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Committee on Children, Families and Seniors

Senator Tom Rossin, Chairman

ROLE OF THE COUNTY COURTS UNDER CHAPTER 916, F. S.

RESPONDING TO PERSONS WITH MENTAL ILLNESS WHO COMMIT MISDEMEANORS

SUMMARY

Florida's mental health law, the Baker Act, contains the provision for law enforcement officers to transport persons who are involved in minor criminal behavior to the nearest receiving facility for an involuntary psychiatric examination. Professionals in the criminal justice system and mental health system believe that many persons commit minor criminal offenses because appropriate mental health evaluation, treatment, and support services are not always provided to this population in a prompt manner.

A review of the problems associated with persons with a mental disorder who are arrested for or convicted of a misdemeanor included a survey of chief judges, state attorneys, public defenders, jail administrators, community mental health providers, and forensic coordinators in the district offices of the Department of Children and Family Services; a review of pertinent literature; a site visit to the Fifteenth Judicial Circuit; and discussions with national forensic consultants.

Based on the findings of this review, staff concluded that local community cooperative agreements between the criminal justice and mental health agencies are needed for diverting persons with mental illness who are arrested for a misdemeanor from the criminal justice system to the mental health system when appropriate. Because law enforcement plays a major role in this diversion, it is necessary to improve training programs for law enforcement officers in identifying mental illness and to assist them with difficult mental health cases. Other strategies are needed in the area of information sharing among pertinent community entities; referring misdemeanants for after care services upon release from jail and from Baker Act receiving

facilities; and providing intensive case management services. Recommendations also include proposing statutory revisions to chapter 394, F.S., and chapter 916, F.S., to expedite mental health treatment for this population. It is also recommended that increasing judicial supervision of misdemeanants with serious mental health problems, the extent and quality of in-jail mental health services, and the effectiveness of the specialized mental health court in Broward county be reviewed. If service delivery problems continue to exist after these strategies are implemented, the Legislature should readdress additional policy and statutory changes to chapter 916, F.S., the Forensic Client Services Act.

BACKGROUND

Florida's mental health law, the Baker Act, encourages local communities to provide mental health treatment to persons who exhibit non-violent criminal behavior rather than place them in the criminal justice system. Section 394.462,(1)(f) F.S., requires that a law enforcement officer who has custody of a person because of noncriminal or minor criminal behavior who meets the involuntary examination criteria in s. 394.463(1), F.S., transport that person to the nearest Baker Act receiving facility for a psychiatric examination. Transporting to receiving facilities does not always occur as many of these persons with mental health problems are taken to county jails. Data are not available however that specify the number or percentage of these persons who are taken to Baker Act receiving facilities as opposed to a county detention facility.

Judges and other professionals in Florida's criminal system and mental health system find that many persons with mental illness who commit misdemeanors cycle in and out of the county jails

because they do not have access to the appropriate mental health treatment and support services. Community experts believe that persons with mental illness continue to commit misdemeanors for the following reasons: 1) many persons are not diagnosed and treated in jail immediately after arrest, 2) many persons who are stabilized in jail or in a mental health facility decompensate quickly when returning to their home because the appropriate psychiatric medications or other treatment modalities that help maintain mental stability are discontinued, and 3) there is a lack of managing and monitoring of the client in the community to assure that service needs are being met. Mental health experts in Florida's community mental health system believe that one of the more subtle outcomes of the deinstitutionalization of persons with mental illness from the state mental health hospitals has been their reinstitutionalization in the criminal justice system.

The issue of community safety and appropriate treatment alternatives for these misdemeanants is of great concern to Florida's county judges. With the *Onwu* decision, issued by the Florida Supreme Court on April 24, 1997, the county courts find it even more difficult to acquire treatment services for misdemeanants. Prior to April, 1997, approximately 60 to 80 persons with mental illness who committed misdemeanors were committed to the Department of Children and Family Services each year by the county courts for placement in Florida's secure forensic units under the authority of chapter 916, F.S. (Chapter 916, F.S., is Florida's Forensic Client Services Act establishing treatment services for defendants who are charged with a felony and found to be incompetent to proceed due to mental illness or acquitted of a felony because of a finding of not guilty by reason of insanity.)

A Supreme Court opinion was issued on April 24, 1997, that substantially reduced the number of these persons placed by the county courts in Florida's secure forensic units. In the case of *Onwu v. Florida*, 692 So.2d 881 (Fla. 1997), the Florida Supreme Court declared as invalid an administrative order issued by Chief Judge Ross that directed county judges in the Seventeenth Judicial Circuit to act as circuit judges. The Supreme Court ruling states that only a circuit court as defined in s. 916.106(2), F.S., may commit a person to the Department of Children and Family Services for services under chapter 916, F.S. Many county court judges continue to want the option of committing misdemeanants to the Department of

Children and Family Services under chapter 916, F.S., for placement with defendants who are charged with a felony and found incompetent to proceed due to mental illness or acquitted of a felony because of a finding of not guilty by reason of insanity.

