



# The Coming of Age of New Jersey Mental Health Courts

## *Addressing a Dilemma in the Criminal Justice System*

By Joanna R. Adu and Eric Marcy

**T**he intersection of chronic mental illness and the criminal justice system has always posed a dilemma for courts, prosecutors, defense attorneys, defendants, and defendants' families. The system has historically involved individualized review of charging decisions, high bails resulting in possible detention pending trial, plea negotiations, and sentencing. Chronic mental illness<sup>1</sup> has been inconsistently treated as either an aggravating or mitigating factor in the determination of psychiatric intervention, criminal prosecution, diversion, plea offers and sentencing. That determination is unfortunately dependent on the life experience and training of law enforcement, prosecutors, defense attorneys, and the judges assigned to the matter.

Incarcerating non-violent criminal defendants who have mental illness serves a punitive function and does not address the underlying issues that led to incarceration. It also is inca-

pable of preparing the individual to return as a functional member of society after the sentence is served since it does not address the mental illness itself. New Jersey, however, has risen to the challenge and is actively working on various approaches to address treatment.

For instance, the Superior Court of New Jersey has experimented with and, in some cases, implemented, procedures that seek to monitor and manage psychiatric conditions where an individual with mental illness has been exposed to the criminal justice system. Further, homegrown and structured pilot programs are being implemented in several counties, which provide an opportunity to develop and implement more effective approaches to mental health recovery, diversion, and monitoring at the various stages of criminal prosecution. New Jersey counties have established various programs that may serve as models for building a statewide program. The experience gained by these pilot initiatives should provide guidance for

the implementation of a statewide mental health court system. Finally, New Jersey state legislators recently advanced a bill intended to create a “mental illness diversion program” to move eligible persons into case management and mental health services rather than the criminal justice system.<sup>2</sup>

### **The Concept of Mental Health Courts Reach New Jersey**

One of the earliest mental health courts in the country was established in Broward County, Florida in 1997 as the brainchild of a task force involving key stakeholders focused on addressing mental health and the criminal justice system.<sup>3</sup> Fast forward to today, there are now more than 300 mental health court programs nationwide.<sup>4</sup>

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Like the birthing of the first mental health court in Broward County, Supreme Court Chief Justice Stuart Rabner has led the mental health court charge in New Jersey with the establishment of two committees focused on addressing mental illness and our criminal justice system, respectively, the Interbranch Advisory Committee on Mental Health Initiatives (IACMHI) assembled in 2010,<sup>5</sup> and the multidisciplinary Mental Health Advisory Committee (MHAC) in 2019.<sup>6</sup>

The IACMHI included 21 key stakeholders from various disciplines and branches of government including representatives from various county prosecu-

tors’ offices, the Public Defender’s Office, the State Division of Mental Health and Addiction Services (DMHAS), and the New Jersey Judiciary, among others.<sup>7</sup> The stated mission of the IACMHI’s was to, “develop models of research-based, cost-effective intervention processes that can be implemented to improve responses of the criminal justice system to persons with serious mental illness.”<sup>8</sup> In that regard, the population of focus for the IACMHI were those individuals with diagnoses such as schizophrenia and bipolar spectrum disorders.<sup>9</sup>

Approximately two years after its creation, the IACMHI issued its Committee Report outlining 17 recommendations geared toward improving the Judiciary’s response to people with serious mental illnesses in the criminal justice system

and providing suggestions for related changes to the other branches of government.<sup>10</sup> Some of the Committee’s recommendations included: creation of an “Interbranch Mental Health Initiatives Implementation Committee” to spearhead and oversee many of the other related recommendations, and development of comprehensive intervention strategies for the different stages of the criminal justice system.<sup>11</sup> The issues IACMHI sought to tackle included pre-arrest; initial contact with the criminal justice system; pre-adjudication diversion; municipal court mental health liaisons; educational programs for Judges, non-



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judicial staff, first responders, public defenders’ offices, mental health service providers, and the public; and the funding for such programs.<sup>12</sup> As a result of its research and investigation, the IACMHI concluded that focus on early intervention initiatives was most likely to produce the best return for “effectiveness and financial investment.”<sup>13</sup>

