

**Delaware Supreme Court  
Task Force on  
Criminal Justice  
and  
Mental Health**

**Interim Report**

**June 2009**

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## **I. Introduction**

### Importance of Addressing Criminal Justice Involved Individuals with Mental Illnesses

The frequency with which people with mental illnesses enter our criminal justice system and their handling within that system are critical issues across the nation and in Delaware. National statistics show that 24% of state prisoners had received a clinical diagnosis or treatment by a mental health professional within the past 12 months. When prisoners with symptoms of a mental disorder were also included, statistics show that 56% of state prisoners had a mental health problem.<sup>1</sup> In Delaware, high rates of mental illness among prisoners have exacerbated problems in the treatment of prisoners with mental illnesses in the corrections system as highlighted in an investigation of Delaware's corrections system undertaken by the Civil Rights Division of the United States Department of Justice. While remedial actions are being undertaken by the corrections system, many of those with mental illnesses would be better treated by diversion, rather than being incarcerated, especially since slightly over half (51%) of state prison inmates with mental health problems were incarcerated for non-violent offenses.<sup>2</sup>

Recognizing this problem, Delaware has made substantial efforts to divert those with mental illnesses from the criminal justice system. New initiatives – including the establishment of several pilot mental health courts in New Castle County, as well as new efforts regarding police training on handling those with mental illnesses – demonstrate the State's commitment to addressing these issues and provide hope for improving the treatment of the mentally ill within the criminal justice system, but much more remains to be done.

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<sup>1</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Mental Health Problems of Prison and Jail Inmates* (September 2006).

<sup>2</sup> *Ibid.*

## Creation of the Delaware Supreme Court Task Force on Criminal Justice and Mental Health

In an effort to better understand and address the issue of criminal justice involved individuals with mental illnesses, the Delaware Supreme Court is participating in the Chief Justices' Criminal Justice/Mental Health Leadership Initiative, a national project in its second year. In 2008, Delaware was one of only four states selected by the Council of State Governments (CSG) Justice Center to participate, and as one of the states selected, Delaware will receive funding and technical assistance from the CSG Justice Center and National GAINS Center.

To lead Delaware's efforts, Chief Justice Myron T. Steele formed the Delaware Supreme Court Task Force on Criminal Justice and Mental Health and has designated Delaware Supreme Court Justice Henry duPont Ridgely as chair of the project.

### Goals of the Task Force

Under Justice Ridgely's leadership, the Task Force has brought together judges, state leaders, legislators and nonprofit organizations to develop ways to improve outcomes for people with mental illnesses engaged with the criminal justice system. The goals of the Task Force are to encourage inter-agency co-operation, and identify specific gaps in resources, including improvements to treatment options, as well as steps to take when appropriate, to help individuals with mental illnesses avoid contact with the criminal justice system. In 2009, the Task Force will develop a strategic plan to address these issues.

## Funding

The work of the Task Force is supported by a \$5,000 grant from the Council of State Governments Justice Center. The Task Force will also receive technical assistance from the CSG Justice Center, the National GAINS Center, and nationally recognized experts in the areas of criminal justice and mental health.

## **II. Charge of the Task Force**

The charge of the Delaware Supreme Court Task Force on Criminal Justice and Mental Health is to develop recommendations to policymakers to improve prevention and system-wide responses to persons with mental illness involved in the entry into the criminal justice system or re-entry into the community through inter-branch communication, collaboration and allocation of resources for the education of the criminal justice community, the identification of juvenile and adult defendants in need of mental health treatment, the enhancement of victim's rights and the referral, when appropriate, of defendants with mental illness to mental health courts established in each county for judicially supervised community-based treatment.

### **III. Task Force Membership**

Chief Justice Myron T. Steele appointed Justice Henry duPont Ridgely of the Delaware Supreme Court to chair the Task Force. Other members of the Task Force are:

#### **JUDICIAL BRANCH**

Hon. Jan R. Jurden  
Judge, Superior Court of Delaware

Hon. Joseph F. Flickinger, III  
Judge, Delaware Court of Common Pleas

Hon. Andrea Maybee Freud  
Commissioner, Superior Court of Delaware

Hon. Alicia B. Howard  
Commissioner, Superior Court of Delaware

Hon. Loretta M. Young  
Commissioner, Family Court of Delaware

Hon. Deborah Ann McNesby  
Justice of the Peace, Justice of the Peace Court

#### **LEGISLATIVE BRANCH**

##### **Delaware Senate**

Hon. Margaret Rose Henry  
Hon. Liane M. Sorenson

##### **Delaware House of Representatives**

Hon. Deborah Hudson  
Hon. Helene M. Keeley

#### **EXECUTIVE BRANCH**

##### **Delaware Board of Parole**

Dwight F. Holden, Chairperson

##### **Delaware Health and Social Services**

Hon. Rita Landgraf, Cabinet Secretary  
Kevin Huckshorn, RN, MSN, CAP, ICADC, Director, Division of Substance Abuse and Mental Health  
Susan McLaughlin, Director, Treatment Access Center (TASC)

**Department of Correction**

Thomas Carroll, Deputy Commissioner  
Imad Jarwan, Treatment Services Coordinator  
Jeremy McEntire, Treatment Services Administrator  
Georgiana Staley, Senior Probation Officer

**Department of Justice**

Hon. Richard S. Gebelein, Chief Deputy

**Department of Safety and Homeland Security**

Terry L. Pepper, Deputy Principal Assistant

**Department of Services for Children, Youth, and Their Families**

Hon. Vivian Rapposelli, Cabinet Secretary  
Susan A. Cycyk, M.Ed., Director, Division of Child Mental Health Services

**Office of the Public Defender**

Brian J. Bartley, Esq. Chief Deputy  
Kerry M. Ferriter, Supervisor, Psycho-Forensic Evaluation Unit  
Dawn M. Williams, Esq., Assistant Public Defender

**COMMUNITY TASK FORCE MEMBERS**

Dr. Janet Kramer, Board Chair, Delaware Center for Justice  
James Lafferty, Director, Mental Health Association in Delaware (MHA)  
Patricia McDowell, Director of Programs, National Alliance on Mental Illness in Delaware (NAMI)  
Dr. Carol A. Tavani, MD, MS, DFAPA, Psychiatric Services, Christiana Care Mental Health Unit

**ADVISORY SUBCOMMITTEE MEMBERS**

Ronald Keen, Criminal Justice Senior Planner, Criminal Justice Council  
Christian Kervick, Criminal Justice Planning Coordinator, Criminal Justice Council  
Dr. Chrysanthi Leon, Assistant Professor of Sociology, University of Delaware  
Patricia Dailey Lewis, Director of Family Division, Department of Justice  
Dr. Clarence Watson, Psychiatrist, Delaware Psychiatric Center

**TASK FORCE STAFF**

Hon. Patricia W. Griffin, State Court Administrator  
Christine Sudell, Esq., Deputy State Court Administrator  
Stephanie Symons, Esq., Staff Attorney, Administrative Office of the Courts

## **IV. Subcommittees**

The Task Force has established the following subcommittees. Each subcommittee has been tasked with addressing specific areas of concern related to criminal justice involved individuals with mental illnesses and with developing concrete action plans to address those concerns. Subcommittees meet regularly and report back to the Task Force.

### **Communication, Collaboration, and Resource Allocation Subcommittee**

Chair: Hon. Jan R. Jurden  
Judge, Superior Court of Delaware

### **Education, Prevention, and Victim's Rights Subcommittee**

Chair: Dwight F. Holden  
Chairperson, Delaware Board of Parole

### **Identification, Assessment, and Treatment Subcommittee**

Chair: Dr. Carol A. Tavani, MD, MS, DFAPA  
Psychiatric Services, Christiana Care Mental Health Unit

### **Juvenile Subcommittee**

Chair: Hon. Jan R. Jurden  
Judge, Superior Court of Delaware

### **Mental Health Courts Subcommittee**

Chair: Hon. Joseph F. Flickinger, III  
Judge, Delaware Court of Common Pleas

## **V. Current Task Force Projects**

### Meetings

The Task Force held its first meeting on December 1, 2008. Additional meetings were held on January 23, 2009, March 20, 2009, and May 8, 2009. Minutes of the December 1, 2008, January 23, 2009, and March 20, 2009 meetings are included in the appendix to this report. The Task Force will continue to meet throughout 2009.

### Justice Leadership Initiative (JLI) Policy Forum

On January 8 and 9, 2009, Task Force members attended the JLI Policy Forum in Philadelphia. Hosted by the CSG Justice Center and the National GAINS Center, the Policy Forum brought together teams of judges, leaders of state agencies, and other practitioners from the four states selected to participate in the Chief Justices' Criminal Justice/Mental Health Leadership Initiative: Delaware, Idaho, New Hampshire, and Wisconsin. Task Force members shared information and learned from experts and judges who chaired similar task forces the previous year.

### Tours of Department of Correction Treatment Facilities

On April 27, 2009, Task Force members toured Howard R. Young Correctional Institution and Delores J. Baylor Women's Correctional Institution. On May 19, 2009, Task Force members toured James T. Vaughn Correctional Center. Task Force members received a guided tour of the special needs units that house and treat inmates with mental illnesses as well as the medical and receiving areas at the institutions. Task Force members also met with Department of Correction and Correctional Medical Services staff, and at Baylor, met and spoke with women housed in the facility's special needs unit.

### Judicial and Public Education

#### Articles

The Task Force recognizes the importance of educating the public as well as the Courts and other agencies about the Task Force, existing programs such as mental health courts, and the need to improve responses to individuals with

mental illnesses. Members of the Task Force have written articles on a variety of criminal justice and mental health issues. Published articles are included in the appendix of this report.

### *Judges' Guide to Mental Health Jargon*

The Task Force provided copies of the *Judges' Guide to Mental Health Jargon* to all Delaware Judges and Justices of the Peace. Published by the Judges' Criminal Justice/Mental Health Leadership Initiative, the *Judges' Guide to Mental Health Jargon* is a reference for mental health terms most often encountered by the Judiciary.

### Public Forums

The Task Force plans to hold statewide public forums to familiarize the public with the work of the Task Force, educate the public about the issues surrounding criminal justice involved individuals with mental illnesses, and invite public comment.

## Expansion of Mental Health Courts

### Superior Court

On March 12, 2009, the Task Force collaborated with the Criminal Justice Council to submit a Planning and Implementation application to the Bureau of Justice Assistance to expand the Superior Court Mental Health Court into Sussex County.

The request was made in the amount of \$250,000. These funds would provide for legal counsel (Public Defender) as well as a psychiatric social worker to help staff the expansion. The program will handle both pre- and post-adjudication offenders, 18 years or older, Delaware residents who are charged with a non-violent felony level offense and whose mental illness contributed to their criminality. To be eligible they must also have an Axis I mental health diagnosis. Individuals who meet the criteria for a substance abuse diagnosis will be eligible for consideration provided the mental health diagnosis is primary.

#### Court of Common Pleas

The Hon. Joseph F. Flickinger, III has begun work to establish a pilot program in New Castle County to expand the Court of Common Pleas Mental Health Court to Violations of Probation (VOPs). The pilot program would allow New Castle County Court of Common Pleas judges to transfer someone before them for a VOP who has been identified as having mental issues to a Court of Common Pleas VOP calendar. Using existing resources, Judge Flickinger will hear the cases in addition to his current Mental Health Diversion Court calendar and will work with TASC and Probation and Parole to establish a screening process for potential participants. If the pilot program is successful in New Castle County, it could be expanded to Kent and Sussex Counties.

#### Attorney General's Opinion on HIPAA

Enacted to establish standards and requirements for the transmission of medical records, the Task Force has identified federal and state HIPAA laws as potential barriers

to information sharing and the proper treatment of inmates with mental illnesses. To better understand these barriers, both real and perceived, Task Force member Dwight Holden, Chairperson of the Delaware Board of Parole, requested an opinion from the State Solicitor pursuant to Title 29, Chapter 5 of the Delaware Code.

On April 29, 2009, Mr. Holden asked the State Solicitor to provide an opinion concerning the applicability of the federal and state HIPAA laws as well as any other applicable laws regarding confidentiality to Delaware's criminal justice agencies with respect to inter-agency sharing and/or transfers of the medical and mental health records of sentenced defendants in criminal cases. Mr. Holden also requested that the State Solicitor provide an opinion regarding what statutory or rule changes might be necessary to fully authorize the various criminal justice agencies to engage in regular inter-agency sharing and/or transfer of the mental and medical health records of sentenced defendants in criminal cases without the necessity of a written waiver. A copy of the request is included in the appendix to this report.

### Involuntary Commitments

A large number of people who appear for involuntary commitment hearings have had some kind of police contact. The Task Force is working to develop ways to ensure that judges know if a defendant appearing before them in a criminal matter has been involuntarily committed. The Task Force is working with Superior Court and the Prothonotary's Office to "flag" case files. Coding files would alert judges of involuntary commitments while also preserving the confidentiality of defendants.

