates the county commissioners who have stepped in to support the funding gap that occurred after the 2008 recession stopped statewide funding. County partnerships are now actively seeking opioid settlement money to grow the treatment courts across the state. During visits to courthouses in each one of the one hundred counties across North Carolina he saw how beautifully

diverse the state is in every way. Every county will come up with their own solutions and we can help equip them with information and resources, so they are able to do so.

Secretary Kody Kinsley explained that a common goal for DHHS and the Judicial Branch is to wrap systems around people rather than to wrap people around systems. Behavioral health improvements save money with regard to physical health; when people's behavior and health issues are under control, then their overall costs for other chronic diseases go down and a number of other issues can be addressed to improve their ability to work. All the things that drive economic improvement, improve family wellness too. Alternate approaches to capacity restoration could free up beds and move cases through our court system without delay.

Overview

Rick Schwermer, Utah State Court Administrator (ret.), Court Consultant from the National Center for State Courts (NCSC) provided examples of what works relative to the intersection of individuals with serious mental illness (SMI) and co-occurring substance use disorders (SUD) as they interact with the justice system. Provided an overview of effective strategies using the framework of the Sequential Intercept Model (SIM) to describe practices and provide examples of how they have been implemented across the country. A community based behavioral health treatment continuum will have less crises penetrate the criminal justice system. When there is a crisis, people can now call 988 to get a triaged response such as a mobile crisis unit rather than an armed response so they can respond appropriately.

Mental illness doesn't cause crime but people with mental illness have more criminogenic risk factors such as: antisocial attitudes; antisocial personality pattern; antisocial friends and peers; substance abuse; family and/or marital factors; lack of prosocial leisure activities; poor employment history; lack of education. Criminogenic needs are risk factors for criminal recidivism that are potentially changeable or treatable. You can't effectively address dynamic risk factors without treating the mental illness. Responsivity needs are clinical syndromes, impairments, or social service needs that usually do not cause crime but can interfere with rehabilitation. Homelessness, serious or persistent mental illness, drug or alcohol cravings/withdrawal, PTSD, TBI, and therefore often Veteran status are all responsivity needs that must be addressed before criminogenic needs. Providing resources at the front end to prevent criminal justice involvement is possible when communities screen, assess, share, and use information to triage risk needs responsivity.

The Sequential Intercept Model (SIM) was developed as a conceptual model to inform community-based responses to the involvement of people with mental and substance use disorders in the criminal justice system. Communities can look for diversion opportunity at every step of the SIM. Solutions involve more than just specialty courts. For example, mental health diversion programs can take place pre-booking, with deferred prosecution, and mental health pretrial release. Communities can plan how to improve connections between criminal justice and behavioral health at the major "intercept" points of law enforcement/arrest; booking in jail/pretrial; adjudication; reentry; and in the community. Communities may engage in strategic planning and map how the process works in their community at each of these

steps, what the "flow" of individuals with SMI is, and what resources are available. Every intercept has different opportunities to build out solutions that have staying power. Courts are encouraged to use the resources developed by the National Task Force: Behavioral Health and the State Courts | NCSC

Research has shown that the approaches set out in the SIM and discussed here actually work to save money and reduce recidivism. In addition, a survey of about 2500 people last summer showed that 82% of respondents said that courts should help individuals find treatment options and 79% supports diverting lower-level defendants with behavioral health issues. There is a degree of empathy from the public for these issues.

The Miami Model – A Diversionary System

Judge Steven Leifman, Associate Administrative Judge, Eleventh Judicial Circuit of Florida, explained that for over 23 years he has been a part of a program in Miami that is about identifying people that don't need to be in the court system and getting them treatment, or when they do come into the court system making sure that if they qualify they get access to treatment when they leave. While 60% of people in the criminal justice system have a substance use disorder, 70% of people in the criminal justice system either have a serious mental illness (SMI), a substance use disorder (SUD), or both. Because of this, Judge Leifman noted that perhaps a specialty court for the 30% with no SMI or SUD would be more helpful. The concept of integrated systems is not new. In January 1939, the American Journal of Psychiatry published an article about the necessity of educating parents, children, physicians, judges, jury, jurors, clergy, employers, employees, and the public in general that all laws concerning mental illness should be integrated to eliminate inefficiencies duplication and that integrating psychiatry to the general practice of medicine is in line with modern trends.