METHODOLOGY

A survey was conducted of chief judges, state attorneys, public defenders, jail administrators, community mental health providers, and Department of Children and Family Services district forensic coordinators to determine the problems and reasons for the recycling of persons with mental illness who are arrested for or convicted of a misdemeanor through the criminal justice system. Each judicial circuit was asked to provide data concerning persons in their circuit who are arrested for a misdemeanor with suspected or diagnosed mental illness including the number arrested, the number who had their misdemeanor charges dropped, and number receiving voluntary or involuntary treatment under the Baker Act.

A literature review was conducted of various strategies currently being tested with this population. Discussions were held with national forensic consultants concerning the extent of this problem in other states and their programs and services for addressing this population. A site visit was conducted in Palm Beach county to examine services and to discuss the ways that the judicial and mental health systems are working with this population.

FINDINGS

A report prepared for the National Coalition for the Mentally Ill in the Criminal Justice System, June, 1990, substantiates the problem of misdemeanants not receiving adequate mental health care and treatment. This report states that several studies of local jails estimate that approximately 7 to 10 percent of all jail inmates are severely mentally ill and concludes that many people with mental illness are incarcerated because there is a lack of treatment resources in the community and jails are often the only community alternative for this population. Poor coordination of existing resources and the lack of integration of mental health and criminal justice programs are cited as a major problem that hampers services to this population.

Jail Diversion

Research conducted by Policy Research Associates, Inc., that was funded by a grant from the National

Institute of Mental Health Research concludes that persons with mental illness who are arrested for less serious, non-violent crimes can be appropriately diverted from the criminal justice system. Diversion programs are types of mental health interventions that place people with mental illnesses in the community instead of keeping them in jail. Persons with mental illnesses may be identified for diversion from the criminal justice system at any point, including pre-booking interventions (before formal charges are brought) and post-booking interventions (after the person has been arrested and jailed). Pre-booking diversion occurs at the point of contact with law enforcement officers and relies heavily on effective interactions between police and community mental health services. A post-booking diversion program is one that screens persons potentially eligible for diversion for the presence of mental illnesses; evaluates their eligibility for diversion; negotiates with prosecutors, defense attorneys, community-based mental health providers, and the courts to produce a disposition outside the jail in lieu of prosecution or as a condition for a reduction in charges (whether or not a formal conviction occurs); and links persons to the array of community-based services that they require. Most diversion efforts in the U.S. are post-booking which can take place upon arraignment in the courts or in the jail.

Even though formal outcome-based research has not been completed that details which diversion programs work best with individual population groups, the Deferred Prosecution program operated by a community mental health center in Phoenix reports a reduction in recidivism back into the criminal justice system when misdemeanants successfully complete their treatment program.

This research cites key factors for effective post-booking diversion programs:

- The integration of all services needed by persons with mental illness at the community level including corrections, courts, mental health care, substance abuse treatment, and social services (such as housing and entitlements), with a high level of cooperation among all parties. Meetings among the key players encourage coordination of services and sharing of information and should begin in the early stages of planning and implementing the diversion programs and should continue regularly.
- Liaisons to bridge the barriers between the mental health and criminal justice systems and to manage the interactions among corrections, mental health, and judicial staff. These persons need to have the trust and recognition of key players from each of the systems to be able to effectively coordinate the diversion effort.
- Early identification of detainees with mental health treatment needs who meet the diversion program's criteria. This is done through the initial screening and evaluation that takes place in the arraignment court or at the jail. It is important to have aggressive case finding so that persons with mental illnesses are screened in the first 24 to 48 hours of detention.
- Case managers who have experience in both the mental health and criminal justice systems and who are culturally and racially similar to the clients they serve. An effective case management program is one of the most important components of successful diversion. Such a program features a high level of contact between clients and case managers, in places where clients live and work, to insure that clients won't get "lost" along the way.

Research into which diversion activities and treatment programs are effective for incarcerated persons with co-occurring mental illness and substance abuse disorders is limited. However, the research literature does indicate that 72 percent of the persons who are incarcerated and have a severe mental illness also have either an alcohol or other substance use disorder. To identify exemplary practices in the diversion and treatment of persons with co-occurring mental illness and substance abuse disorders in local criminal justice settings, the Center for Mental Health Services and the Center for Substance Abuse Treatment within the federal Substance Abuse and Mental Health Services Administration are providing funds for knowledge development and an application program. This grant involves nine sites that offer community based mental health and substance abuse treatment in lieu of arrest and/or incarceration. Outcome-based research for these programs will be completed and published in about three years.