### Review of Department of Correction Formulary

Recognizing that the availability of appropriate medications and the ability to continue current medications is crucial to the successful treatment of individuals with mental illnesses, Task Force members Dr. Carol A. Tavani and James Lafferty met to compare and contrast the Medicaid formulary and the Department of Correction formulary and to review community resources. After reviewing the formularies, Dr. Tavani and Mr. Lafferty met with fellow Task Force members Jeremy McEntire, Treatment Services Administrator for the Department of Correction, and Imad Jarwan, Treatment Services Coordinator for the Department of Correction, and discussed the following issues:

- The relationship between the DOC, CMS, Pharmacor, and the Therapeutics Committee
- The mechanism by which non-formulary drugs are requested and processed
- The disconnect between court commitment to medications and medications received during incarceration
- Information sharing between DHSS and DOC
- Issuing of medications upon release

### Collaboration with Governor's Reentry Task Force

Ms. Valarie Tickle, Criminal Justice Planning Coordinator for the Criminal Justice Council, presented the Delaware Offender Reentry Plan to the Task Force at the May 8, 2009 Task Force meeting. The Task Force has voted to endorse the Plan and will collaborate with the Governor's Reentry Task Force on issues related to offenders with

mental illnesses. Some of the issues which have been identified as potential areas of collaboration are:

- Maximizing existing resources by creating interdisciplinary approaches to support offenders' successful re-integration into the community
- Improving public safety by reducing recidivism and re-victimization in our communities
- Development of Memoranda of Understanding with partner government agencies to streamline process and delivery with clear expectations and accountability
- Seek grant funds to support reentry and recidivism efforts
- Work with DOC and DHSS to identify individuals with specific mental health needs prior to release and coordinate services in anticipation of release
- Encourage collaboration between DHSS and DOC to begin the Medicaid and entitlement application process before release
- Identify HIPAA myths and barriers to pre-release planning and coordination of services
- Work to amend Title 16 of the Delaware Code to allow release of public health information between partnering agencies

#### Technical Assistance: Delaware Criminal Justice/Mental Health Information Sharing Project

The Delaware Task Force will receive technical assistance from the Justice Center and the GAINS Center to help identify and implement strategies that will improve responses to those with mental illnesses who become involved in the criminal justice system.

The Council of State Governments Justice Center has received funding support from the Bureau of Justice Assistance, U.S. Department of Justice, to analyze information sharing challenges that arise when court officials, prosecutors, defense attorneys, and mental health providers are considering options for defendants and inmates with mental

illnesses. The Justice Center will conduct this work in partnership with Timothy Murray, Executive Director of the Pretrial Justice Institute.

The Justice Center and the Pretrial Justice Institute will work with the Task Force and will provide technical assistance to address barriers to information exchange between criminal justice and mental health agencies and organizations. Topics to be explored and addressed include:

- Using waiver forms and seeking informed consent
- Accessing information about community behavioral healthcare service utilization and Medicaid enrollment prior to incarceration in order to inform treatment and reentry plans
- Communication between community behavioral healthcare providers and community corrections officers serving probationers/parolees with mental illnesses
- Hurdles to ensuring that judges have more information about the mental health status and needs of individuals appearing in court
- Pre-trial information sharing challenges specific to mental health courts
- Development of information sharing protocols

Research Assistance: University of Delaware

Chrysanthi L. Leon, J.D., Ph.D., Assistant Professor and Principal Investigator in the Department of Sociology and Criminal Justice at the University of Delaware, is providing research assistance to the Task Force. Two projects have been initiated which will result in reports for the Task Force with recommendations for future implementation and for obtaining long-term funding. Both projects involve graduate and undergraduate students at the University of Delaware thereby broadening the capacity to collect data and increasing awareness of the Task Force's goals and activities. The two projects are:

1) Issues in Collaborative Justice: A Process Evaluation of a Mental Health Court

This study will examine how the members of involved agencies understand their role in the New Castle County Superior Court Violation of Probation Mental Health Court and the role of the Mental Health Court in the larger justice system.

The study uses a multi-faceted ethnographic approach, featuring in-depth interviews with officials and participant-observation of mental health court meetings and court sessions. The resultant products include a research report for use by the mental health court, peer-review and conference papers, methodological tools (interview guides and surveys) for future investigation, electronic resources for widespread dissemination of the research findings, and recommendations for policy-makers and practitioners.

2) Outcome Evaluation of New Castle County Court Mental Health Initiatives

University of Delaware researchers will follow participants involved in the Superior Court Violation of Probation Mental Health Court and the Court of Common Pleas Mental Health Diversion Court over the course of their involvement with the Mental Health Courts. Researchers will interview participants to capture experiences which can document useful aspects of the Mental Health Court calendars that are not represented by criminal offending, drug use, or other standard measures.

When the research is complete, information will be available on the participants' experiences during supervision and for a one year follow up period.

This information will be used to report to the Task Force about general effectiveness, as well as areas that require more attention. Information gathered will also be used to assist those implementing mental health initiatives and to create a screening instrument to help select new subjects that are most likely to benefit from mental health courts.

## **VI. Preliminary Recommendations**

### **1. Diversion**

- Develop interventions to identify and target adults and juveniles with mental health issues involved in or at risk of becoming involved in the criminal justice system
- Improve and standardize screening and assessment tools to identify individuals with mental illnesses who have become involved in the criminal justice system

### **2. Expansion and Creation of Mental Health Court Programs**

- Expand existing New Castle County Mental Health Court programs to Kent and Sussex Counties
- Explore creating new Mental Health Court programs, including a Court of Common Pleas VOP Mental Health Court, a Superior Court Diversion Mental Health Court, Veterans' Court, and new juvenile programs
- Support the Criminal Justice Council's approval to allocate \$1,309,575 in federal Byrne Grants for the Delaware Courts, including the continuation of the Family Mental Health Court and the expansion of the Superior Court Mental Health Court statewide

### **3. Communication and Inter-agency Collaboration**

- Improve communication and collaboration between all agencies and actors in the criminal justice system concerning the individual's mental health issues, medications, past treatments and future treatment needs as the individual moves through the system
- Improve communication with the public about the issues facing those with mental illnesses in the criminal justice system, available programs, and the need to improve law enforcement and the Courts' responses to individuals with mental illnesses

- Improve communication with former mental health providers to obtain the most up to date and complete information about the individual to better assist him with his mental health needs

#### **4. Clarification of HIPAA Requirements**

- Determine what statutory or rule changes might be needed to fully authorize the various criminal justice agencies to engage in regular inter-agency sharing and/or transfer of the mental and medical health records of sentenced defendants in criminal cases without the necessity of a written waiver
- Educate service providers about HIPAA requirements and HIPAA myths that create unnecessary barriers to the sharing of information
- Support legislation which would amend Delaware's HIPAA statute to create a limited exception for the Department of Correction, removing barriers to obtaining information and helping to ensure the appropriate continuity of healthcare services for offenders in DOC custody

#### **5. Development of Information Sharing Protocols**

- Develop information sharing protocols between all agencies and actors in the criminal justice system as well as community service providers
- Ensure that all agencies and actors know what information is available and how to access that information
- Develop a system whereby medical and mental health treatment records follow inmates from DOC facility to DOC facility
- Ensure that institutional release officers have the information needed about offenders' mental health histories in order to ensure proper Probation and Parole placement

#### **6. Expansion of Law Enforcement Training**

- Expand law enforcement training beyond the mandated one-time course currently conducted at the Police Academy
- Design and implement a Crisis Intervention Training (CIT) program which would educate law enforcement professionals on recognizing, responding to, triaging and referring offenders with mental illnesses

- Make training available to police, probation officers, court officers, corrections officers, and any other law enforcement professionals that may come into contact with offenders with mental illnesses

## **7. Expansion of Crisis and Psychiatric Emergency Services (C.A.P.E.S.)**

- Expand C.A.P.E.S. units to hospitals in Kent and Sussex Counties to improve triage and treatment of patients with mental illnesses

## **8. Allocation of Resources**

- Maximize current resources and efficiency while improving provision of mental health treatment to criminal justice involved individuals. This includes:
  - Exploring “gap funding” to provide interim assistance for individuals applying for federal entitlement benefits such as SSI/SSDI during the period between application and approval of benefits
  - Suspending rather than terminating Medicaid benefits during incarceration
  - Exploring the availability of veteran’s benefits for eligible individuals
  - Exploring Social Security Outreach, Access and Recovery (SOAR) programs
  - Working with the Insurance Commissioner to determine if Delaware employers are adhering to legislation requiring coverage for mental health issues
  - Moving the Delaware Violent Crimes Compensation Board to an existing agency and revising eligibility and application requirements to ensure that victims receive the assistance they need
  - Pursuing grants to fund programs to better assist those with mental health issues who become involved with the criminal justice system

## **9. Judicial Education**

- Develop programs to educate Judicial Officers on mental health and criminal justice issues as well as available resources both for mentally ill offenders and the victims of crime

## **10. Public Education**

- Develop programs to educate the public on mental health and criminal justice issues as well as available resources both for mentally ill offenders and the victims of crime

#### **11. Reentry**

- Implement the recommendations contained in the Delaware Offender Reentry Plan developed by the Governor's Reentry Task Force

#### **VII. Conclusion**

While Delaware has made substantial efforts to address the needs of the mentally ill in the criminal justice system, much more remains to be done. A comprehensive approach is needed to ensure that inmates receive proper mental health treatment and that, when appropriate, individuals with mental illnesses enter diversion programs instead of being incarcerated. Over the course of 2009, the Delaware Supreme Court Task Force on Criminal Justice and Mental Health will continue to work to develop a strategic plan designed to address the issue of criminal justice involved individuals with mental illnesses.

June 9, 2009

Respectfully submitted,  
DELAWARE SUPREME COURT TASK FORCE  
ON CRIMINAL JUSTICE AND MENTAL HEALTH

By: 

Hon. Henry duPont Ridgely  
Chair

**APPENDIX TO THE INTERIM REPORT OF THE  
DELAWARE SUPREME COURT TASK FORCE ON  
CRIMINAL JUSTICE AND MENTAL HEALTH**

**DELAWARE SUPREME COURT TASK FORCE ON  
CRIMINAL JUSTICE AND MENTAL HEALTH:  
MEETING MINUTES**



## **MINUTES OF THE SUPREME COURT MENTAL HEALTH/CRIMINAL JUSTICE TASK FORCE**

**DECEMBER 1, 2008**

The first meeting of the Supreme Court Mental Health/Criminal Justice Task Force was held in the Supreme Court conference room in the Carvel Building, Wilmington. The meeting was convened at 10 a.m. Those present were: The Hon. Myron T. Steele, The Hon. Henry duPont Ridgely, The Hon. Jan R. Jurden, The Hon. Joseph Flickinger, The Hon. Alicia Howard, The Hon. Loretta Young, The Hon. Andrea M. Freud, The Hon. Richard Comly, The Hon. Deborah Hudson, The Hon. Margaret Rose Henry, The Hon. Liane Sorenson, The Hon. Helene Keeley, The Honorable David B. Mitchell, Michael Kelleher, Dr. Carol Tavani, Dwight F. Holden, Thomas L. Carroll, Brian J. Bartley, Esq. Susan McLaughlin, Patricia Dailey Lewis, Esq., James Lafferty, Dawn M. Williams, Esq., Kerry M. Ferriter, Georgiana Staley, Ron Keen, Robert Dunleavy (for Susan Cycyk), The Hon. Patricia W. Griffin, Christine Sudell, Esq. and Stephanie Symons, Esq.

### **I. Welcome and Background**

The meeting commenced with a welcome by Chief Justice Myron T. Steele. Chief Justice Steele emphasized the importance of the Task Force in developing innovative ways to resolve the problems of the mentally ill in the criminal justice system for both defendants and society as a whole. He thanked all of the task force members for their willingness to serve in this important effort.

Justice Henry duPont Ridgely provided background on the establishment of the task force. He stated that the task force is being supported by a grant and technical assistance from the Council of State Governments. (Rep. Deborah Hudson has recently served as president of the Council and Senator Liane Sorenson has served on the board of the Justice Center of the Council of State Governments). This is the second year in which the grant has been offered and this year thirteen states applied of which Delaware was one of four selected. The other states selected this year were Wisconsin, Idaho, and New Hampshire. The Council will hold a policy forum in Philadelphia in January at which the four states will meet to discuss issues relating to mental health and criminal justice.

Justice Ridgely noted that the Task Force does not have an easy job, but that he believes that Delaware has a good start in making progress since it already has existing

successful mental health courts. As an example, 91% of those who completed the Court of Common Pleas mental health court program did not have new charges within six months of graduating.

## **II. Charge of the Task Force**

Justice Ridgely handed out a proposed charge for the Task Force. After discussion and revision, the following charge was adopted:

### **CHARGE OF THE SUPREME COURT MENTAL/HEALTH CRIMINAL JUSTICE TASK FORCE**

The charge of the Supreme Court Mental Health/Criminal Justice Task Force is to develop recommendations to policymakers to improve prevention and system-wide responses to persons with mental illness involved in the entry into the criminal justice system or re-entry into the community through inter-branch communication, collaboration and allocation of resources for the education of the criminal justice community, the identification of juvenile and adult defendants in need of mental health treatment, the enhancement of victim's rights and the referral, when appropriate, of defendants with mental illness to mental health courts established in each county for judicially supervised community-based treatment.

## **III. Introduction of Task Force Members and Review of Existing Efforts Relating to mental health/criminal justice**

Justice Ridgely asked each of Task Force participants to introduce themselves and to provide information as to the mission and programs of their organization related to mental health and criminal justice. The following information was provided:

A. Michael Kelleher – Director, Division of Substance Abuse and Mental Health. Mr. Kelleher reported that the Division serves about 14,000 individuals per year. He noted that the 24% figure contained in the grant application for individuals with mental illness is similar to that for the general population. He indicated that though there is much need in this area, he is not sure what will happen to programs given the current economy. He also noted that there are concerns about client confidentiality that may need to be addressed.

