

# MENTAL HEALTH COURTS: A Giant Step Forward

by Robert M. Tudisco, Esq.

**Robert M. Tudisco, Esq.,**

*is a practicing attorney and adult diagnosed with AD/HD. Tudisco is a member of CHADD's board of directors and the editorial advisory board of Attention magazine, and chair of CHADD's public policy committee. He welcomes questions and comments on his Web site, [www.ADDcopingskills.com](http://www.ADDcopingskills.com).*

*Sources for statistics cited in this article include E. Fuller Torrey, "Reinventing Mental Health Care," City Journal, 9:4, Autumn 1999; Fox Butterfield, "Prisons Replace Hospitals for the Nation's Mentally Ill," New York Times, March 5, 1998; U.S. Department of Health and Human Services, Mental Health: A Report of the Surgeon General, 1999; The National Council on Disability, Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current Status of Evidence-Based Research, 2003; Robert B. Rutherford, Jr., et al, Youth with Disabilities in the Correctional System: Prevalence Rates and Identification Issues, Center for Effective Collaboration and Practice, American Institutes for Research.*



**MORE INFO:** For a list of references and helpful resources, visit [www.chadd.org/attention/references](http://www.chadd.org/attention/references).

WE OFTEN HEAR that there is an overrepresentation of individuals with AD/HD and co-occurring conditions in the criminal justice system. But what do the statistics actually tell us? On any given day, the country's three largest jails—the Los Angeles County Jail, the Cook County Jail, and Riker's Island—each hold more people with mental health issues than any psychiatric facility in the United States. Inmates with mental illnesses are not only more numerous, but they also remain in the system for longer periods of time, consuming a greater share of resources. A study conducted at Riker's Island Correctional Facility in New York City revealed that the average stay for an inmate at the facility is 42 days, while the average stay for an inmate with mental illness is 215 days. Based on this information, the cost to the community of incarcerating a prisoner with a mental disorder is more than five times greater, in addition to the drain on the system itself.

Studies further suggest that AD/HD is four to five times more prevalent in correctional facilities than it is in schools. While nationally the disorder is present in five to eight percent of school-aged children, twenty to fifty percent of incarcerated youths are estimated to have AD/HD. It is also widely recognized that in approximately sixty-five percent of cases, AD/HD is present with a co-occurring disorder or learning disability.

In response to growing concern over statistics like those cited above, the Bureau of Justice Assistance and the Council of State Governments brought together several organizations—representing nearly all the stakeholders in the criminal justice system—to understand the nature of the problem and recommend systemic changes to address it. The resulting initiative, the Criminal Justice/Mental Health Consensus Project, provides a blueprint for in-

creasing collaboration between the criminal justice and mental health systems to address the overrepresentation of individuals with mental illness in the penal system throughout the country (see [www.consensusproject.org](http://www.consensusproject.org)). Mental health courts (MHCs) are an outgrowth of this work.

### **The mental health court system**

The goal of mental health courts is to identify defendants with mental illnesses and seek to divert them, if appropriate, from incarceration into treatment. When incarceration is unavoidable, MHCs provide services and therapeutic support along with follow-up supervision after release to monitor and assist individuals in reintegrating back into society.

Since beginning with four MHCs in 1997, the program has rapidly expanded throughout the United States, and by 2005, 125 MHCs were operating in thirty-six states. The Bureau of Justice Assistance estimates that over 150 courts are currently in operation, and many more are seeking startup.

MHCs integrate the cooperation of nearly every institutional element of the criminal court system (law enforcement, prosecution, judges, clerical staff, corrections personnel, and probation/parole personnel) in the identification of various forms of mental illness and how they impact antisocial and/or criminal behavior. Similar to the drug court system, the MHC system is predicated upon identification and treatment to alleviate the burden to the judicial system, provide treatment to the individual, and protect the community by reducing recidivism.

MHCs are a voluntary system. Court personnel and mental health professionals provide specialized screening and assessment to identify mental illness and develop court-supervised treatment programs in lieu of incarceration. Typically, the court, the prosecutor, the mental health professional and the defendant agree on the terms and conditions of the community-based

supervision. Defendants are required to make regular court appearances in which the court is apprised of their progress and cooperation with the treatment program. Defendants can be sanctioned for violating their conditions, or encouraged when they show progress and cooperation. Successful defendants graduate from the program and receive a greatly reduced resolution to their criminal case. In some cases, their plea is withdrawn by the court and their case is dismissed. Some MHCs limit themselves to misdemeanor cases, while others handle misdemeanor and felony cases.

The mental health court system is a monumental step toward reducing crime by addressing its causes rather than its symptoms, with a view toward positive results both in the short and the long term. Significant gaps in service persist, however, that if addressed, could dramatically enhance the model's effectiveness.

### **Juveniles in the system**

MHCs are an adult model that does not encompass juveniles with mental illness who come into contact with the justice system. Juveniles are potentially more readily identifiable than adults, since their school records may contain evidence of their educational needs. Additionally, incarcerated juveniles who have not received a diploma and are still of school age have an absolute right under the law to receive a Free Appropriate Public Education (FAPE). This obligation poses additional challenges

## **Handling an Arrest**

- Never use the disability to avoid responsibility for actions or as an excuse for antisocial or criminal behavior. Acknowledging the presence of the disability is helpful in understanding why the conduct occurred, with a view toward treating it and preventing it from occurring in the future.
- Find out if there is a mental health court in your jurisdiction. Contact your local criminal court, or check the Web site of the local district attorney or other local court offices. Information by state is available on the Criminal Justice/Mental Health Information Network Web site at <http://cjmh-infonet.org/by-state>.
- Seek a defense attorney who has a working knowledge of AD/HD and co-occurring conditions.
- If you (or a family member) already have a criminal defense attorney, but the attorney does not have experience with mental illness, put the attorney in touch with your treating doctor to explain the various manifestations of the condition and the need for treatment. You may need to sign waiver forms for this information to be shared.
- Put your attorney and doctor in touch with the assessment personnel in the mental health court system to share any diagnosis and/or current treatment plans.