Like its predecessor, the MHAC will also evaluate the issues that arise from the intersection of the criminal justice system and individuals with mental illness, with the goal of developing ways to improve mental health services access.<sup>14</sup> The MHAC roster again includes a powerhouse of key multidisciplinary stakeholders from all branches of government, mental health service providers, ACLU-NJ, and others.<sup>15</sup>

The number of inmates with diagnosable mental health issues is significant, and this presents difficult issues for the criminal justice system. State prisons and county jails are not equipped to provide effective psychiatric treatment to properly stabilize and treat inmates with mental illness. So, while the advent of second- and third-generation “psychotropic” or “antipsychotic” medications have enabled many people to manage symptoms that previously brought them into conflict with the criminal justice system, prisons simply do not have the available medications or sufficient professional staff to provide effective treatment. In the absence of properly trained and sufficient professional staff, the available medication in prisons may focus only on sedating inmates.

On Jan. 11, 2022, the New Jersey General Assembly introduced Assembly Bill No. 1700, which would expand on the current county-based diversion programs by establishing a “Statewide Mental Illness Diversion Program.”<sup>16</sup> Like its county-based counterparts, the proposed statewide diversion program would divert eligible people into case management and mental health services rather than the criminal justice system.<sup>17</sup> If enacted, this legislation would create a uniform framework for intake procedures, eligibility, disqualification standards, program requirements, conditions for admission, deferred prosecution with a potential dismissal of charges, and establish a statewide resource directory of entities to facilitate mental health screening, counseling, case management and treatment.<sup>18</sup> This Assembly Bill further proposes amendments to the Pre-Trial Intervention, conditional discharge, and expungement statutes.<sup>19</sup> Eligibility would be limited to “non-violent petty disorderly persons offense, disorderly persons offense, or crime of the third or fourth degree,” but the county prosecutor would retain sole authority to determine eligibility and admission.<sup>20</sup> Assembly Bill No. 1700 is still in the early stages of consideration, and as of Sept.

29, 2022, had been referred to the Assembly Human Services Committee.<sup>21</sup>

#### **Why the Need Exists**

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Housing offenders who have mental illness creates unique problems for the prison system, including overcrowding, behavioral problems resulting in discipline, related physical medical problems resulting in stress on prison medical services, suicides, victimization of these inmates due to the vulnerability arising

from their mental illness, increased costs to the prison system, and increased likelihood of recidivism.<sup>25</sup>

Data on recidivism rates has yet to be developed in New Jersey; however, nationwide statistics show that people with mental illness are 10 times more likely to end up in a jail than in a hospital.<sup>26</sup> As New Jersey counties continue to develop mental health court programs, data will be collected and is expected to reveal the impact, if any, of mental health court programs on recidivism. In the interim, statistical data from other jurisdictions with established mental health court programs confirms a significant positive impact not only on recidivism rates,<sup>27</sup> but also in other areas such as rate of psychiatric hospitalizations,<sup>28</sup> medication compliance,<sup>29</sup> and improved employment status.<sup>30</sup>

By way of example, Michigan established its first mental health court in 2007 and codified its Mental Health Court program in 2013.<sup>31</sup> As of January 2021, the Michigan Judiciary reported 41 mental health courts across the state that are considered as part of the state’s “Problem-Solving Courts,” along with 135 Drug and Sobriety Court programs and 27 Veterans Treatment Court programs.<sup>32</sup> For the year 2021, new convictions with-

in three years of admission for mental health court graduates were reduced by 18%-21%, and new convictions within five years of admission for mental health court graduates were reduced by 18%-19%.<sup>33</sup>

In New Jersey, county prosecutor's offices have been at the forefront in addressing issues presented by defendants with mental illness. Notable examples are the programs initiated by the Union County Prosecutor's Office, which began a program in 2005, and the Ocean County Prosecutor's Office, which began a program in 2014. Most counties, without established diversion programs, continue to resolve matters that present serious mental health issues on a case-by-case basis. Such a response is highly individual and dependent on the subjective approaches of individual prosecutors, defense attorneys, and judges. Connecting services to address mental health issues has been left to families, defense counsel, and the availability, or lack thereof, of private and community mental health care providers.