B. Senator Liane Sorenson – Delaware State Senate. Senator Sorenson said that she has been involved in the Council of State Governments Justice Center since its inception. She noted that she had concerns about victims of crime committed by persons with mental illness as these victims frequently do not receive the same notifications as do other crime victims.

C. Patricia Dailey Lewis, Esq. – Director, Family Division of the Department of Justice. Ms. Lewis stated that the Division pursues a variety of civil and criminal issues relating to families including child abuse, child protection, juvenile delinquency, domestic violence, and senior protection. She expressed a concern with balancing the rights of victims and the mentally ill. She also noted that there has been an increase in mentally ill victims, particularly with regard to domestic violence and that women who are mentally ill are more likely to be victims of domestic violence. Ms. Lewis explained that the Division has been working closely with Family Court to get family supports in as early a stage as possible in order to try to prevent progression from juvenile delinquency to the adult criminal system. Deputy attorneys general in the Division are cross-trained in a variety of issues so that they will be best able to work with this population.

D. Commissioner Loretta Young – Family Court. Commissioner Young handles the Family Court Mental Health Court hearings. If a child is found competent, with the permission of the deputy attorney general, the child may enter the mental health court and follow a treatment plan which includes various criteria such as attending school, going to treatment, and appearing in court, as required. If the child successfully completes the plan, the charges will be dismissed.

E. Commissioner Alicia Howard – Superior Court (Sussex County). Commissioner Howard stated that she handles civil and criminal commitments for the Superior Court in Sussex County. There is no mental health court yet in Sussex County, but she believes that it would be beneficial.

F. Commissioner Andrea Freud – Superior Court (Kent County). Commissioner Freud also does commitments and expressed concern that there are not good placements for individuals who have a dual diagnosis of mental illness and substance abuse. She indicated that this was an issue that needed to be addressed.

G. Secretary David Mitchell – Secretary, Homeland Security. Secretary Mitchell observed that the handling of persons with mental illness and or substance abuse problems has been a longstanding issue for police officers on the street. Officers often view custodial arrest as an opening to the door to a solution. However, officers need options as to what they can do. There have been successful programs through which mental health professionals paired up with police officers which helped with intake for the mentally ill. Secretary Mitchell also indicated that he believed that coordination with emergency services and 911 would be areas for the Task Force to examine. In addition, the Task Force might look at what needs to be done with increasing training of new officers through the Council on Police Training and for in-service training for existing police officers. One concern that he has noted recently has been individuals who essentially commit suicide by attacking a police officer. There is also a large challenge with regard to returning veterans who have post traumatic stress disorder and act out in

manner that results in a call to the police. With the downturn in the economy, Secretary Mitchell suggested that consideration be given to a central building for booking, where services would be consistently available, as opposed to going to a police station. This could return officers to the street faster and streamline the provision of services to arrestees with mental illnesses.

H. Ron Keen – Criminal Justice Council. Mr. Keen noted that there have been cuts in federal, as well as state funds and he hopes that the Task Force will be able to find ways to leverage funds as much as possible.

I. Judge Joseph Flickinger – Court of Common Pleas (New Castle County). Judge Flickinger, who is the judge in charge of the New Castle County Court of Common Pleas Mental Health Court, reported that the Court has been in operation for five years. It was the first mental health court in the state and was begun with a federal grant. The Court has had tremendous success with only 17 individuals terminated and 141 who have successfully completed the program. The mental health court works as follows:

1. Defendants with pending misdemeanor charges and an Axis I disorder (a psychiatric disorder such as schizophrenia or depression) are identified through the Public Defender's office or a private attorney as possible candidates.
2. With the permission of the attorney general and the Court, the defendant enters a guilty plea which is dismissed if the defendant completes the program.
3. A customized treatment plan is developed which the defendant agrees to follow.
4. Status conferences are held on an ongoing basis. At the conference, the judge goes over the case manager's report. If the defendant is doing well, they may be held only every six weeks. If the defendant is not doing well, they may be held twice a month. There is an effort to keep a positive momentum. For example, if someone is put in a residential program, the judge tells them that it is a chance to succeed.

Judge Flickinger concluded his report by expressing the hope that the mental health court will become statewide.

J. Judge Jan Jurden – Superior Court (New Castle County). Judge Jurden is the judge in charge of the New Castle County Superior Court Violation of Probation Mental Health Court. She explained that the court was created in response to seeing repeat offenders in Violation of Probation calendars that were mentally ill and could not succeed on regular probation. The Mental Health Court works as follows:

1. Probation and Parole and TASC identify a candidate with no open charges and with no domestic violence or sex offense history.

2. The Court is held every two weeks and maintains consistency with the same deputy attorney general and deputy public defender. Previously they would not have had this consistency. Each individual is given a customized treatment plan.

At this time there are about 30 individuals who have graduated. It is encouraging to see positive results that can occur and Judge Jurden would like to see the Court expanded. One difficulty is that it is hard for Probation and Parole and TASC to monitor with no additional funding allocated.

K. Susan McLaughlin – Director, Treatment Access Center (TASC). Ms. McLaughlin stated that the assessment case management unit of TASC provides case managers and psychiatric social workers in the drug courts. Client profiles have been changing with serious mental health and substance abuse issues making the specialty and diversion courts necessary. TASC staff members are being cross-trained so that they can address both mental illness and substance abuse issues. They would like to work with these issues downstate as well, but are unable to do so with the existing funding.

L. Judge Richard Comly – Justice of the Peace Court (Sussex County). Judge Comly reported that about ten years ago studies were done that showed the importance of truancy in leading to involvement in the criminal justice system. To combat this, the Justice of the Peace Court started a truancy court which has received national recognition. Many of the parents and children in the Truancy Court have mental health issues.

In addition, Judge Comly pointed out that the Justice of the Peace Court is currently moving to consolidate its courts in New Castle County. This is an opportunity to better address mental illness issues by better allowing for a deputy attorney general and public defender to be present at initial appearances and will provide an opportunity for earlier identification of those with mental illnesses and a better opportunity to get them into diversion.

M. Brian Bartley, Esq. – Chief Deputy, Office of the Public Defender. Mr. Bartley reported that one problem seen by his office is deinstitutionalization and that the court system is now being required to deal with this population. The Office of the Public Defender has been involved with the mental health courts from their beginnings and has psycho-forensic evaluators who work in the courts. They also have mitigation specialists in murder cases to see what in a defendant's background would cause them to commit murder. About six years ago, the Office received a grant for pre-commitment drug treatment. There is a large problem in that people with co-occurring disorders need to go to jail before they can receive treatment. It would be helpful for the Task Force to address ways for individuals to receive treatment without having to be sent to jail when their crimes do not warrant incarceration. There is also need to de-stigmatize mental illness.

N. Thomas Carroll – Deputy Commissioner, Department of Correction. Mr. Carroll stated that the Department of Correction has approximately 7,000 to 7,200 individuals in custody at a time, with about 25,000 individuals being admitted and discharged in a year. On any given day, about 1,125 incarcerated individuals are getting mental health treatment. Mental health treatment is handled through a contract and there are special needs units. There are also infirmary beds used in all institutions for those with acute psychiatric problems. If offenders cannot be stabilized, placement is requested at the Delaware Psychiatric Center.

O. Dwight Holden – Chair, Board of Pardons. Mr. Holden reported that the Board sees a lot of mental health issues and refers people to TASC. A few years ago, they tried to introduce legislation to have mental health assistance for secondary victims (family members who are caretakers of victims). He also expressed concern that juveniles are committing crimes with weapons and eventually end up in the adult criminal justice system.

P. James Lafferty - Director of Mental Health Association in Delaware. Mr. Lafferty stated that about one quarter of all adults in the United States have some type of mental illness. His organization is an advocacy organization. He believes that the Court of Common Pleas Mental Health Court is very impressive and that a mental health court can succeed at the felony level. He also indicated that he believes that diversion at the police level can help, as can working with probation and parole. There is a need for treatment to begin in the community and for early intervention.

Q. Dr. Carol Tavani – Psychiatrist, Christiana Care Mental Health Unit. Dr. Tavani expressed concern that prisons have become repositories for the mentally ill. She has been doing psychiatric work for Brandywine Counseling. They have a long waiting list for Axis I diagnoses. It is her view that most people with a substance abuse problem have an underlying mental health problem and that the 25% figure for prevalence of mental illness in the population is too low. Only about one-half of individuals with mood disorders are diagnosed. Since almost all individuals with substance abuse have co-occurring disorders, if you proceed with the idea that they have both you're more likely to be correct. She also commented that communication among agencies is a big issue. Dr. Tavani emphasized that she did not always get the records for a patient even within her own institution. There is no interface between community mental health and jail or from jail to outpatient services. It takes financial resources to reinvent this information. Therefore, we should be able to improve communication and save money in doing so.

R. Senator Margaret Rose Henry – Delaware State Senate. Senator Henry said that she is an advocate for mental health treatment. She emphasized the importance of finding a balance between the availability of records and confidentiality. She hopes to work with the Task Force as a policy maker and advocate.

S. Representative Deborah Hudson – Delaware House of Representatives. Representative Hudson is a past president of the Council of State Governments. Delaware has participated in the Council and has won two national awards for its programs. She looks forward to working with the Task Force.

T. Representative Helene Keeley – Delaware House of Representatives. Representative Keeley has large parts of the city in her district and her constituents are affected by the issues the Task Force will be considering. She will be happy to work with the Task Force to do whatever she can to help.

U. Kerry Ferriter – Director, Psycho-Forensic Unit, Office of the Public Defender. Ms. Ferriter explained that the unit’s work starts with referrals to enter the mental health courts and they work closely with the attorneys. The staff members have MSWs and try to foster relationships, get needs met, and assist the case to be resolved.

V. Dawn Williams, Esq. – Supervisor, Misdemeanor Trial Unit at the Office of the Public Defender. Ms. Williams stated that her office has responsibility for clients charged with a variety of offenses. Most clients have been victims themselves. She indicated that needs in improving the handling of the mentally ill in the criminal justice system include better coordination of agencies, increased police training with regard to pre-arrest diversion, and diversion options. Currently, when family members call police to help get the person to the hospital, the person may wind up with charges. Substance abusers are the hardest clients to help. There is also a need to address the handling of those who do not fit into current mental health courts due to prior felonies or sex offenses.

W. Georgiana Staley – Mental Health Unit, Probation and Parole. Probation and Parole has been working with the superior Court mental health court. Some needs she has seen are training for police officers, notification of probation and parole that persons released have a mental illness, and how to address the needs of those who are schizophrenic and do not follow up on treatment.

X. Robert Dunleavy (for Susan Cycyk, Director, Child Mental Health Services) Mr. Dunleavy reported that Child Mental Health Services has a program through which clinicians have been embedded in the Wilmington Police Department and that it has referred 1900 children to treatment so far. Where they identify a need for mental health assistance in a family, they can work with siblings, as well as parents, if needed. Only about 5% of those treated have gone on to have more serious mental health issues and only a low percentage have committed crimes. They currently have five full time clinicians. Embedding is a technique based on a model established for adults in Memphis. They currently operate mainly on grants. Child Mental Health Services also provides training for police in Wilmington and New Castle County.

**IV. Subcommittees.** The following subcommittees and chairs were established:

- Identification, Assessment and Treatment – Dr. Carol Tavani
- Mental Health Courts – Judge Joseph Flickinger
- Education and Prevention/Victims Rights – Dwight Holden
- Communication/Collaboration and Resource Allocation – Judge Jan Jurden

Subcommittees will be expected to report back to the full Task Force at its next meeting.

It was agreed that there would not be a separate legislative subcommittee at this time and that each subcommittee could recommend legislation related to its area.

Justice Ridgely requested each Task Force member to sign up for a subcommittee. (A list of subcommittees and members is attached.)

**V. Policy Forum.** Justice Ridgely advised that the Council of State Governments will be holding a policy forum on January 8<sup>th</sup>-9<sup>th</sup> in Philadelphia and requested that each of the committee chairs attend. It was also agreed that Judge Gebelein and Brian Bartley would attend, if the Council of State Governments would permit additional attendees.

**VI. Next Meeting.**

The next meeting of the full Task Force will be held:

Date: Friday, January 23, 2009  
Time: 10:00 a.m.  
Place: Supreme Court Conference Room  
11<sup>th</sup> Floor  
Carvel State Office Building  
820 N. French St.  
Wilmington, DE

The meeting was adjourned at approximately 12:30 p.m.