Judge Leifman explained how and why the Criminal Mental Health Project (CMHP), located in Miami-Dade County, Florida, was established in 2000 to divert individuals with serious mental illnesses (SMI; e.g., schizophrenia, bipolar disorder, and major depression) or co-occurring SMI and substance use disorders away from the criminal justice system and into comprehensive community-based treatment and support services. They started with a summit that brought all leadership together to map out the intersection between the community, mental health system, and the criminal justice system. What they identified was that they were operating a fragmented system of care that was difficult to access and difficult to hold accountable which made it problematic. However, by collaborating and coordinating systems, they could make a huge difference to fix the system. They worked on a written cooperative agreement that was very prescriptive of the process, steps, and who would do what. Within 2 years, the recidivism rate went from 75% to 20%. Today the CMHP provides an effective, cost-efficient solution to a community problem and works by eliminating gaps in services, and by forging productive and innovative relationships among all stakeholders who have an interest in the welfare and safety of one of our community's most vulnerable populations.

Miami's initial goals were (1) to reduce the number of cases coming in, so they found and replicated the Memphis pre-arrest diversion system which is the crisis intervention team policing program that some

are already using in North Carolina, and (2) implement post-arrest diversion. Reflecting on the written cooperative agreement, Judge Leifman mentioned that we would include a trauma assessment step in the process, given Adverse Childhood Experiences (ACEs) that we now know about, and he would have included the superintendent of schools and school board members in the initial work. He recognized that North Carolina's efforts to create trauma-informed courts and raise awareness about ACEs will have a positive impact for all.

Ninety-two percent (92%) of all the women in jail in the United States have horrific histories of trauma, mostly sexual abuse and usually when they are 5-7 years old victims. Young brains that are exposed to trauma are even more damaged than an older brain. Seventy-five percent (75%) of men who are in the criminal justice system with a serious mental illness also have very serious histories of trauma. Some of it is sexual abuse, and more likely victims or witnesses to domestic violence or other violent crimes. Similar to what a soldier sees in combat, this exposure to violence permanently alters brain activity. It is not an emotional reaction that can be shrugged off; just as you cannot shrug off a broken arm, cancer, or heart disease. People with an ACEs score of 4 or above (out of ten) have a 100% chance of developing a mental health or substance use disorder.

Types of services is not a one size fits all for mental illnesses. People can be released with or without treatment. Without treatment, people tend to be coming back in a revolving door. Florida got the legislature to expand jurisdiction for assisted outpatient treatment for misdemeanor criminal diversion. This allows the court to require the person be put on treatment, and if they can tolerate it, many go on a long-term injectable mediation and within two weeks, they are different human beings. Outcomes are stunning. By using a civil law, the person can stay connected to needed services for a much longer duration. This strategy, recommended by the Conference of Chief Justices, can greatly reduce the caseload. Consider having one individual getting arrested 50 times a year. If you can get that one person on a longer-term treatment system, it reduces the number of cases that will need to be heard.

Unintended consequences of their work includes being able to close multiple jails, therefore saving $120 million over the past 10 years. In addition, police shootings almost stopped after they worked out a deal with the police chiefs association to refer officers to treatment outside their departments. Unless they are suicidal or homicidal, which most are not fortunately, the referrals do not have to be reported and the officers love it. This has helped make them incredibly empathetic to the SMI population now, which has totally changed the police culture. Officers do a 40-hour training program and 911 call takers have a special 16 hour training program to make sure they get the right officer to the situation. Eight peer support specialists with lived experience now help people navigate the post-arrest diversion process and counteract the default "learned helplessness" behavior.

Judge Leifman has been instrumental convening local stakeholders and businesses to create a new Miami Center for Mental Health and Recovery that will open in about six months at 2200 NW Seventh Ave in Miami. The goal is to treat people for mental health problems who would otherwise cycle through the criminal justice system.

North Carolina Statistics

Robert Cochrane, NCDHHS Statewide Director of Forensic Services, Division of State-Operated Healthcare Facilities (DSOHF), reported that capacity evaluations are on the rise across most states nationwide. In North Carolina there are over 2,000 evaluations conducted each year and approximately 55% are found Incapable to Proceed (ITP). To date in 2023, there have been 939 local certified forensic evaluations (LCFE) with 52% of those cases for defendants with misdemeanors only. There are currently 902 state psychiatric beds, with staffing available for 600 (67%). Central Regional Hospital is estimated to have performed about 800 competency evaluations to date. Dr. Cochrane shared numbers of clients on the waitlist, wait times, and current ITP admissions.

Dr. Cochrane summarized that ITP defendants do not get the care they need in a timely manner or at the right level. The system gets overwhelmed because more officers are needed for arrest and processing individuals with SMI. These defendants often spend a longer time in detention resulting in the courts being further backlogged with increased caseloads for the district attorney and defense counsel. Misdemeanor diversion could supplement other efforts. Capacity evaluation and restoration resources could be reserved for violent and felony cases. Misdemeanor diversion would allow for increased behavioral health engagement.