### **How Early Intervention Can Facilitate Help**

There is a recognition that early psychiatric screening and diversion should be a priority when police are confronting a suspect involved in non-violent, disorderly, or minor criminal activity. Directing an individual suffering from an obvious mental health issue to a screening center is the most effective way to stabilize and avoid unnecessary incarceration.<sup>34</sup> Police training<sup>35</sup> and coordina-

tion with the Psychiatric Emergency Screening centers<sup>36</sup> are more effective than incarceration of individuals needing psychiatric intervention. Crisis Intervention Training (CIT) Programs for law enforcement are a good start but need expansion and integration with psychiatric emergency screening centers, county prosecutors' offices, and the New Jersey Judicial system.<sup>37</sup>

Early psychiatric intervention, investment in local community mental health providers, and case management follow up care is not only humane, but will reduce the jail population, the stress on the county and state prison systems, and the expense of incarceration.<sup>38</sup>

The current statewide pre-trial detention system and the Public Safety Assessment (PSA) tool does not account for and address the special needs presented when a defendant has a serious mental illness. People suffering from serious mental illness may have a history of minor criminal offenses, such as disorderly conduct, harassment, stalking, or other convictions that arise from or relate to their illness. Such individuals may have a history of failing to appear for minor motor vehicle or criminal charges resulting in a higher Public Safety Assessment (PSA) score resulting unnecessarily in pre-trial detention.<sup>39</sup>

### **Pilot Programs Have Been Newly Initiated**

Prosecutors' offices and courts have recognized the need for assessing individuals early in the criminal process with serious mental illness and establishing a

diversion system. It has been long recognized that there are defendants that have the potential for diversion out of the system if given needed social services, case management, supervision, and mental health treatment necessary to stabilize them and reduce the chance of recidivism. Incarceration of individuals with serious mental illness and subsequent release without treatment and support services only fosters recidivism.<sup>40</sup>

Beginning in 2022, New Jersey began funding pilot programs for early intervention Pre-Trial Release in Camden, Essex, and Middlesex counties. On May 18, 2022, the Division of Mental Health and Addictions Services issued a "Request for Proposals—Mental Health Screening, Referral, and Support Pilot Diversion Program for Criminal Justice Reform (CJR) Pretrial Released Defendants."<sup>41</sup> The purpose of this program is to provide services for persons who have a Serious Mental Illness (SMI)<sup>42</sup> and provide early intervention services, community-based mental health, medical, housing, case management, and other social support services for diversion from the criminal justice system if the participant successfully completes the diversion program. Funding for this pilot program was awarded to Legacy Treatment Services of Middlesex County, Mental Health Association of Essex County, and Oaks Integrated Care of Camden County on Aug. 10, 2022. These pilot programs are in the process of development and implementation by these respective agencies.<sup>43</sup>

The scope and goals of the pilot programs are to: 1) Identify defendants with

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serious mental health issues early in the criminal process; 2) Link defendants to community providers that can address the mental health needs of the defendant and identify and implement necessary support services; 3) Provide for expedited mental health evaluations; 4) Assist defendants in application and completion of a voluntary diversion program; 5) Coordinate with the County Prosecutor's Office, Public Defender's Office, and courts for a collaborative integrated approach to addressing eligible criminal defendants in securing services and diversion from criminal prosecution; and 6) Establish comprehensive individual service plans to address the mental health issues in an effort to reduce recidivism.<sup>44</sup>

The programs seek to identify defendants with serious mental health issues, connect them with providers of mental health and other social services. The programs require voluntary participation, for those in county jails or on pre-trial release and coordination with community services for employment, housing, substance abuse and mental health support.<sup>45</sup> The evaluation will be a component of the risk-based Public Safety Assessment (PSA) and a Social Determinants of Health (SDOH) mental health screen to identify those who qualify and will voluntarily participate in the program.<sup>46</sup>

The goal and benefit to the individual participant is the ability to address their mental health and social needs with the possibility of diversion away from the criminal justice system. This program involves collaboration with county prosecutor's offices, local mental health service providers, probation departments, the Public Defender's Office, private counsel, with an assigned Judiciary Diversion Officer, monitoring by a case management behavioral team, and supervision by the court.