## **MINUTES OF THE MENTAL HEALTH/CRIMINAL JUSTICE TASK FORCE MEETING JANUARY 23, 2009**

The meeting of the Task Force was convened at approximately 10:15 a.m. Those present were: The Hon. Henry duPont Ridgely, Chair, Veterans Affairs, Tracy Polk, Veterans Affairs, The Hon. Jan Jurden, Superior Court, The Hon. Joseph Flickinger, Court of Common Pleas, The Hon. Loretta Young, Family Court, The Hon. Richard Comly, Justice of the Peace Court, The Hon. Liane Sorenson, Delaware State Senate, The Hon. Margaret Rose Henry, Delaware State Senate, The Hon. Alicia B. Howard, Superior Court, The Hon. Andrea Freud, Superior Court, Dr. Carol A. Tavani, Christiana Psychiatric Services, Michael Kelleher, Division of Substance Abuse and Mental Health, The Hon. Richard Gebelein, Department of Justice, Brian Bartley, Esq., Public Defender's Office, Dawn M. Williams, Esq., Public Defender's Office, Kerry Ferriter, Public Defender's Office, Dwight Holden, Board of Parole, Thomas L. Carroll, Department of Correction, Jeremy D. McEntire, Department of Correction, James Lafferty, Mental Health Association of Delaware, Elizabeth Olsen, Department of Safety and Homeland Security, Jay A. Hills, Veterans Affairs, Susan McLaughlin, TASC, Ron Keen, Criminal Justice Council, Chris Kervick, Criminal Justice Council, Patricia W. Griffin, Administrative Office of the Courts, Chris Sudell, Administrative Office of the Courts, Stephanie Symons, Administrative Office of the Courts.

At the request of Dwight Holden, the meeting began with a moment of silence for the passing of Oliver Casson, the first Chairman of the Board of Parole.

### Approval of the Minutes of December 1, 2008

The minutes of the meeting of December 1, 2008 were approved with the following change: The last sentence of the initial paragraph in subsection I. of section III should read:

The Court has had tremendous success with only 17 individuals terminated and 141 who have successfully completed the program.

### Introduction of New Member and Guests

Judge Jurden introduced Jeremy McEntire, the head of Treatment Services for the Department of Correction and Justice Ridgely invited him to serve on the Task Force.

Three guests from the Department of Veterans' Affairs – Otis Nash, Tracy Polk, and Jay Hills were also introduced.

### Report from the JLI Policy Forum

Justice Ridgely reported that the forum held in Philadelphia was excellent and a copy of the agenda is attached to these minutes. Florida, which participated in the initiative last year, provided an informative report at the meeting and a copy of their published report can be found at [http://www.floridasupremecourt.org/pub\\_info/documents/11-14-2007\\_Mental\\_Health\\_Report.pdf](http://www.floridasupremecourt.org/pub_info/documents/11-14-2007_Mental_Health_Report.pdf). Justice Ridgely also distributed power point slides that were discussed at the forum and which he indicated may be helpful to the subcommittees.

Although Justice Ridgely reported that he believed Delaware is a bit further along than the three other states which are initiative participants this year, he indicated that some of the issues that were discussed at the forum exist here and that the GAINS Center and the Council of State Governments provide excellent resources to assist us as we move forward.

Among the issues that were discussed in depth at the forum were:

A. Myths about HIPPA

Myths about HIPPA need to be dispelled in order to have effective communications. Justice Ridgely said that he believed that an opinion from the Delaware Attorney General's Office concerning application of HIPPA in communications among criminal justice agencies, the courts DOC, and the treatment community would be very helpful. It was agreed that Brian Bartley and Dwight Holden would draft a letter requesting an opinion from the Attorney General's Office which would take into account federal regulations. Judge Gebelein agreed that the Attorney General's Office would respond to such a request.

B. Improving outcomes when there are no additional state funds for this purpose.

One option that was discussed at the forum was using federal funds. Medicaid benefits may be terminated when someone is in prison and it can be a difficult and lengthy process to have them reinstated after release. Several states have passed legislation to suspend rather than terminate benefits. In Delaware, the Department of Correction tries to help set up benefits prior to release and James Lafferty said that the Mental Health Association had worked on this issue. Judge Jurden reported that this has been a topic of discussion in her subcommittee and that they anticipate drafting legislation similar to what has been passed in other states.

There are also opportunities through the VA as a significant percentage of the incarcerated may be eligible for these benefits. One related issue is how to

identify those that are veterans. For example, states indicated that it was more effective to ask whether you have ever been a member of the U.S. military than to ask whether you are a veteran.

#### C. Preparing the groundwork for legislation.

In Florida, significant legislation was stalled because a key legislator was not involved in the effort. To ensure that all interested Delaware legislators are able to participate in this initiative, Justice Ridgely reported that he and Chief Justice Steele had sent a letter to every member of the legislator explaining the work of the Task Force, indicating that the Task Force anticipates drafting legislation, and inviting any legislator who would like to serve on the Task Force to contact Justice Ridgely.

The other participants in the forum also expressed their appreciation of the work of the GAINS Center and the Council of State Governments in providing a very useful forum that they felt would be beneficial to the Task Force.

#### Executive Branch Participation

Justice Ridgely mentioned that, as we are in a time of transition in the Executive Branch, he will be inviting each of the cabinet secretaries whose area touches upon the work of the Task Force to participate. Justice Ridgely also invited the Task Force members to suggest anyone they thought should be invited to join the Task Force as a full member or as an advisory member... Dr. Tavani requested that Rita Landgraf be included in the invitation.

#### Prison mental health

The possibility of a tour of prison facilities to see conditions first hand was discussed. It was agreed that Justice Ridgely will contact Joshua Martin to learn more about his committee. He also suggested that anyone wishing to join a tour sign up by responding to an e-mail that will be sent by Stephanie Symons.

Jeremy McEntire of the Department of Correction explained that that DOC identifies those with mental illness at intake and those identified are seen by a psychiatrist who can make a referral to a special needs unit (SNU). A hearing is held before an inmate is admitted to the unit. The Task Force discussed the need for the courts to have more information about the services available within the criminal justice system and Dwight Holden said that his committee will work on a manual to provide this information. Jeremy McEntire was added to Dr. Tavani's subcommittee and it was also decided that Rita Landgraf would be invited to join Dr. Tavani's subcommittee.

#### Presentation on Veterans' Benefits

Otis Nash of the Department of Veterans' Affairs reported that nationally, veterans are 13% of the incarcerated population and that he is working with DOC to get the figure for Delaware specifically. He stated that there is a person in each correctional

facility who coordinates the VA process of enrollment and starts working with inmates about six months prior to release and providing them with information about benefits. Inmates are eager to participate because they know they will get help in finding housing. They use an LSI score which is a measure of likelihood of succeeding in the community. Tracy Polk, also of Veterans Affairs stated that when inmates are released they contact her and she works with them to find emergency housing, setting them up with benefits, counseling, mental health services, and related community programs for continuity of care. There is also a Delaware Guidebook that is updated annually.

When released from DOC, persons have 30 days of medication and are directed to go to the VA hospital or clinic to get prescriptions filled. While they are there, they are referred to a case manager so there is a continuum of care. The Elsmere Veterans Hospital has a mental health and substance abuse center and outpatient clinics in Dover and Georgetown reduce the need to travel upstate, though transportation to Elsmere can be provided when needed. About 16% of Iraq war veterans are women and a women's program has been established in their medical centers. Family members are involved whenever possible. The Home of the Brave in Milford currently has 15 beds for benefits and is looking to expand to Wilmington. There is also a veterans section 8 program with 35 certificates for Delaware. Persons can be placed if they are on probation.

In response to a question by Judge Jurden, Mr. Nash stated that veterans must sign a release of information that goes back to DOC. If a court needs the records they will usually be available within 5-7 days.

Justice Ridgely invited Mr. Nash to serve on the Task Force and expressed an interest in also inviting someone from the state veteran's office.

### Subcommittee Reports

#### A. Identification, Assessment and Treatment – Dr. Carol Tavani, Chair

Dr. Tavani stated that the subcommittee had prepared an outline of intercept points in the system and the screening instruments used which she reviewed for the Task Force. The following intercept points were identified:

- Law enforcement and emergency services – no specific instrument other than observation; police may use evaluation in ER including CAPES unit and 24 hour hold for commitment; mobile crisis is another entry point
- Initial hearing and detention – the PD's Office has a screening instrument
- Jails and courts – mental health issues may or may not be noted at court interface
- Reentry from prisons and hospitals – gaps in release/discharge planning and medication availability were noted, as were differences in formularies (e.g. Medicaid vs. prison system)
- Community corrections and community support services – better identification of co-occurring disorders is needed

Dr. Tavani noted the following recommendations:

- An efficient mechanism for exchange of data is needed to enable the prison system to identify individuals requiring care and to enable community resources to assess needs upon release
- For expediency, only a summary or specific portion of a record need be sent
- A uniform identification number would be helpful in identifying individuals with psychiatric histories
- A uniform screening and assessment instrument or set of instruments is worth consideration. Dr. Tavani asked that anyone using a screening instrument please forward a copy to her.

Thomas Carroll noted that some of DOC's screening is subject to agreements with the U.S. Department of Justice and, thus, can't be changed without DOJ's agreement.

Dr. Tavani further stated that other issues include being sure that formularies match, communications with regard to records, the availability of psychiatrists for Medicaid patients, and reimbursement by private insurers for court ordered treatment.

James Lafferty offered to work with Jeremy McEntire to compare the prison and Medicare formularies for psychiatric drugs.

#### B. Mental Health Courts – Judge Joseph Flickinger, Chair

Judge Flickinger reported that the subcommittee decided to focus on expanding existing programs and models. Currently, there is a mental health court in CCP that is operating under a Byrne grant, a pilot program in Family Court and a violation of probation mental health court in Superior Court. One issue that was discussed was that in Family Court only juveniles are eligible for the mental health court – including adults could be a goal for the future, possibly by transferring them to CCP. Another area of discussion was expanding the CCP mental health court to include a post-conviction program for violations of probation.

Commissioner Freud suggested considering the possibility of a mental health court type program for persons considered for involuntary commitments who have criminal justice issues. She believes that contact with a judge could help with early intervention and avoiding involvement with the criminal justice system. Judge Flickinger noted that people who have been involuntarily committed may appear before a judge without the judge knowing about the commitment and suggested that a code be put on the docket.

#### C. Education and Prevention/Victims Rights – Dwight Holden, Chair

Mr. Holden stated that the subcommittee had discussed the following issues:

- Obtaining cooperation of families when mental health services are offered – 60-70% are not cooperative
- Education – how to relate with schools and to educate them that mental illness is a medical condition

- Insurance coverage – what policies are accepted and by whom
- Victims rights – availability of services is limited. Caretakers for victims need services. Sometimes victims are denied counseling at court hearings

The following efforts are planned by the subcommittee:

- Contact DOI and employers to learn more about insurance coverage
- Track mental health legislation
- Contact SOAR regarding victims
- Collect information for a mental health services guide
- Follow-up on assisting juveniles

D. Communication/Collaboration and Resource Allocation – Judge Jan Jurden, Chair

Judge Jurden reported that the subcommittee had prepared a draft charge and had prepared a draft chart of the flow of information. Each point on the chart is an opportunity to pass information or to drop the ball.

Jeremy McEntire noted that community providers have met and looked at barriers between DOC and the providers. As a result they have agreed to have single points of contact in each agency so that they can obtain the necessary information about individuals. The group will be meeting quarterly.

Judge Jurden further stated that the committee had identified the following problems:

- CAPES gives a discharge plan to the person, but usually by the time they get to court, the person does not have it.
- The HIPPA myths problem. (Hopefully, the opinion to be requested by the AG's Office will be helpful.)
- Community treatment providers do not advise DOC when someone they treat enters DOC.

Mr. Holden suggested adding Kim Book from Victims Voices Heard to the Task Force.

With regard to resource allocation, Judge Jurden noted that VA benefits need to be explored. The committee has noted that Blue Cross has refused to pay for court ordered treatment. Resource allocation is a huge piece and may need to be considered by the entire Task Force with each subcommittee looking at the resource allocation issue related to the work of that subcommittee.

Justice Ridgely thanked the subcommittees for their reports and suggested that the next meeting include speakers to address Social Security and Medicaid. For the next meeting, Justice Ridgely asked James Lafferty to provide a contact who could discuss these issues. James Lafferty agreed and also said that he would be glad to get an article on the Task Force in the Mental Health Association Newsletter and it was agreed that the AOC would draft an article.

It was agreed that the next Task Force meeting will be held:

Date: Friday, March 20, 2009  
Time: 10:00 a.m.  
Place: **New Castle County Courthouse**  
**12<sup>th</sup> Floor Conference Room**



## **MINUTES OF THE MENTAL HEALTH/CRIMINAL JUSTICE TASK FORCE MEETING MARCH 20, 2009**

The meeting of the Task Force was convened at approximately 10:10 a.m. Those present were: The Hon. Henry duPont Ridgely, Chair, Harry Hill, Division of Medicaid and Medical Assistance, Barbara Hanson, Division of Social Services, The Hon. Jan Jurden, Superior Court, The Hon. Joseph Flickinger, Court of Common Pleas, The Hon. Loretta Young, Family Court, The Hon. Deborah McNesby, Justice of the Peace Court, The Hon. Andrea Freud, Superior Court, Dr. Carol A. Tavani, Christiana Psychiatric Services, Michael Kelleher, Division of Substance Abuse and Mental Health, The Hon. Richard Gebelein, Department of Justice, The Hon. Vivian Rapposelli, Department of Services for Children, Youth and Their Families, Brian Bartley, Esq., Public Defender's Office, Dawn M. Williams, Esq., Public Defender's Office, Kerry Ferriter, Public Defender's Office, Dwight Holden, Board of Parole, Thomas L. Carroll, Department of Correction, Jeremy D. McEntire, Department of Correction, Georgiana Staley, Department of Correction, James Lafferty, Mental Health Association of Delaware, Terry Pepper, Department of Safety and Homeland Security, Susan McLaughlin, TASC, Ron Keen, Criminal Justice Council, Bob Dunleavy, Child Mental Health, Cerron Cade, Delaware House of Representatives, Dr. Chrysanthi Leon, University of Delaware, Elizabeth Bennett, Delaware Law Weekly, Patricia W. Griffin, Administrative Office of the Courts, Chris Sudell, Administrative Office of the Courts, Stephanie Symons, Administrative Office of the Courts.