Emily Mehta, NCAOC Research Policy & Planning Manager, presented findings about a sample dataset of 25 cases provided by DHHS where the defendant was found ITP. Using publicly available identifying information, Research Policy & Planning staff conducted a manual analysis of the criminal history of the unique individuals in the sample. One was for a juvenile and was therefore excluded from analysis. For the remaining 24 defendants had 775 total offenses (including multiple instances of the same charge) and 151 total unique charges (excluding multiple instances of the same charge). Data was further examined to find Offenses per Defendant [Avg. (32), Min. (1), Max. (143)] and unique charges per defendant [Avg. (15), Min. (1), Max. (38)]. Having a data sharing agreement between DHHS and AOC would enable more in-depth analysis of trends and outcomes for existing practices and a way to measure the impact of any future changes.

North Carolina District Attorney Perspective

Lisa Coltrain, Resource Prosecutor for the Conference of District Attorneys, explained concerns from the district attorney's perspective. Forensic evaluations for misdemeanors must be done through a local certified forensic examiner (LCFE). There is no option for an evaluation at Central Regional Hospital for misdemeanors.

District attorneys are concerned that (1) local evaluations are often inadequate; (2) Once a defendant is found incapable to proceed (ITP), there are insufficient safeguards in place to prevent re-offending; and

(3) when a defendant is found incapable to proceed and non-restorable, prosecutors lose all agency in the case. Under N.C.G.S. 15A-1003, the judge shall determine whether there are reasonable grounds to believe that defendant meets criteria for involuntary commitment under Chapter 122C. If the defendant is found to be ITP, and the judge determines the defendant is a not a danger to self or others, then the defendant is released and often repeats the cycle.

The current system can impact the court backlog as well. When a defendant is found to be ITP, the charge is held open in anticipation of the defendant regaining capacity. If he or she regains capacity, the case can be tried or pled ASAP. If the defendant does not regain capacity, the charge will be dismissed upon the earliest of (a) will not regain capacity, (b) deprived of liberty beyond maximum term, (c) five years for misdemeanor, ten years for felony.

Panel on Justice Involved Populations and Current State Efforts

Division of Mental Health Developmental Disabilities and Substance Abuse Services (DMHDDSAS) Justice System Innovation Section Chief Stella Bailey moderated a panel of three participants. She is working on upstream solutions to assist people with mental illness and her role at DHHS partners with the following panelists.

Ziev Dalsheim-Kahane, Policy Advisor from the Office of the Governor represented the state's deflection strategy. He reiterated that when the Medicaid Expansion starts, it will bring $500 million a month to North Carolina which will provide health insurance to over 600,000 people who were struggling to have coverage. Governor Cooper has a roadmap for using $1 billion of the signing bonus money to make behavioral health services more available when where people need them; build strong systems to support people in crisis and people with complex needs and enabling better health access and outcomes with data and technology; and expanding diversion and reentry programs as well as supporting prearrest and deflection programs.

State Forensic Director Dr. Robert Cochrane explained that unless there is a huge investment in community resources, it will not be possible to expect recidivism to go down and for people with behavioral health challenges to be served. When the providers don't exist or the structure doesn't exist, or you don't have someone to monitor it there is nowhere to divert people to. Those community resources don't exist yet in many parts of the state. Centralized data collection for hospital and a closer look at the capacity restoration process are areas that could be improved.

Dr. Marvin Swartz, Professor in Psychiatry and Behavioral Sciences from the Wilson Center for Science and Justice at Duke Law, emphasized that to improve the system and the cross-system linkages in North Carolina, we need to make data sharing more available. He explained that voluntary outpatient commitment was codified in 1992 but the system fell apart with mental health reform. With privatization and diversification of providers there are now more expensive patients with no one entity responsible for accountability, so people are falling through the cracks. A lot of involuntary outpatient

commitment has to do with implementation. New York state has Kendra's Law which has helpful outcomes including that any person with serious mental illness who is coming out of the justice system or coming out of prison had to be evaluated and then put on the order to adhere to treatment.

Discussion: Next Steps for North Carolina

Judge Leifman and Rick Schwermer encouraged discussion of ideas that were shared and how they could help North Carolina. Director Boyce asked everyone to respond to a survey to help determine next steps for North Carolina.

The meeting adjourned at 3:15 p.m.

Submitted by Lori Cole