

Mental Health Courts on the Rise

by The Honorable Joseph A. Migliozi Jr. and Denisa Muhametaj



Is there any question that the criminal justice system has been overwhelmed recently by people suffering from mental health issues? This article is an update to the 2013 article published in this magazine (December 2013) addressing the adjudication and warehousing of mentally ill criminal defendants. Although statistical data is unavailable to account for the number of felony convictions since 2013 by people diagnosed with mental illnesses, it is clear from recent national events that it remains a significant and growing problem.

Mentally Ill Defendants

The Mental Health Services Administration is the lead federal agency to “provid[e] targeted funding for states to implement proven and effective services for individuals with . . . men-

tal health conditions.”¹ The Mental Health Block Grant provided approximately \$483.7 million in 2015 towards mental illness services, which include jail diversion programs.² In 2010, the Commonwealth of Virginia spent about \$717 million in total on mental health agencies.³

In recent years, several jurisdictions throughout the country have been organizing Mental Health Dockets and Courts. As of the writing of this article, there are approximately 357 active adult Mental Health Courts and/or Dockets spread throughout the United States.⁴ These programs have had tremendous success in assisting the mentally ill to gain control of their illnesses. It has been reported that in 2014 people who completed the Mental Health Court programs experienced recidivism rates of 53.9 percent.⁵

The Norfolk Mental Health Docket began in September of 2011. At the time, the Norfolk General District Court was one of three⁶ misdemeanor courts, out of Virginia’s thirty-two judicial General District Courts,⁷ to establish a Mental Health Docket. Recently, however, this number has increased to at least eight, including the General District Courts

of two of Virginia's largest jurisdictions, Virginia Beach and Fairfax County. However, the Commonwealth of Virginia still only has one official Mental Health Circuit Court Docket in Norfolk. The cities of Norfolk and Virginia Beach have the only two misdemeanor courts in the Hampton Roads area that redirect defendants with a mental illness to a Mental Health Docket. The cities of Chesapeake and Portsmouth are also in the process of initiating a specialty docket for mentally ill defendants.

Eighty-six defendants have been on the Norfolk Mental Health Docket since January 2016. While the docket has eligibility criteria, the defendants continue to participate in the program voluntarily. The Norfolk Mental Health Circuit Court Docket has resulted in a "substantially higher rate of access to services, less time spent incarcerated, better collaboration of services, improved mental health and engagement of treatment, and lower recidivism rates . . ."⁸

Changes in Law

In recent years, Virginia and most other states have cut the funding required to care for this vulnerable group. In 2014, the commonwealth had only 17.6 psychiatric beds available per 10,000 people.⁹ This is less than 40 percent of the recommended minimum.¹⁰ As a response to this problem, Senator Creigh Deeds presented legislation to the General Assembly in an effort to recognize the plight of the mentally ill within the Virginia criminal justice system. This legislation was subsequently adopted into law, and awareness for the mentally ill took on new meaning.

The law used to require that, unless an available psychiatric bed for a mentally ill patient could be located within six hours, a magistrate could not issue a temporary detention order.¹¹ The new legislation, however, provides state agents with twelve hours to find an available psychiatric bed, and it further states that if an available bed is not found within twelve hours, the state hospitals will be required to admit the mentally ill patient.¹² If an officer has probable cause that a minor has a mental illness, the law used to permit the officer to hold that minor in emergency custody for a period not exceeding four hours; however, this period has now been extended to eight hours.¹³ Additionally, the officer is now required to notify the community services board, which is responsible for conducting an evaluation of the patient suspected to have a mental illness. The new legislation further states that the Department of Behavioral Health and Development Services will establish an online acute psychiatric bed registry that will provide information on the availability of beds in psychiatric facilities.¹⁴ This change in the law has provided the mentally ill with the ability to obtain necessary aid with respect to their conditions.

Finally, to address one of the most relevant of current issues within the policing community, there has been a significant increase in the number of Virginia police departments that require CIT (Crisis Intervention Team) training. Such training familiarizes local law enforcement officers with methods to de-escalate potentially harmful situations involving mentally ill suspects.

Although the commonwealth has recently taken steps toward addressing its mentally ill defendants, further advancements are being proposed to properly assist these individuals in maintaining control of their conditions.

Endnotes:

- 1 National Council for Behavioral Health, Federal Budget (2015), <http://www.thenationalcouncil.org/topics/federal-budget/>.
- 2 *Id.*
- 3 *Mental Health Spending: State Agency Totals*, Governing the States and Localities, <http://www.governing.com/gov-data/health/mental-health-spending-by-state.html>.
- 4 *Adult Mental Health Treatment Court Locator*, SAHMSA http://www.samhsa.gov/gains-center/mental-health-treatment-court-locator/adults?field_gains_mhc_state_value=VA.
- 5 Ray, B. (2014). Long-Term Recidivism of Mental Health Court Defendants. *International Journal of Law & Psychiatry*. 37(5).
- 6 Norfolk, Petersburg, and Richmond
- 7 Office of the Executive Secretary, Supreme Court of Virginia, Virginia's Court System, <http://www.courts.state.va.us/courts/home.html>.
- 8 *Virginia Is Not For Lovers of Mental Health*, WordPress (Mar. 25, 2013), <https://powerofadvocacy.wordpress.com/2013/03/25/virginia-is-not-for-lovers-of-mental-health-courts/>.
- 9 Sy Mukherjee, *Creigh Deeds Introduces Mental Health Reform Bills After Son's Tragic Suicide*, ThinkProgress (Jan. 7, 2014), <http://thinkprogress.org/health/2014/01/07/3126291/creigh-deeds-mental-health-legislation/>.
- 10 *Id.*
- 11 Nikki Schwab, *Creigh Deeds Tells Son's Mental Health Horror Story*, U.S. News and World Report (Mar. 31, 2014, 6:58 PM), <http://www.usnews.com/news/blogs/washington-whispers/2014/03/31/creigh-deeds-tells-sons-mental-health-horror-story>.
- 12 *Id.*
- 13 VA Code § 16.1-340.
- 14 VA Code § 37.2-308.1.



Joseph A. Migliozi Jr. was appointed to the Norfolk General District Court bench in 2009. Beginning in 2002, he served as the southeastern district's capital defender, representing people charged in death-penalty-eligible cases.



Denisa Muhametaj is a second year law student at Regent University School of Law. She obtained her undergraduate degree from James Madison University, where she studied Justice Studies and Mathematics. She was a summer clerk for The Honorable Joseph A. Migliozi Jr. in the Norfolk Circuit Court during the summer of 2016. She is from Chesapeake and upon graduating law school she plans to sit for the Virginia Bar.