### Approval of the Minutes of January 23, 2009

The minutes of the meeting of January 23, 2009 were approved with no changes.

### League Day

Justice Ridgely noted that Judge Flickinger had appeared on the front page of the Delaware State News. Judge Flickinger explained that he part of a panel of six at League Day in Dover, an event hosted by the League of Women Voters of Delaware. Judge Flickinger said his presentation focused on the Court of Common Pleas Mental Health Court as well as the mental health court programs available through Superior Court and Family Court. Several members of the Task Force were present at the event and he was able to share information about the role and mission of the Task Force as well as what it hopes to accomplish. Judge Flickinger reported that several people asked him why mental health courts were not available in Kent and Sussex counties and he told them that

the issue is being discussed by the Task Force. The event was a great opportunity to raise awareness of mental health courts in Delaware and the work of the Task Force.

#### Introduction of New Member and Guests

Justice Ridgely introduced Harry Hill, Director of Medicaid and Medical Services for the Department of Health and Social Services and Barbara Hanson, Deputy Director of Social Services for the Department of Health and Social Services.

#### Council of State Governments – Technical Assistance

Justice Ridgely reported he had participated in a conference call with Lauren Almquist and others from the Council of State Governments (CSG) on March 10<sup>th</sup>. Using funding from the Bureau of Justice Assistance, the CSG is offering technical assistance to Delaware to address the issue of information sharing between mental health providers and criminal justice agencies. The goal is to have a national expert look at how we do things and make recommendations for improving communication. For example, Tim Murray, who is the executive director of the Pretrial Justice Institute, could work with Judge Jurden's or other subcommittees. Because of our small size Delaware is ideal for this project, and in times of scarce resources we need to work smarter with existing resources.

#### Bureau of Justice Assistance Mental Health and Criminal Justice Collaboration Grant

Justice Ridgely asked Susan McLaughlin to report on the status of the BJA grant application. Ms. McLaughlin reported that the grant application was submitted by the March 12<sup>th</sup> deadline. The grant application requested \$250,000 for planning and implementation to expand mental health courts to Sussex County, including funds for a TASC social worker. Susan reported that there is already a TASC social worker in Kent County. The grant would focus on Superior Court and would be used to fund a pre- and post-conviction mental health court in Sussex County. If awarded, the grant would be for a 30 month period. It will be approximately three to four months before Delaware will find out if it has been awarded funding.

Ms. McLaughlin said she has also spoken to the Criminal Justice Council about a SAMSHA jail diversion grant. Justice Ridgely asked Ron Keen to look into any funds that might be available for specialized courts. James Lafferty suggested talking to Vincent Meconi about the availability of stimulus funds.

#### Presentation on Medicaid

Harry Hill, Director of the Division of Medicaid and Medical Assistance for the Department of Health and Social Services, reported that the greatest challenge to suspending benefits instead of terminating them is automation. Mr. Hill said that the federal government allows suspension of benefits, but Delaware's computer system is not set up to suspend benefits. Mr. Hill introduced Barbara Hanson, Deputy Director of the Division of Social Services and they discussed automating the system. Estimates for

automation are in the low six figures (just over \$100,000) and Mr. Hill said he did not know how long it would take or where it would fall in the list of priorities for the programmers. There are currently more than 500 items on the programmer's list.

Mr. Hill then reviewed the handout he had distributed, "Medicaid Recipients Closed Due to Incarceration". Mr. Hill explained that the numbers are a hand count since the system is not automated. He also shared that the Reentry Project is working on this same issue and Secretary Landgraf, a member of the Task Force, is involved with that project. Judge Jurden said her subcommittee has also been exploring the issue.

Mr. Hill told the Task Force that terminating benefits is currently manual process. Medicaid gets lists of inmates from the DOC and compares the DOC list to the list of people receiving Medicaid benefits. Judge Jurden said she was encouraged by the small number of people whose benefits were terminated due to incarceration and hoped that we might be able to address the issue with a manual solution instead of revamping the entire system. Jeremy McEntire reported that the DOC has 27,000 people a year coming in and out of their system so the numbers cited by Judge Jurden may have something missing, but agreed that a manual solution would be the least expensive. Mr. McEntire said the goal of the Department of Correction is to enroll people as they enter the correctional system, but there have been obstacles such as the requirement of having a permanent address. Ms. Hanson said that there should be a way to resolve the address issue. For example, Medicaid allows someone to use a shelter as a permanent address.

Ms. Hanson said there is just no "suspension" in the current system. The system was built for termination only, and it is old and difficult to make changes to. Inmates can apply for benefits while incarcerated but the benefits cannot begin until after release. A major issue is that Medicaid does not know when someone is going to be released.

Justice Ridgely said his review of Delaware law indicated that Medicaid is governed by regulations and asked if there are comparable regulations from other states. Justice Ridgely said that the Task Force had discussed the need to present legislation, but it would be better if changes could be handled by regulation. Judge Jurden agreed that she would prefer to address the issue through the regulatory process instead of through legislation.

Justice Ridgely asked if the DOC has regulations regarding benefits. Tom Carroll answered that the Department of Correction is working to enhance discharge planning but issues arise with detentioners who are released after short periods of time or released on bail. The Department of Correction has much more success putting everything in place with long-term Level 5 inmates.

Mr. Hill said there is no "\$500 bounty" for terminating benefits, however the state does not have to pay the capitated rate while the person is incarcerated. Judge Jurden said that there would be a cost because people would get benefits a few months sooner but that there would be an overall savings because the person is not going through other state agencies such as Community Mental Health (CMH) for services that would

otherwise be covered by Medicaid. Judge Jurden said she does not have data specific to Delaware, but other states have saved money by not terminating benefits. Judge Jurden invited Ms. Hanson to become a member of her subcommittee and Ms. Hanson agreed. Michael Kelleher presented an example to illustrate the potential cost savings. If some is a Medicaid recipient, a portion of their care is covered with federal money instead of the entire cost being borne by the state. If someone does not receive services through Medicaid, then they are going to need other services which are paid for entirely by the state such as through CMH. If they do not receive the necessary treatment, there will still be a cost for the state in terms of police, DOC, and other services.

Ms Hanson said to terminate benefits, they currently review the enrollment list once a month and compare it to the lists they have received from the DOC. Patricia Griffin asked if benefits would be terminated even if someone was in the system for a very short period of time. Ms. Hanson replied that the benefits would not be terminated if the person was released before the enrollment list was checked against DOC admissions that month. Ms. Hanson said that inmates in Delaware can apply for benefits while incarcerated. She explained how inmates in Vermont apply while incarcerated but said that the process is very dependant on the Department of Correction.

Dr. Tavani asked if there was some way to “flag” the people who are on Medicaid who have recently been incarcerated. She asked if people could be given a blank card that could be activated upon release. Tom Carroll said this issue is similar to ID issues with other agencies such as the DMV, and that it might be something that is being worked on through the reentry initiative. Justice Ridgely asked how soon after release someone had to report to Probation and Parole, and Mr. Carroll replied that they were required to report within 72 hours, but they do not have to report if they were a detentioner. Mr. Kelleher said one issue is that DHSS and the DOC do not have a common client identifier. Brian Bartley suggested adding SBI numbers to DELJIS and agreed to discuss the issue with Jeremy McEntire.

James Lafferty asked about the cost of mental health treatment in the community versus the cost of receiving treatment through the DOC. Mr. Kelleher replied that the cost depends on the kinds of services needed and that physical health issues can also increase costs.

Justice Ridgely pointed out that it looked like we could make changes through regulations and asked how to start the process. Mr. Hill agreed that the state is better off if people are able to receive Medicaid benefits sooner. Mr. Hill also agreed to go back and talk to his division about possible solutions and will work with the Deputy Attorney General assigned to his division on regulatory changes.

Ms. Hanson noted that another challenge is that the Division of Social Services received 1,000 more applications last month and they are seeing people they have never seen before who are in need of services, many of which are time intensive. Mr. Hill said they also have a 14% staff vacancy rate.

## Medicaid Formulary

Dr. Tavani noted that the Medicaid formulary is good and Mr. Hill said that Medicaid patients can get any drug as long as their doctor pre-approves it.

## Interim Report of the Task Force

Justice Ridgely stated that he would like the Task Force to produce an interim report that could be shared with the legislature and other policy makers, and he has asked Stephanie Symons to draft the report. Justice Ridgely then asked the subcommittee chairs to provide Stephanie with information so that a draft report could be ready by early May.

## Subcommittee Reports

### E. Identification, Assessment and Treatment – Dr. Carol Tavani, Chair

Dr. Tavani reported that the subcommittee had discussed the following issues:

1. Uniform Assessment Instrument: The subcommittee discussed developing a uniform assessment instrument but realizes that may be easier said than done. For example, the DOC needs federal approval in order to make changes to their assessment forms. However, if a uniform instrument is not possible, Dr. Tavani notes that we least need to make sure that communication is there and that people are familiar with one another's forms.

2. Continuity of Treatment: In terms of treatment, we want to make sure that treatment occurs for everyone and that it is the appropriate treatment. Treatment should continue with as little interruption as possible which is difficult because people often do not provide the best information about themselves and their histories.

3. DOC Formulary: Dr. Tavani reported that she had spoken with Jeremy McEntire about the DOC formulary and that DOC policy is to continue effective medications. This may not always happen, for example if someone does not provide accurate information about their treatment history, but it is good that the policy is there. Dr. Tavani expressed some concern with the limited number of medications on the DOC formulary, for example that only one of the new anti-psychotics appears on the list. She expressed concern that for someone who is beginning treatment de novo, the doctor's medication choices are limited. Jeremy McEntire offered to go over the list of medications that the DOC prescribes with Dr. Tavani and noted that doctors can go off the formulary. Mr. McEntire said that in order to prescribe a medication that is not on the formulary, the doctor has

to provide a reason. He is willing to work with Dr. Tavani and James Lafferty to look at the formulary and see if they have any suggestions for items that should be added. Tom Carroll said that the DOC has federal monitors but that the formulary has not been an issue.

4. Receiving Medications Upon Release: Kerry Ferriter reported that there is now an informal agreement between the Office of the Public Defender and the DOC. The PD's Office will notify the DOC if they think defendants are likely to be released at their hearing. This gives the DOC the opportunity to provide a supply of medications the defendant might not receive if they were released without notice.

Tom Carroll noted that another issue is that released inmates have to be referred to different places for different services. Dr. Tavani said the goal should be "one stop shopping" to make it easier for people to get the services they need.

F. Mental Health Courts – Judge Joseph Flickinger, Chair

Judge Flickinger reported that the subcommittee has not met since the January 20<sup>th</sup> Task Force Meeting but expects to meet again in the next two weeks.

G. Education and Prevention/Victims Rights – Dwight Holden, Chair

Mr. Holden stated that his subcommittee is discussing the following:

1. Service Delivery: How do we get services to juveniles? How do we get services to those who are eligible but do not want them?

2. Selling Medications: How do we address the issue of people who sell their psychiatric medications on the street? There has been some discussion of using injectible medications and Georgiana Staley reported that for some of their caseload, Probation and Parole has to count pills to make sure people are taking their medication as prescribed.

H. Communication/Collaboration and Resource Allocation – Judge Jan Jurden, Chair

1. Heightening Awareness: Judge Jurden reported that the subcommittee has been trying to heighten awareness by publishing articles about the Task Force and the issues it is addressing. She thanked Stephanie Symons for writing an article which appeared in the Mental Health Association newsletter. She also thanked Brian Bartley, Susan McLaughlin, and Commissioner Young for writing an upcoming article which will appear in the Criminal Justice Council's newsletter. Ron Keen asked the Task Force to please let him know how many copies of the CJC newsletter they would like printed.

2. Information Sharing: The subcommittee has benefited from meeting with Dr. Hal Rosen, the founder of CAPES and is working on the issue of information flow between CAPES and other agencies and service providers. The subcommittee is also working with Mitzi Boddy to code files so that judges and court staff will have more information available to them. Currently, judges and court staff do not know that a defendant in their courtroom has been civilly committed.

3. Expansion of Superior Court Mental Health Court to Pre-adjudication: Judge Jurden reported that she had met with Susan McLaughlin, Brian Bartley, and Judge Gebelein to discuss expanding the Superior Court Mental Health Court to pre-adjudication. Funding issues would need to be worked out, but the desire for such a program is there.

4. Research: Dr. Chrysanthi Leon has agreed to provide some research assistance. Dr. Leon shared that she is working on two projects. The first is a process evaluation study: This will involve interviewing all of the Task Force members to find out what is driving the project. It will be useful to find out what we are doing well and can be used to seek funding. The second study will be an outcome study.

Judge Jurden shared Dr. Janet Kramer's article which appeared in the Medical Society of Delaware's journal.