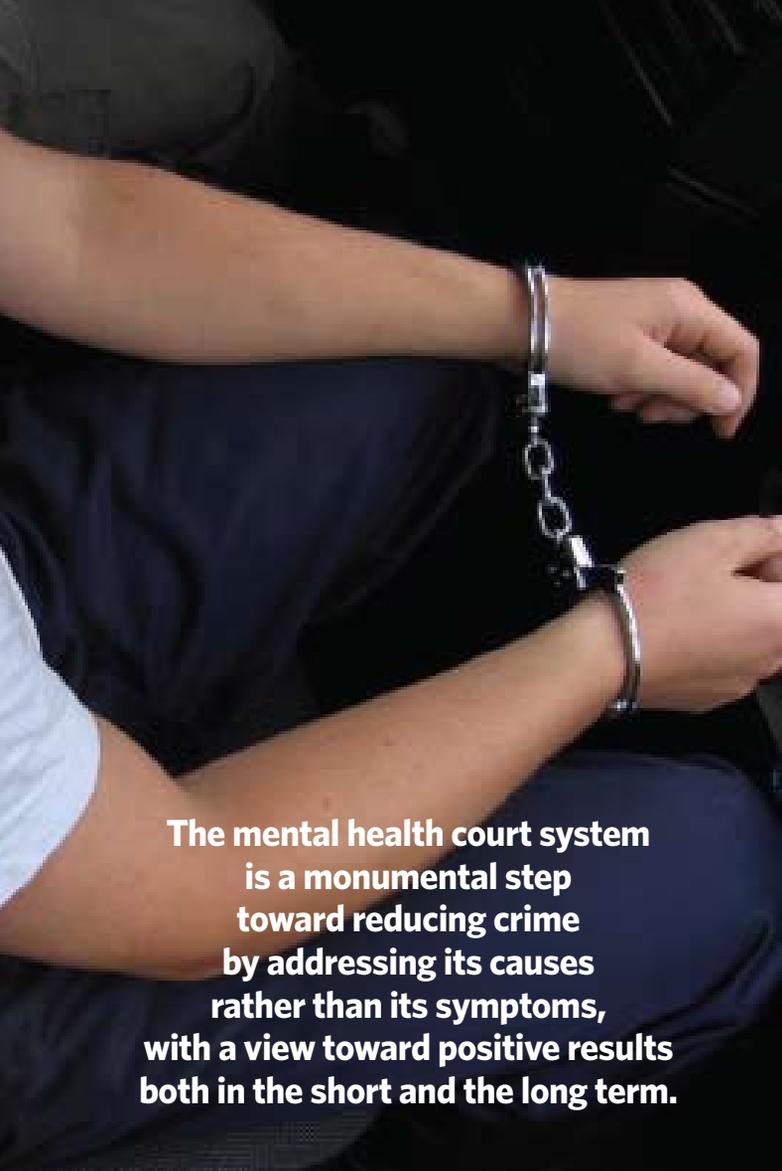
and costs to both schools and correctional systems.

Many cases involving juvenile crime result from symptoms of, or are exacerbated by, a disability such as AD/HD or another co-occurring condition. Antisocial conduct, while wrong, is often the product of an ineffective Individual Education Program (IEP) or 504 Plan, which could be resolved by a Functional Behavioral Assessment (FBA) and the imposition of a Behavioral Intervention Plan (BIP). Much of the conduct for which juveniles are incarcerated could be avoided through effective advocacy by attorneys, in obtaining appropriate programs, supports, services, and even placement for their clients.

The most troubling thing about the exclusion of juveniles from the MHC model is that the juvenile justice system is a significant point of entry into the adult criminal justice system. Establishing this resource without including juveniles is like bailing out the boat without fixing the hole in the bottom where the water is coming in.

### **Defense bar as agent of change**

While defense attorneys are considered part of the "team" in addressing the needs of their clients, in practice, the current MHC system has not offered the defense bar the same type of education and training about mental illness that has been made available to law enforcement, the courts, prosecution, and corrections personnel. Most MHCs operate out of the office of the local prosecutor, who works in conjunction with a judge and court staff who have been educated about the



**The mental health court system  
is a monumental step  
toward reducing crime  
by addressing its causes  
rather than its symptoms,  
with a view toward positive results  
both in the short and the long term.**

issues facing defendants with mental illness. In putting together this model, the CSG combined all the institutional participants without including the defendant's advocate.

Yet criminal defense attorneys are often the first individual to have any type of substantial contact with a defendant and to advocate for his or her needs. Currently, MHCs rely on prosecutors, judges, and other institutional personnel to identify and address the special needs of the mentally ill criminal defendant and omitting defense attorneys from the team. It should be role of the defense attorney to bring a client's individual needs and mitigating circumstances to the attention of the court and prosecutor, and to advocate for necessary and appropriate services.

Like its predecessor, the mental health court system represents a very positive step in addressing the overrepresentation of individuals with mental disorders in the criminal justice system. Expanding the model to encompass juveniles would dramatically increase the success of the mental health court system. In the last two years, a small handful of MHCs have expanded their parameters to accept juveniles. Additionally, national and local organizations that represent the defense bar have been seeking to educate their members about the special needs of defendants with mental illnesses who come into contact with the criminal justice system. These new developments hold much promise in addressing the needs of people with mental illnesses while reducing criminal activity. **A**