## **What New Jersey Has Now**

### ***Union County Recovery and Veteran Court—Jail Diversion Program (JDP), Initiated 2005***

The Union County Prosecutor's Office created one of the earliest, progressive, structured programs for the diversion of defendants presenting serious mental health issues. In 2005 the Union County Prosecutor's Office created an alternative to incarceration, a program of "treatment and oversight."<sup>47</sup> The Jail Diversion Program (JDP) permits a diversion that may result in a dismissal or downgrade of charges following the completion of a course of mental health treatment and completion of rehabilitative services. Eligibility is limited to non-violent offenses, in-county residents, and those who are not subject to Megan's Law, parole disqualifiers, or mandatory sentences. Conditions of participation include supervision by a caseworker, release of medical, psychiatric, and substance abuse treatment history to the program, monthly appearances before the designated JDP Judge, and active participation for a minimum of eight months. Information is available from the Union County Prosecutor's Office Special Offenders Unit and referral forms are available on its website.<sup>48</sup>

### ***Ocean County Mental Health Diversion Program (MHDP), initiated 2014***

The Ocean County Prosecutor's Office implemented an early Mental Health Diversion Program (MHDP) in September of 2014, which continues through today. It provides a diversion option for those with "serious and persistent mental illness," and is structured to provide a teamwork approach involving mental health professionals and case management. Mental health services are provided through community mental health providers, Ocean Mental Health Services and Preferred Behavioral Health. Successful completion of the course of recommended treatment may result in a downgrade or dismissal of charges. After

completion of the program, defendants continue to be monitored by the program for one year to track recidivism.<sup>49</sup>

### ***Essex County Mental Health Diversion Initiative***

Essex County has implemented a mental health diversion program based on the Union County Program. The goal is diversion through long-term treatment and reducing the recidivism rate with those who have serious mental health issues. The program seeks to establish "individualized treatment plans" with linkage to mental health providers and monitoring by case managers and courts. The model follows the drug court programs, and the Essex County Hospital Center providing case management for those who qualify and are admitted into the diversion program. The program seeks to address the many social and supportive needs of the participants including mental health treatment and "social entitlements, housing, education, vocation" with the goal of comprehensive services for community reintegration and the reduction of recidivism.<sup>50</sup>

### ***Morris County Mental Health and Veterans Diversion Program and Collaborative Justice Services (CJS) Pilot Program<sup>51</sup>***

The Morris County Prosecutor's Office has implemented a Mental Health and Veteran's Diversion Program "for individuals with serious mental illness where there is a causal link between the defendant's criminal conduct and their diagnosis. The goal is to work with appropriate individuals who agree to comply with supervised treatment to limit certain convictions or incarceration based upon continued cooperation." The aim of the program is to reduce recidivism and the rate of incarceration for those with mental illness, and to create wrap-around supportive services and case management so that individuals may



not only recover from mental illness but be successful in reintegrating into the community. The program includes collaboration with the Mental Health Association's Collaborative Justice Services Pilot Program, Morris County Judiciary, and Morris County Sheriff's Office Community Connections and Hope Hub Programs.<sup>52</sup>

Referrals to the CJS come from a wide range of stakeholders including attorneys, assistant prosecutors, probation department, pre-trial services, law enforcement, and family members. It is a structured program, and the application outlines the: 1) Admission Criteria; 2) Exclusionary Criteria; 3) Referral Process; 4) Acceptance Procedures; and 5) Conditions of Acceptance. Depending on the type of offense, charges may be downgraded or dismissed if the defendant successfully completes a plan of treatment.<sup>53</sup>

The application is available through the Morris County Prosecutor's Office. The Morris County Prosecutor's Office reviews applications with the Mental Health Association and Morris County Judiciary Probation Officers to assess whether the individual is legally, clinically, and case management appropriate. If accepted into the program, a comprehensive case management and treatment plan is implemented and closely monitored. The individual's criminal charges are addressed, and services are linked to counseling, housing, and other supportive services. If there is a co-occurring substance abuse disorder, the program will coordinate with or refer the individual to the Recovery Court Program. The Morris County Judiciary provides supervision through Probation Services on certain cases and has developed a "Wellness Court" to review the individuals in the program. The assigned Judge, Prosecutor's Office, Office of the Public Defender, and Probation Officers conduct regular meetings with participants to ensure and support compliance and assist with treatment and other needs.<sup>54</sup>