Finally, Judge Jurden reported that the subcommittee is interested in working on two other items but has not had time to focus on them yet: 1) Veterans/Veterans Courts and 2) Blue Cross's refusal to pay for court ordered treatment and evaluations. Patricia Griffin asked if Blue Cross' denial of coverage only occurs in Delaware. Judge Gebelein answered that it is not uniform across the country. It was suggested that the Task Force should talk to the Insurance Commissioner. Dr. Tavani agreed to discuss the issue with Paul Kaplan from Blue Cross.

Patricia Griffin asked if the MHA Community Resources Directory could be distributed to all of the courts and Stephanie agreed to send out an electronic version.

Justice Ridgely thanked the subcommittees for their reports and reported that he had sent copies of the Judge's Guide to Mental Health Jargon to all of Delaware's Judges and Justices of the Peace. There are a few copies left and if any Task Force members would like a copy, they should contact Stephanie Symons. Justice Ridgely also asked the AOC to work on a website for the Task Force and asked subcommittee chairs to work with Stephanie Symons on the interim report of the Task Force.

It was agreed that the next Task Force meeting will be held:

Date: **Friday, May 8, 2009**

Time: **10:00 a.m.**

Place: **New Castle County Courthouse**  
**12<sup>th</sup> Floor Conference Room**

**REQUEST FOR  
ATTORNEY GENERAL'S OPINION  
ON HIPAA**



STATE OF DELAWARE  
BOARD OF PAROLE  
CARVEL STATE OFFICE BUILDING - FIFTH FLOOR  
820 N. FRENCH STREET  
WILMINGTON, DELAWARE 19801

DWIGHT F. HOLDEN  
CHAIRPERSON

TELEPHONE: (302) 577-5233  
FAX: (302) 577-3501

April 29, 2009

Lawrence Lewis, Esquire  
State Solicitor  
Delaware Department of Justice  
Sixth Floor  
820 North French Street  
Wilmington, DE 19801

RE: Parameters of "HIPPA" and Other Confidentiality Laws

Dear Mr. Lewis:

As you already know, I am the Chairperson of the State Board of Parole. I also chair the Education Prevention and Victim's Rights Subcommittee of the Delaware Supreme Court Mental Health/ Criminal Justice Task Force.

Significant questions exist concerning the extent of legal access with various state agencies who are supervising or treating a sentenced criminal defendant have to, the mental health and medical records of criminal defendants in the absence of an express written waiver, or authorization executed by the patient/defendant. We have been informed that a written authorization or release might not be legally necessary. If so, this would simplify and expedite the treatment process and supervision of some sentenced defendants with relevant mental health and/or medical health issues.

Therefore, pursuant to Title 29, Chapter 5 of the Delaware Code, I write to request the opinion of your office concerning the applicability of the federal and state "HIPPA" laws as well as any other applicable laws regarding confidentiality to Delaware's criminal justice agencies with respect to the inter-agency sharing and/or transfers of the mental and medical health records of sentenced defendants in criminal cases. There are three broad areas in which we would appreciate your advice and guidance.

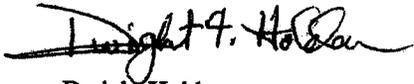
First, what impediments currently exist under federal law with respect to the inter-agency sharing and/or transfer of the mental and medical health records of sentenced defendants in criminal cases?

Second, what impediments currently exist under state law with respect to the inter-agency sharing and/or transfer of the mental and medical health records of sentenced defendants in criminal cases?

Third, what statutory and rule changes might be necessary to fully authorize the various criminal justice agencies to engage in regular inter-agency sharing and/or transfer of the mental and medical health records of sentenced defendants in criminal cases without the necessity of a written waiver from the patient/defendant?

Your prompt attention to these issues will be appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dwight Holden". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dwight Holden  
Delaware Board of Parole

## **ARTICLES AND PRESS RELEASES**

*September 2, 2008*  
*Immediate Release*

## **Delaware Selected to Participate in National Criminal Justice/Mental Health Initiative**

The Council of State Governments (CSG) Justice Center has announced that the Delaware Courts have been selected to participate in the Chief Justices' Criminal Justice/Mental Health Leadership Initiative. The initiative is a national project in its second year designed to assist state supreme court chief justices, together with state leaders, in developing strategic plans to improve responses to people with mental illnesses involved in the justice system.

Chief Justices from 13 states submitted applications, with only four states being selected to participate in the initiative; Delaware will be joined by Wisconsin, Idaho, and New Hampshire. Chief Justice Myron T. Steele has designated Delaware Supreme Court Justice Henry duPont Ridgely as the chair of this project, due to his extensive experience with criminal justice and mental health issues. Over the next year, Justice Ridgely will convene a statewide task force to examine ways to improve outcomes for people with mental illnesses engaged with the criminal justice system. The Delaware Supreme Court Task Force on Mental Health will receive funding and technical assistance from the CSG Justice Center and National GAINS Center, two nonprofit organizations coordinating the initiative. The task force members will also participate in a CSG Justice Center-convened policy forum with their counterparts from the other three states.

“Chief Justice Steele and Justice Ridgely have demonstrated the Delaware Supreme Court’s commitment to addressing the needs of people with mental illnesses, and we are pleased to be able to invite Delaware to participate,” said Judge Steven Leifman, Special Advisor on Criminal Justice/Mental Health to the Florida Supreme Court and co-chair of the advisory board that reviewed the submissions. “The application process was very competitive, and we are confident that Delaware’s task force will design and implement successful strategies.”

“The frequency with which people with mental illnesses enter our courts, jails and prisons remains a critical problem. This task force will greatly enhance our understanding of the problems that individuals with mental illnesses face, enable us to identify specific gaps in resources, including improvements to treatment options, as well as steps to take, when appropriate, to help individuals with mental illnesses avoid contact with the criminal justice system.” said Justice Ridgely.

According to a 2006 report by the U.S. Bureau of Justice Statistics, nearly a quarter of both state prisoners and jail inmates who reported they had a mental health problem had served three or more prior incarcerations. This makes them familiar faces in our nation’s courtrooms. Justice Ridgely noted “Delaware has already initiated substantial efforts to divert those with mental illnesses from the criminal justice system, including the establishment of pilot mental health courts in New Castle County. Through the Delaware Supreme Court Task Force on Mental Health, we look forward to the opportunity to support and expand these initiatives, and to explore new ways to improve the treatment of the mentally ill within Delaware’s criminal justice system. The task force has the joint goals of improving the quality of life for those with mental illnesses in Delaware, increasing public safety, and ensuring that state funds directed towards mental health issues are being used most cost-effectively.”

“To address this complex issue, there must be extensive collaboration among a state’s systems. The Supreme Court is often uniquely positioned to convene key leaders to develop bipartisan, coordinated strategies,” said Presiding Judge of the Texas Court of Criminal Appeals and Justice Center board chair Sharon Keller. “I look forward to seeing what the Delaware Supreme Court’s task force will accomplish in the coming year.”

*The support to the state task forces is made possible through grants from the JEHT Foundation and the Conrad N. Hilton Foundation. Funding for the planning phases of this project was provided by the U.S. Justice Department’s Bureau of Justice Assistance and the U.S. Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration. The Council of State Governments Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. The Justice Center provides practical, nonpartisan advice and consensus-driven strategies, informed by available evidence, to increase public safety and strengthen communities.*

**State Media Contact:** Patricia Griffin, State Court Administrator at 302-856-5406,  
[patricia.griffin@state.de.us](mailto:patricia.griffin@state.de.us)

**CSG Justice Center Contact:** Lauren Almquist at 646-383-5743, [lalmquist@csg.org](mailto:lalmquist@csg.org)

# Delaware Law Weekly

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## Task Force Addresses Regime for Mentally Ill in Court System

### REHABILITATION IN THE COURTS

By Elizabeth Bennett  
Of the DLW

*Editor's note: This is the second in an ongoing series of articles examining Delaware's efforts as part of the National Criminal Justice Mental Health Leadership Initiative.*

Some time ago, a woman stood in Judge Joseph F. Flickinger III's courtroom in New Castle County Common Pleas Court. She had been expected to plead guilty to a charge of disorderly conduct.

But when she was asked for her plea, the woman said she didn't know if she was guilty of anything. She had been threatening to jump off a bridge, and after police officers talked her down, she was charged.

"I asked her if she'd ever been diagnosed with a mental illness and she said, 'yes,'" Flickinger recounted.

That answer meant the woman was a candidate for the CCP mental health pilot program handled by Flickinger, where mentally ill defendants are diverted from the regular course of court business into treatment for their illnesses.

The woman in Flickinger's court that day had never heard of the program. The judge was able to identify her before she was charged and released in regular court, perhaps only to wind up on the edge of a bridge yet again.

The CCP mental health program was instituted about five years ago. Candidates cannot have a history of violence, nor can they be sex offenders.

Flickinger said the Delaware criminal justice system still needs to build awareness of this resource as well as recognition of the plight of the mentally ill who

become "justice involved."

Now the state has convened a task force and begun a gargantuan project to spread awareness, expand existing pilot projects and improve outcomes for the justice-involved mentally ill in any way it can.

The task force was convened in early December as part of a national project of the Council of State Governments Justice Center and the National GAINS Center, the two government organizations coordinating the initiative. GAINS stands for gathering information, assessing what works, interpreting and integrating the facts, networking and stimulating change.

In September, Delaware was selected to participate. The state is to receive a \$5,000 grant and technical assistance.

Shortly thereafter, Chief Justice Myron T. Steele of the Delaware Supreme Court chose Justice Henry duPont Ridgely to chair the task force. By now it has had two

**Task Force continues on page 5**

# Task Force

Continued from page 1

meetings, the most recent on Jan. 23. Four subcommittees have been formed and their leadership has been chosen.

Flickinger chairs the Mental Health Courts subcommittee. Aside from his program in the CCP, there are also pilot mental health courts in the Family and Superior courts of New Castle County.

"We decided that our role should be to build on the model and look over ways to expand geographically and into other courts in Delaware," he said.

Judge Jan R. Jurden of New Castle County Superior Court chairs the communication, collaboration and resource allocation subcommittee. Jurden also runs the Superior Court pilot program, which differs from the CCP program in that it is not a diversion program, but identifies candidates at the stage they have violated their probation.

Dr. Carol Tavani, a psychiatrist with the Christiana Care Mental Health Unit, chairs the identification, assessment and treatment subcommittee, and Dwight Holden, chairman of the Board of Pardons, heads the education and prevention/victims' rights subcommittee.

The subcommittee chairs traveled to Philadelphia in early January for a policy forum organized by CSG Justice Center and the GAINS Center.

"It was a terrific starting point," Ridgely said. "We were oriented on what has been happening around the country, and we had presentations by experts in the field."

The forum imparted the experience of other states that had developed strategic plans to better serve the mentally ill, and there were sessions on the proper way to interface with behavioral health systems, among other things.

"The benefit of the policy forum — it helped us to refine and focus on specific areas," Ridgely said. "The elephant in the room is always how to pay for things. We are looking for ways to maximize the benefits already available through the Veterans' Administration and through Medicaid."

In fact, Harry Hill, director of the Delaware Division of Medicaid and Medical Assistance, has been invited to give a presentation at the next task force meeting, scheduled for March 20.

Jurden said the policy forum "was just an amazing two days. ... It was one of

the most inspiring programs I've ever attended."

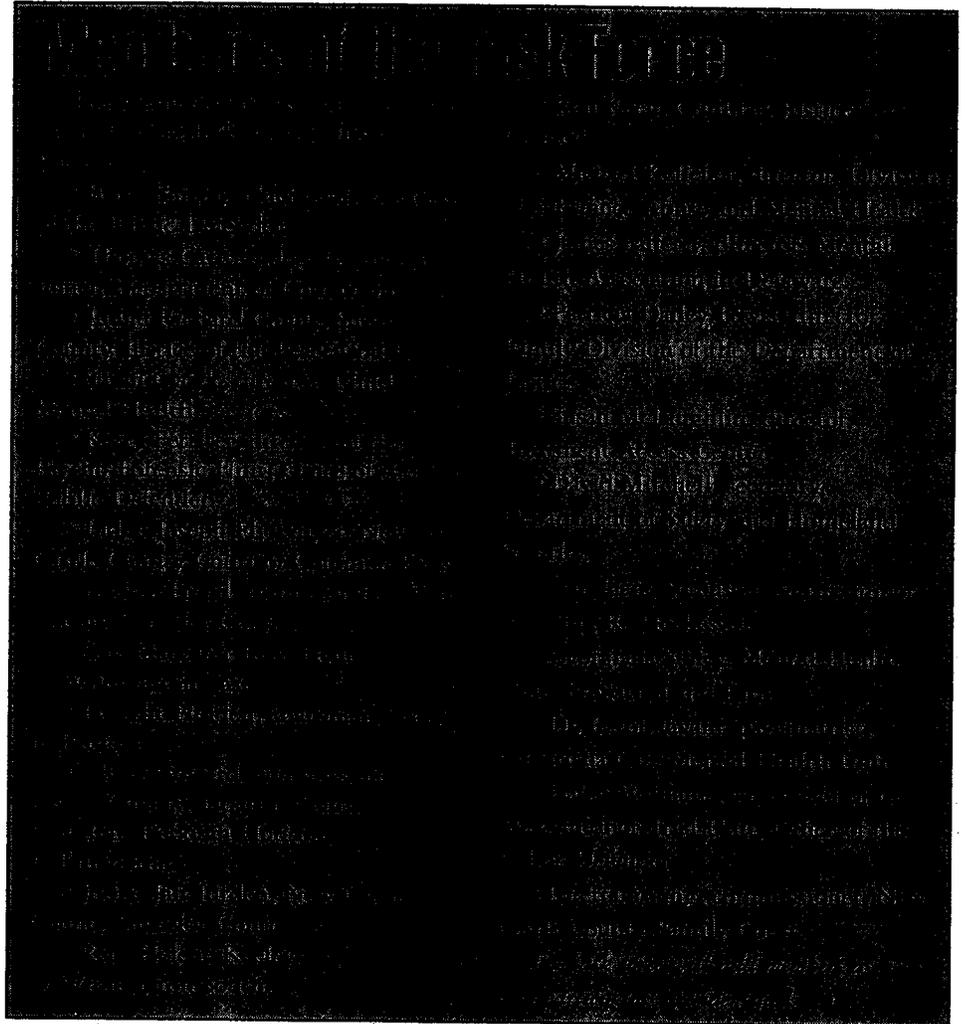
Thanks to the forum, Jurden said, the task force is now moving at full speed. She said she learned about the depth of the problem, such as the high rate of recidivism nationwide for inmates who report mental health problems.