Mental Health and Drug Courts

In May 1997, Chief Judge Dale Ross in the 19th Judicial Circuit appointed Ginger Lerner-Wren an acting circuit court judge in all matters relating to

mental health, substance abuse, and developmental disabilities. The creation of this specialized court in Broward county focuses upon persons arrested for misdemeanor offenses who are mentally ill or mentally retarded and their need for appropriate treatment in an environment conducive to “wellness and not punishment” as well as the continuing necessity to insure the protection of the public. This mental health court meets daily for the judge to determine whether each defendant requires immediate psychiatric treatment in a hospital setting, whether mental competency is an issue, the specific types of community mental health services that may be needed, and whether there are public safety issues.

Treatment-based drug courts involve the judge in the supervision of an offender’s treatment, a model which has been termed “intensive therapeutic judicial supervision.” In a drug court, the offender returns to court at regular intervals for status hearings before the judge. Judges are an integral part of the treatment program as offenders are accountable directly to them. The defense and prosecution are part of a “team approach” and shed their traditional “adversarial” roles. In most status hearings, judges talk directly to an offender, usually bypassing the defense attorney and prosecutor.

Research on drug courts has been conducted by Columbia University’s National Center on Addiction and Substance Abuse. The study found that drug courts provide closer, more comprehensive supervision and much more frequent monitoring of the client’s behavior than other forms of community supervision. Drug use and criminal behavior were found to be substantially reduced while offenders are participating in drug court.

Criminal behavior was found to be lower after program participation, especially for graduates from the program, although few studies have tracked recidivism for more than one year after leaving the program.

Other Mental Health Collaborations

There have been a number of successful collaborations throughout the country between law enforcement agencies and mental health professionals to ensure that timely and appropriate mental services are provided when needed. The Memphis Police Department and University of Tennessee Medical Center pioneered the Crisis Intervention Team program where specially trained police officers are on call during their regular patrol duties to respond to incidents involving persons

with mental illness or co-occurring mental illness and substance abuse disorders. In Birmingham and Lane County, non-uniformed mental health professionals employed by or under contract with local law enforcement agencies assist patrol officers in responding to such incidents. In Albany County, mobile community mental health center employees respond to such incidents as part of a team with police; and in Rensselaer County, New York, mental health staff based at community mental health centers cooperate with police in responding to mental health crises.

Survey Results

The majority of the chief judges, jail administrators, public defenders, state attorneys, mental health providers, and district forensic coordinators who were asked to complete the Senate questionnaire responded. This high response rate indicates a significant level of interest by these groups in persons with mental illness who are arrested for or convicted of a misdemeanor.

In-Jail Services

Survey results show that there is a need to improve in-jail mental health services. More than half of the jail administrators, forensic coordinators, and mental health providers believe that there is a lack of appropriate in-jail services for this population. Counties are responsible for providing mental health care to jail inmates based on: 1) tort liability because the inmate is involuntarily detained and therefore cannot seek the required care, and 2) minimum constitutional standards of care in correctional facilities through case law interpretation of the U.S. Constitution pursuant to the 8th amendment (cruel and unusual punishment) and the 14th amendment (due process of law).

In-jail mental health services play a very important role in treating misdemeanants, as 85 percent of the jail administrators state that those detained in jail are not likely to be released from jail until sentenced. Only 13 percent of the jail administrators state that persons with mental illness remain in jail **untreated** until sentenced.

Post-booking diversion strategies do not appear to exist in many of Florida’s communities, as 62 percent of the jail administrators state that these detainees are not likely to have their charges dropped. Survey results support the belief that misdemeanants in Florida are reoffending as 94 percent of the jail administrators believe that persons charged with a misdemeanor

exhibiting symptoms of mental illness will return to jail with another misdemeanor charge.

Community Mental Health Services

Ninety-three percent of the chief judges responding to the survey do not believe that mental health services for this population are appropriate and adequate. Sixty-four percent of the chief judges and 60 percent of the district forensic coordinators and mental health providers agree that there is a lack of an array of community-based mental health services. Fifty-seven percent of the chief judges, 73 percent of the district forensic coordinators, and 55 percent of the mental health providers state that there is a lack of appropriate support services in the community for misdemeanants.

Of services or programs needed to enhance mental health treatment to the misdemeanant population, the majority of most respondent groups believe that increased aftercare services and intensive case management are needed.

