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## San Francisco's Behavioral Health Court: On the Ci

### Honorable Herbert Donaldson, Judge of the Superior Court, and Jenni Deputy Public Defender

When Behavioral Health Court was featured in San Francisco Medicine magazine of 2004, it was a fledgling effort by the Superior Court to stem the flow of non-offenders into the criminal justice system. The creation of a mental health court in Justice was an innovative experiment designed to redirect mentally ill clients to community mental health services. In the summer of 2004, the court had been in place for only 18 months. Policy makers in the city were scarcely aware of the collaboration between the criminal justice and mental health communities to address a crisis that had become the responsibility of the criminal justice system. In this past year, the Behavioral Health Court has become part of the vocabulary of the city of San Francisco.

The concept has garnered support from the San Francisco Medical Society, lawyers, psychiatrists, community behavioral health, the Mayor's Disability Council, law enforcement and the Superior Court bench. What started as a pilot project in the justice system as a necessary component of the city's approach to the most vulnerable citizens. San Francisco is on the forefront of what may well be the biggest trend in criminal justice since the advent of drug courts in the 1990s.

#### THE NATIONAL TREND

The problem of mentally ill offenders in jails and prisons throughout the United States is well known. Studies indicate that the rate of serious mental illness among the jail population in the United States is at least three to four times higher than the rate of serious mental illness in the general population.<sup>1</sup> Although the issue has received some national attention, funding is available for innovative programs designed to address the overrepresentation of mentally ill offenders in the system.

Out of necessity, local communities have responded by streamlining limited resources and forging relationships between organizations that traditionally do not work together. In dealing with mentally ill offenders, there is a surprising unity of voice among defense attorneys, police, sheriffs, judges and mental health providers.

The concept of Mental Health Courts is a logical outgrowth of this collaborative approach. Dockets dedicated to dealing with mentally ill offenders are growing rapidly.

#### WHY SAN FRANCISCO IS A LEADER

Although San Francisco's Behavioral Health Court was created without looking for a model, it has become a national leader in the field.

model, there are common themes among mental health courts across the country. Judges and lawyers in a mental health court work closely with mental health providers to offer intensive case management services and access to medication. The court provides structure, accountability, and a supportive atmosphere for clients. In San Francisco, mirrors other jurisdictions in these areas, the vision of the players and the personality of the city have shaped a court with some important differences.

### **BEHAVIORAL HEALTH COURT IS A PRE-PLEA COURT**

Unlike most mental health courts, San Francisco's court does not require a guilty plea to criminal charges in order to participate in treatment. In the community mental health court practitioners, this is known as a "pre-plea" court. The court's approach is that the court recognizes its own limitations in treating this population of offenders.

Most clients in our court have fallen through the cracks of a decimated mental health system. Many have never had any mental health treatment at all. To complicate matters, a percentage of them are dually diagnosed with a substance abuse problem. Relapse is understandably high and relapse is common for this population. The court does not give up basic constitutional rights in order to have the opportunity to participate in treatment. The team learns about the client first, observes how the client responds to treatment, and sets expectations accordingly.

### **COURT FOCUSES ON DIAGNOSIS RATHER THAN CHARGES**

A second difference that stands out *visa-vis* San Francisco and other jurisdictions is that the court does not maintain a rigid set of standards about which criminal charges will be accepted into the court. Rather than focusing on the criminal charges, Behavioral Health Court focuses on the client's mental health diagnosis, and to the connection between the mental health behavior that led to the client's arrest.

There is a presumption in Behavioral Health Court that certain charges such as domestic violence, and crimes involving serious bodily injury will be excluded from consideration. In certain cases, the court will consider extenuating circumstances such as the client's long-term mental health history, willingness to participate in treatment, social support, and prior criminal history as factors in the eligibility decision. In an adversarial process, the consent of the district attorney's office is necessary for exceptions.

### **LEGAL OUTCOME IS RELATED TO MENTAL HEALTH OUTCOME**

Finally, our court is unique in that there is no set standard for what it means to be successful. Each case is looked at individually, and success is defined differently for each case. The court operates on the premise that a client can always exceed our highest expectations. In Behavioral Health Court, the better the mental health outcome, the better the legal outcome. Clients are rewarded for success in treatment by having felonies reduced to misdemeanors, grants of probation terminated early, and criminal charges dismissed.

### **A PROMISING FUTURE**

San Francisco

San Francisco's Behavioral Health Court has received positive publicity and national attention in the past year. Along with articles in three local newspapers, our court was featured in the United States Interagency Council on Homelessness after a visit by President Obama's homelessness czar, Philip Mangano. In one of the most significant developments, the court was invited to participate in the first comprehensive study of mental health courts. In a lengthy interview process, San Francisco's Behavioral Health Court was selected as one of more than 100 jurisdictions across the country. Funded by the MacArthur Foundation,

look at the outcome data of four courts over a period of three years, compare have participated in mental health courts to other, similar clients who were option of treatment. The researchers will look carefully at how incentives, the court atmosphere contribute to success in mental health treatment and how influence legal outcomes and rates of recidivism.

In addition to receiving the honor of being chosen for the MacArthur Mental Study, Behavioral Health Court has assisted in crafting national policy in the health courts. In June of this year, the staff of the court attended a conference U.S. Department of Justice and attended by more than 400 people from courts across the country. Behavioral Health Court participated in a special forum health court practitioners were asked to evaluate and edit a document entitled "Elements of a Mental Health Court." This document will be published by the Assistance, a division of the U.S. Department of Justice, and the Council of State Governments.

It is likely that the clients in Behavioral Health Court would not be in the criminal system at all if our mental health system had not crumbled under decades of targeted budget cuts. While San Francisco is not alone in confronting an influx of mentally ill offenders into the criminal justice system, the city is showing finding a solution. Without any funding at all, Behavioral Health Court has focused on maximize existing resources, protect public safety, decrease homelessness with respect and dignity. Our sincere hope is that this court can realize its goals in months and years to come.

*Jennifer Johnson, a deputy public defender in San Francisco, represents the indigent defendants in Behavioral Health Court. She has been working with the planning stages and is actively involved in promoting the concept of mental health courts. She can be reached at [Jennifer.Johnson@sfgov.org](mailto:Jennifer.Johnson@sfgov.org).*

*Judge Herbert Donaldson graduated from Stanford Law School 49 years ago and was appointed to the bench January 1, 1983, by Gov. Jerry Brown. Judge Donaldson has served in almost every department of the San Francisco Superior Court, primarily in criminal courts. Prior to being appointed to the bench, he was chief counsel at a public defender's office and also a sole legal practitioner specializing in criminal law. He retired in 1999 to continue to serve the court. His extensive experience and interest in rehabilitation for nonviolent offenders make him well suited to head the Behavioral Health Court since 2003.*



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