Participants also learned about the resources available to help people with mental issues before they get involved in the justice system, Jurden said.

The technical assistance offered by the national organizations can also give the task force a boost. One form is draft legislation.

Ridgely has already set a goal to write up recommendations for legislation concerning the durability of Medicaid benefits. He asked the task force to do this by June.

Jurden explained that when someone gets involved in the justice system their Medicaid benefits are cut off, which can mean an interruption in critical medication for those with mental health issues, "which means the cycle begins anew."



She reported that she is working Brian Bartley, chief deputy in the Office of the Public Defender, on recommendations so that benefits will not be interrupted.

"It's a matter of educating the Legislature," Jurden said. Legislators need to know that making things easier for mentally ill offenders "doesn't mean they are soft on crime."

As chairwoman of the communication, collaboration and resource allocation subcommittee, Jurden knows that getting the different branches and agencies of the government on the same page about the situation is crucial. She drew up a chart that identified 23 possible points of contact for the mentally ill with the state where information can fall through the cracks.

Ideas to prevent this include a standardized privacy release form as well as a centralized medical records receptacle.

Commissioner Loretta Young of New Castle County Family Court, who handles the mental health pilot program there, said one of the biggest issues is how the

Task Force continues on page 6

## Task Force

*Continued from page 5*

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different players can efficiently share information without violating privacy laws, as well as how to make people more aware.

"One of our big things is identifying people before they get into the system," Young said. "How are we going to identify

these people? How can we interface with other agencies? The frontline is always the police."

Young said law enforcement needs to have someone at the table to foster direct communication and education.

"And we have to put our heads together to figure out where we are going to get the money to do this. These are tough times," she said.

Of course, if the task force succeeds, the idea is that it will "reduce recidivism, save money and save beds for the real violent offenders who are just mean, not mentally ill," Jurden said.

Future installments of this series will examine the different mental health court pilot programs in more detail. •

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## Delaware's Mental Health Courts

The State of Delaware operates three "Mental Health Courts". The Court of Common Pleas, Family Court, and Superior Court each has a different version of a "Mental Health Court". Each is available in New Castle County. Each court is distinct from the others in whom it serves and how it functions. Despite individual differences however, the courts share the common goal of addressing the unique mental health issues of these defendants in a courtroom setting. Each of the courts is summarized below, beginning with Delaware's first Mental Health Court, *the Court of Common Pleas Mental Health Court* written by Susan K. McLaughlin, TASC Director, Division of Substance Abuse and Mental Health. The second summary, written by Commissioner Loretta Young, of Family Court describes the *Family Court Mental Health Court*, and the third summary, written by Chief Deputy Public Defender Brian Bartley, describes the *Superior Court Mental Health Court*.

### \*\* Court of Common Pleas Mental Health Court \*\*

Susan K. McLaughlin, TASC Director

In today's society one can't help but notice people walking around the mall or other public places displaying their support for various medical illnesses by wearing red, pink, and yellow bracelets. In addition to this type of public expression, the insignia for breast cancer, for example, is proudly displayed on bumpers, coffee cups, pens, pencils, highlighters, tee-shirts and the like. Proceeds from the sale of these items go toward research in the hope of eliminating these illnesses. Even though May is highlighted as Mental Health month I venture to say that you find few individuals wearing a bracelet or tee-shirt that signifies either a family member or their own recovery from a mental health disorder.

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In November of 2003, the Court of Common Pleas in collaboration with the Division of Substance Abuse and Mental Health (TASC), the Attorney General's office and the Public Defenders' office took a **bold step** toward combating the stigma of mental illness by starting Delaware's first Mental Health Court.

The Mental Health Diversion Court is a cooperative interagency effort to screen, identify, treat and divert misdemeanor offenders in need of mental health services. Each member of the team plans an integral part in the process. The Attorney General approves the charges; the TASC Psychiatric Social Worker assesses the individual to ensure that they meet the clinical criteria for entry and provides follow-up case management; the Public Defender ensures that the clients' rights are represented and legal issues addressed and the Mental Health Court Judge presides over the entire judicial process.

Since the time that the court has adopted this approach, 198 offenders have been served. The program length is determined by the offender's progress but there must be a minimum of four months participation. During that time the participants appear before The Honorable Joseph Flickinger for status hearings where he may impose sanctions and incentives depending on how they are progressing in the program. The most rewarding part of the process for the team is witnessing how the offender develops and becomes more independent. By the time they complete the program the participants are engaged and compliant in treatment, on a medication regimen,

Continued on page 5.....

**\*\*\*\* Court of Common Pleas Mental Health Court \*\*\*\***

**Continued from page 1.....**

employed when qualified and have a better understanding of how their psychiatric illness affects their behavior in the community. On graduation day, Judge Flickinger comes down from the bench to shake their hand, present them with a certificate along with a letter stating that their charges have been nolle processed. To some, this may seem insignificant, but to those who participate in the CCP Mental Health Court this is a major accomplishment and gives them a great sense of pride. Should they not re-offend within a six month period after graduation they are eligible to have their record expunged.

Program success can be measured in many ways but statistically speaking, as of this writing (12-31-08) 85 % of the participants who successfully completed the program did not incur new convictions within six months of their graduation. Those of us who are involved in the program are hopeful that our work will be viewed not as just a 3-year Byrne grant opportunity, but as the model for how cases involving individuals with a mental health diagnosis should be handled statewide in all Delaware Trial Courts.

*For more information on the CCP Mental Health Court you can contact Ms. McLaughlin at (302) 577-2711 or [susan.mclaughlin@state.de.us](mailto:susan.mclaughlin@state.de.us).*

**\*\*\*\* Family Court Mental Health Court \*\*\*\***

**Commissioner Loretta Young, Family Court**

This juvenile mental health diversion program began in September 2006 and was created through the coordinated efforts of Family Court, Child Mental Health and the Office of the Public Defender and is funded by a CJC grant.

The Program has two tracks: 1) Mental Health Court Diversion Program, and 2) Competency Court. When competency to stand trial is questionable, mental health issues are suspected, or there is a pre-identified mental health issue, these cases are scheduled on the MHC Diversion calendar. Mental health evaluations are ordered to determine appropriate future scheduling. In some cases, competency will be contested. These cases require hearings and are re-scheduled on a separate calendar for Competency Court. If found not competent, a management plan will be developed and review hearings may be scheduled every 120 days to assess the likelihood of successful rehabilitation through medication or otherwise.

Competent individuals are considered as candidates for entry into the Mental Health Diversion Program. Final approval lies within the power of the Attorney General's Office. Juveniles must be competent in order to enter a guilty plea which will be held in abeyance. Following the entry hearing, "status review hearings" are scheduled every 4 to 6 weeks thereafter. At the reviews, the Court hears from all parties regarding compliance with treatment goals or problems which may require adjustment of the treatment plan.

The Program has the capacity to actively service up to twenty five juveniles. It employs a judicially coordinated, problem-solving, team approach as opposed to the traditional procedure of entering an adjudication and having a probation officer monitor. The goal is to promote consistent attendance at therapy, taking prescribed medications, school attendance, adherence to home rules, curfew, and any other recommendations of the case manager or treatment providers. The "team" consists of the Commissioner, defense counsel, a Deputy Attorney General, and a mental health case manager. Case managers not only monitor compliance but assist parents/guardians in locating and connecting with community based treatment and social services for their children.

If a child shows consistent compliance with the treatment plan and has been in the diversion program for at least six months, graduation will be recommended. At that point, the charges are dismissed. On the other hand, if it is suspected that the child is not progressing or deteriorating due to behavioral issues not directly related to their mental health, a termination hearing is scheduled and the Court will consider sanctions or removal from the program.

Continued on page 6.....

# Superior Court Mental Health Court

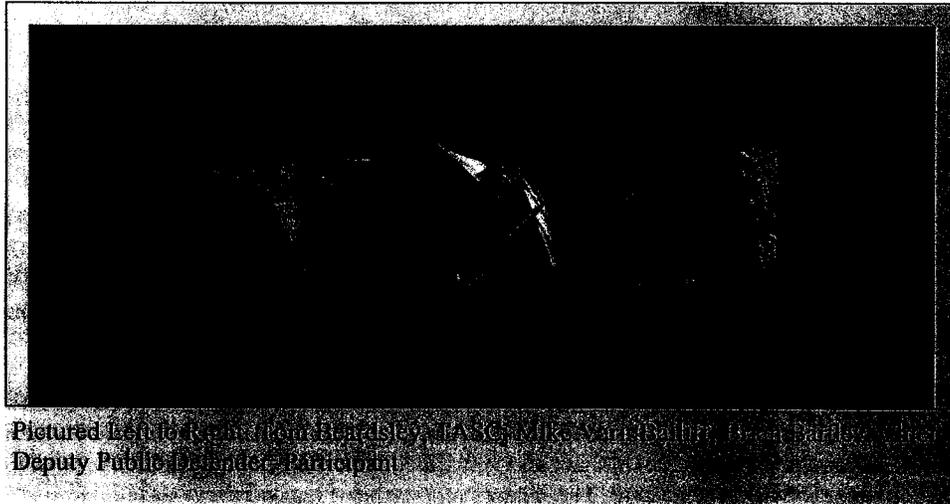
## Brian Bartley, Chief Deputy Public Defender

DECEMBER 7, 2007

DECEMBER 7, 2007

Too often, defendants are sentenced to jail for probation violations when their mental health problems prevented them from succeeding on probation. Many times their mental health problems were the root cause of the crimes for which they were convicted in the first instance.

Traditionally, most sentencing judges have recognized mental health as a mitigating circumstance when imposing a sentence. However, merely imposing probation in light of mental health problems at most recognizes the underlying issue; it does not solve the problems or address potential recidivism in a meaningful way.



Pictured from left to right: Judge Jan Jurden, TASC, Mike Sam Bally, Brian Bartley, Chief Deputy Public Defender, Participant.

To begin addressing this sometimes silent injustice in a more systemic way, Judge Jan Jurden of New Castle County Superior Court began a pilot Mental Health Probation Court in April 2008. The Mental Health Probation Court was created to provide the most effective treatment options for offenders with mental illnesses and is premised upon the realization that the usual criminal sanctions for offenders with mental illness are not always appropriate. [The threat of incarceration posed by a “suspended” sentence rarely proves to be an effective deterrent when mental health problems interfere with a probationer’s ability to readily comply with probationary conditions.]

Judge Jurden’s Mental Health Probation Court is a mixture of prevention and intervention by a team of specialized professionals that includes a judge, a pair of probation officers, a trio of TASC (“Treatment Access Service Center”) caseworkers, a prosecutor and defense attorney.

Continued on page 7.....



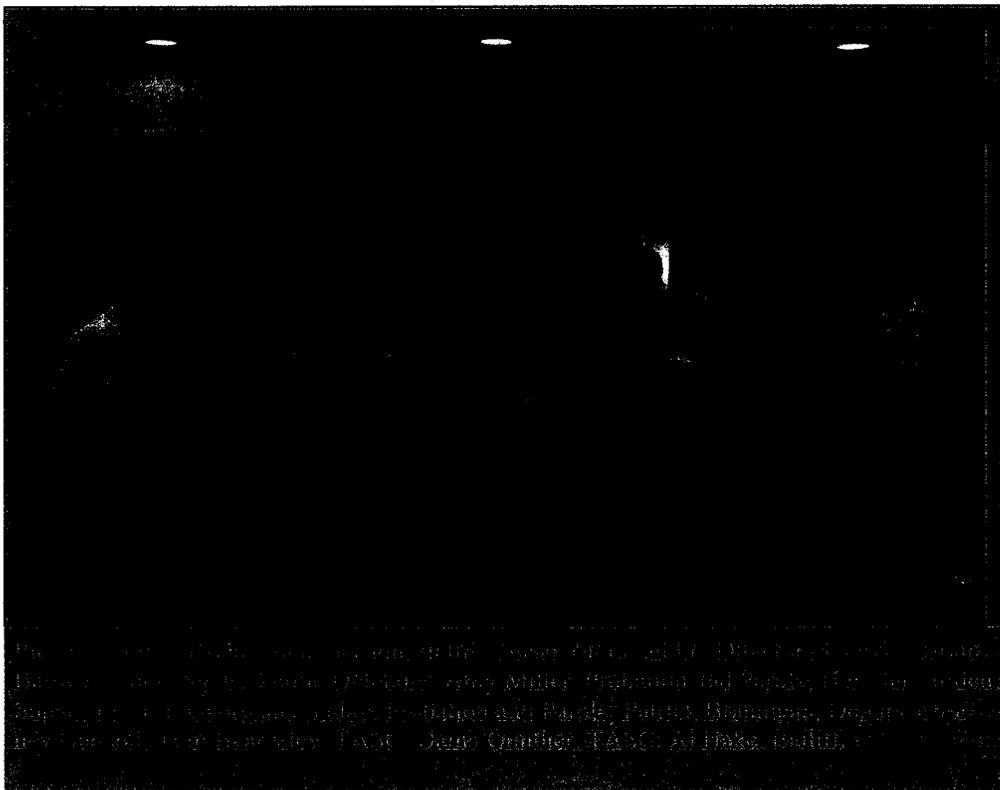
Pictured from Left to Right: Patrick Brannigan, Deputy Attorney General; Brian Bartley, Chief Deputy Public Defender; Participant.