Additional policies, procedures, or activities identified by the respondents that are needed in communities to improve mental health services to this population include: increased law enforcement training in identifying mental illness; greater communication and information sharing between the criminal justice system and mental health system; greater supervision and structure for persons with mental illness to assure that psychotropic medications are continued; more individualized treatment services to enhance insight and personal growth; and the provision of early diagnostic and intervention services to prevent serious criminal conduct.

Forensic Commitment vs. Baker Act System

Seventy percent of the chief judges, as opposed to only 20 percent of the forensic coordinators and 25 percent of the mental health providers, believe that county judges should be able to commit misdemeanants to secure forensic facilities under the provisions of chapter 916, F.S. Many respondents believe that placing misdemeanants in forensic facilities with persons who are charged with a felony or acquitted of a felony, would “criminalize” persons with mental illness in order to obtain mental health services. Respondents also referred to the high costs of a secure forensic facility. The Department of Children and Family Services reports the annual cost of a secure

forensic bed is \$90,000 as opposed to \$70,000 for a civil mental hospital bed.

Fifty-seven percent of the chief judges, as opposed to only 26 percent of the forensic coordinators and 20 percent of the mental health providers, believe that county judges should be able to enter ex-parte orders and place persons involuntarily under the Baker Act. Even though the support for this authority is limited, many respondents state that the Baker Act provides the legal basis for obtaining mental health treatment for misdemeanant persons who are dangerous to self or others and emphasizes utilizing the least restrictive appropriate available treatment setting. Several respondents suggest that allowing county judges to enter ex-parte orders for the involuntary examination under the Baker Act, chapter 394, F.S., would do more to obtain treatment services and divert persons from the criminal justice system. The issue of county court judges committing persons under chapter 394, F.S., was discussed and supported by the community representatives at the site visit in Palm Beach county. Because the survey questionnaire may not have clearly explained this question, additional information is needed on this issue prior to the proposal of any changes to chapter 394, F.S.

Other Survey Findings

The survey shows that collaborative efforts among community agencies which should be involved in expediting early treatment interventions with this population are limited. For example, 92 percent of the chief judges state that no relationship exists with the homeless shelter or another related facility to assist in disposing of cases of homeless misdemeanants who may be mentally ill.

No judicial circuits could provide the data that was requested concerning the number of persons with mental illness arrested for a misdemeanor and those receiving treatment under the Baker Act.

RECOMMENDATIONS

- Require written cooperative agreements among the judicial system, criminal justice system and the local mental health system (including the district Alcohol, Drug Abuse and Mental Health Program Office) in each district of the Department of Children and Family Services or judicial circuit for defining strategies and community alternatives for diverting persons with mental illness who are arrested for a misdemeanor from the criminal justice system to the civil Baker Act system.
- Expand mental health training options for law enforcement officers when dealing with persons suspected to be mentally ill. Direct the Florida Department of Law Enforcement and the Department of Children and Family Services to evaluate the extent and effectiveness of current training curriculum and efforts for law enforcement officers in identifying mental illness and to make recommendations to the departments for any necessary improvements.
- Develop district strategies by which mental health professionals assist law enforcement with difficult mental health cases.
- Develop strategies for sharing information about persons with mental illness who are frequently arrested for misdemeanors among jails, courts, state attorneys, public defenders, community mental health providers, and other necessary community entities in order to improve early identification and treatment of these persons.
- Propose statutory changes to chapter 394, F.S., and chapter 916, F.S., that would improve procedures for expediting mental health

treatment for those mentally ill persons arrested for a misdemeanor diverting them from the criminal justice system when appropriate.

- Provide for an independent entity to assess the provision of in-jail mental health diagnostic and treatment services.
- Develop strategies that would require jails and Baker Act receiving facilities to refer these clients to an appropriate aftercare service upon release.
- Direct the Department of Children and Family Services to develop a plan and a strategy for providing intensive case management services to mentally ill misdemeanants.
- Provide for an independent entity to study the concept of increasing court jurisdiction and supervision over persons with mental illness who are arrested or convicted of a misdemeanor to assure compliance with an approved individualized treatment or service plan.
- Direct the Office of Program Policy Analysis and Government Accountability to evaluate the effectiveness of the specialized mental health court established in Broward County to determine client and system outcomes and cost efficiencies and to make recommendations for establishing similar special courts in other judicial circuits.
- Reevaluate the need for statutory changes to Florida laws, including chapter 916, F.S., if it is determined that the plans and strategies recommended here do not adequately improve the delivery of appropriate mental health evaluation, treatment, and support services to misdemeanants with mental illness.

COMMITTEE(S) INVOLVED IN REPORT *(Contact first committee for more information.)*

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MEMBER OVERSIGHT

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