\*\*\*\*\* Superior Court Mental Health Court \*\*\*\*\*  
Continued from page 6.....

Interestingly, the attorneys necessary to the process play the least important role in this interactive court. This is because the Court's focus is on meeting the individualized needs of the probationers over time and through their life's challenges so that they can more readily succeed on probation.

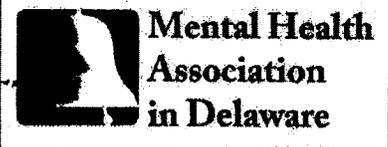
Probation officers screen potential candidates in consultation with the TASC caseworkers to determine whether a particular probationer can benefit by participation in this interactive court.

Once approved for entry into the Mental Health Court, a formal entry takes place before Judge Jurden. This involves a colloquy between the defendant and Court. During the colloquy, Judge Jurden explains the goals and conditions of the program and determines whether the defendant is a suitable candidate. If the Court is satisfied that the defendant is committed to actively participating and otherwise a suitable candidate, the defendant is admitted into the program. Often the defendant was sentenced by another judge in which case Judge Jurden assumes supervision of the defendant.



Once accepted into the Mental Health Probation Court, the probationer reports weekly or biweekly as needed to both their probation officers and their TASC caseworkers to have the treatment, supervision and other needs with a special emphasis by all on mental health assessment, treatment and compliance with psychotropic medication prescriptions. The dynamic is as much educational as it is supervisory and most defendants benefit greatly and visibly thrive from the intensive attention.

Probationers regularly visit with Judge Jurden during one of her specially dedicated Mental Health Probation calendars which are held on alternate Tuesday afternoons to monitor the progress of the participants. Judge Jurden is regularly briefed on the progress of the probationers and she uses the calendar as an opportunity to encourage and congratulate the defendants on their many forms of progress such as maintaining a job, keeping all scheduled appointments, completing treatment, staying on medications, having all clean urine screens, etc. At times, the Court needs to caution defendants about poor performance or relapses. Most defendants have responded positively and there already have been several "graduations."



# Delaware Supreme Court forms Criminal Justice and Mental Health Task Force

The frequency with which people with mental illnesses enter our criminal justice system and their handling within that system are critical issues across the nation and in Delaware. In an effort to better understand and address these issues, the Delaware Supreme Court is participating in the Chief Justices' Criminal Justice/Mental Health Leadership Initiative, a national project in its second year. This year Delaware was one of only four states selected by the by the Council of State Governments (CSG) Justice Center to participate and as one of the states selected, Delaware will receive funding and technical assistance from the CSG Justice Center and National GAINS Center.

Chief Justice Myron T. Steele has designated Delaware Supreme Court Justice Henry duPont Ridgely as the chair of the project due to his extensive experience with criminal justice and mental health issues. Under Justice Ridgely's leadership, the Delaware Supreme Court's Criminal Justice and Mental Health Task Force began meeting in December and has brought together judges, state leaders, legislators and nonprofit organizations (including the Mental Health Association). Over the next year, the Task Force will work to develop a strategic plan to improve outcomes for people with mental illnesses engaged with the criminal justice system.

"The frequency with which people with mental illnesses enter our courts, jails, and prisons remains a critical problem. This Task Force will greatly enhance our understanding of the problems that individuals with mental illnesses face, enable us to identify specific gaps in resources, including improvements to treatment options, as well as steps to take, when appropriate, to help individuals with mental illnesses avoid contact with the criminal justice system," said Justice Ridgely.

According to a 2006 report by the U.S. Bureau of Justice Statistics, nearly a quarter of both state prisoners and jail inmates who reported they had a mental health problem had served three or more prior incarcerations. This makes them familiar faces in our nation's courtrooms. Justice Ridgely noted, "Delaware has already initiated substantial efforts to divert those with mental illnesses from the criminal justice system, including the establishment of pilot mental health courts in New Castle County. Through the Delaware Supreme Court's Criminal Justice and Mental Health Task Force, we look forward to the opportunity to support and expand these initiatives, and to explore new ways to improve the treatment of the mentally ill within Delaware's criminal justice system. The Task Force has the joint goals of improving the quality of life for those with mental illnesses in Delaware, increasing public safety, and ensuring that state funds directed towards mental health issues are being used most cost-effectively."

## Charge of the Criminal Justice and Mental Health Task Force

The charge of the Supreme Court Mental Health/Criminal Justice Task Force is to develop recommendations to policymakers to improve prevention and system-wide responses to persons with mental illness involved in the entry into the criminal justice system or re-entry into the community through inter-branch communication, collaboration and allocation of resources for the education of the criminal justice community, the identification of juvenile and adult defendants in need of mental health treatment, the enhancement of victim's rights and the referral, when appropriate, of defendants with mental illness to mental health courts established in each county for judicially supervised community-based treatment.

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For more information about the Delaware Supreme Court's Criminal Justice and Mental Health Task Force, please contact Stephanie Symons at the Administrative Office of the Courts, (302)255-2475 or [stephanie.symons@state.de.us](mailto:stephanie.symons@state.de.us).

**Welcome to Mental Health Court...*And Everything That Comes With It***  
by The Honorable Jan R. Jurden, Superior Court of Delaware

I looked up from the sentence order I was writing to see blood spurting from the defendant's arm. A split second earlier he had been pleading with me to believe that he hadn't violated his probation. "He's got a blade," is what I heard.

What I saw was a lot of blood shooting up in the air and splattering all over the bailiff who held his arm. I looked at the defendant's face. He was perfectly calm despite the fact his arm was gushing blood. He stared directly at me and my eyes met his. His stare never wavered. In his eyes I saw a triumphant look. "Look what I did," is what his eyes said.

The bailiff had his left arm in a firm grasp, serving the dual purpose of subduing him and slowing down the bleeding. The probation officer, who had just recommended that the defendant be sent to prison pending placement in a strict drug treatment facility, had his right arm in a forceful grip. My sentencing clerk, God bless her, approached the defendant with a wad of tissues in a vain attempt to stem the flow. I asked her to step back, worried what he might do and that he might be HIV positive (he is an IV-drug user).

I know the whole episode took only seconds to unfold, but as *cliché* as it might sound, it seemed like forever. Another bailiff ran in with paper towels and gloves. Everything after this is a blur. I remember the bailiffs and a courthouse security officer whisking the defendant out of the courtroom. I looked at the social workers, his public defender, the probation officer, the court reporter and the clerk. They looked at me, all of us speechless and in disbelief as to what we had just witnessed.



## **MENTAL HEALTH DIVERSION COURTS OFFER NEW SOLUTIONS**

National studies have shown that persons with mental health problems are frequently involved in the criminal justice system for minor offenses and do not receive treatment for the underlying causes of their behavior. In Delaware, mental health diversion courts in the Family Court and the Court of Common Pleas are offering new ways to address this situation by offering treatment as an alternative to a criminal conviction.

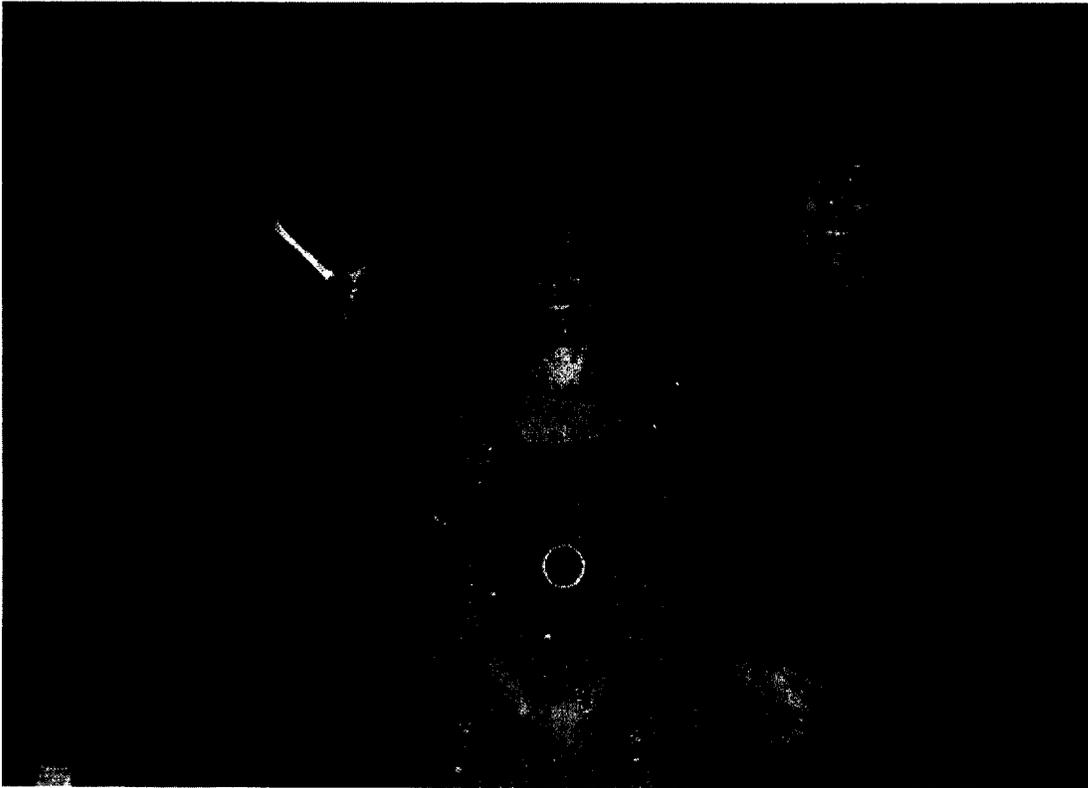
The recently created Family Court mental health court which started in New Castle County in January 2007 can already point to a number of success stories. The program, which receives federal funding through the Criminal Justice Council, offers juveniles with mental health problems who are charged with delinquency a chance to obtain treatment and avoid being found delinquent. To participate in the program, a juvenile must be approved by the Attorney General's Office and must plead guilty to the charge. However, the charge will be dismissed if the juvenile successfully completes the program which requires compliance with the individualized treatment plan recommended by their caseworker, as well as other conditions imposed by the court, including attending all required court appearances to review the status of the case. The Court, defense counsel and two case managers (Jimia Redden of the YMCA and Eileen Cozzi-Bodner of Child Mental Health) review the progress of the children, including their educational needs, twice a month and revise the treatment plan as needed.

Martha Claverie, Esquire, a public defender who represents juveniles in the Court, says that the Court has been instrumental in changing lives for many juveniles and cites, as an example, a young man who entered the program as a shy and withdrawn youngster with both mental health and educational problems. One of the first "graduates" of the Court, he turned around his school performance and became more confident and outgoing. Commissioner Loretta Young, who presides over the mental health court calendars, concurs with Ms. Claverie that the diversion program is making an incredible difference in the lives of children. Commissioner Young says: "These children and their family networks are being intensely guided, encouraged, and applauded for their efforts and success and it has yielded dramatic results." She credits the dedication and skills of all of those involved in the mental health court with making it a success.

Similar successes are also occurring for adults who participate in the Court of Common Pleas mental health court which has been in operation since 2003. Located in New Castle County, the court was Delaware's first mental health court and works to provide

treatment to adults with mental health problems who are charged with a misdemeanor offense. Since its inception, 109 individuals have completed the program and have been diverted from the criminal justice system, with only 11 individuals having been unsuccessfully terminated.

Judge Joseph F. Flickinger, III who presides over the mental health court describes as an example of the Court's success a young man originally charged with Assault 2nd and Terroristic Threatening who was being held at the Level V facility at the Delaware Psychiatric Center when he entered the mental health court. During his seven months in the program, he progressed to living in a group home and became a full time college student. He currently has his own apartment and has remained arrest free for more than two years. Judge Flickinger said, "In almost all cases our participants have achieved our goals of avoiding conviction on the original charges, having no further arrests and learning how to deal with their mental illness in order to lead happier and more productive lives."



Honorable Joseph F. Flickinger, III of the Court of Common Pleas with Mental Health Court staff Colleen Rapposelli and Stefanie Garbatowski, BSW. Not pictured are Mental Health Court staff members Daina Gunther and Tom Beardsley.

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