The Morris County Prosecutor's Office has also implemented Crisis Intervention Team (CIT) Training, which is a 40-hour course for Law Enforcement, Emergency Medical Technicians, Department of Children Protection & Permanency, and other professionals who regularly deal with the special needs populations to work together to identify individuals having a mental health crisis and address them in a manner to de-escalate high risk situations and link these persons to county services and treatment.<sup>55</sup>

### **Other Mental Health Initiatives**

New Jersey courts confront mental health issues in a variety of contexts, which has generated programs that may serve as models, and if not models, provide experience that may contribute to the development of a statewide mental health court system. Some examples include:

#### ***Recovery Court—"Drug Court" Programs***

New Jersey is in the process of standardizing a Statewide Drug Court Program. The goal is to create a uniform approach for eligibility criteria and a statewide system.<sup>56</sup> The implementation of drug courts is a success story that may serve as a template for how mental health courts can be rolled out throughout the various vicinages and implemented on a statewide basis. The structure for supervision and monitoring sets a good example as to how a statewide mental health court may be implemented.<sup>57</sup>

One of the challenges arising out of current drug court programs are defendants with co-occurring disorders, i.e., serious mental health issues co-existing with substance abuse issues. It is not uncommon for those with serious mental health issues to rely on alcohol and drugs to self-medicate. Co-occurring disorders present a unique challenge to the

drug court system because it is not equipped and does not have the funding to provide the mental health and social services necessary to address underlying serious mental health issues.<sup>58</sup>

The challenge for the implementation of mental health courts will be obtaining funding and clinical services to manage serious and persistent mental health issues and any related substance abuse issues. The experience in the development and implementation of the drug court program will be instructive to the development of a standardized statewide approach to a diversion program for those with serious mental health issues.

#### ***Veteran Diversion Courts (VDP)***

The Veterans Diversion Program (VDP) is another court system involving assessments and diversions related to mental health issues which can serve as a guide for mental health courts. In recognition of those who have served our country and in recognition that service sometimes results in psychological issues, New Jersey has implemented a diversion program for veterans with mental health issues that result in contact with the criminal justice system. VDP is limited to qualifying service members, charged with an eligible offense, and present with mental illness.<sup>59</sup> The eligible offenses have limitations, they include non-violent municipal criminal matters and third- and fourth-degree offenses. Admission into the VDP is the sole discretion of the prosecutor. VDP also has a mentorship component that makes this program unique. Successful completion of VDP may potentially lead to the dismissal of criminal charges.<sup>60</sup>

#### ***Involuntary Out-Patient Commitment<sup>61</sup>***

New Jersey courts have experience with the supervision and case management of individuals with chronic mental illness. The creation of state-wide mental health courts in the criminal justice sys-

tem can look to the experience gained in the civil commitment system<sup>62</sup> and most notably the Involuntary Outpatient Commitment (IOC) programs. One component of the involuntary commitment system provides for judicial supervision of those are not “immediately or imminently dangerous to self, others, or property.”<sup>63</sup> The involuntary out-patient commitment system is of fairly recent origin implemented due to the need to provide mental health services to those who may be dangerous in the ‘reasonably foreseeable’ future.”<sup>64</sup>

The Involuntary Out-Patient Commitment system involves court-ordered treatment, provides links to community provider mental health services, the implementation, and judicial monitoring of court ordered plan of treatment.<sup>65</sup> The system assesses clinical progress, provides for legal representation of patients, and coordinates the patient’s participation in court hearings. Individual enrollment requires a structured screening by mental health professionals consistent with the court rules and state law.<sup>66</sup> Before an out-patient commitment order may be entered, a certified psychiatric screener, qualified mental health providers, and a court must make a determination that the individual qualifies under the legal standard which is: “an adult with mental illness, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is unwilling to accept appropriate treatment voluntarily after it has been offered.”<sup>67</sup>

The involuntary in-patient and out-patient commitment system is different than the system that mental health courts in the criminal justice system would implement. Mental health courts will seek to provide an alternate avenue for resolving criminal charges, for those who will voluntarily participate, like recovery court diversion programs for substance abuse and veterans. The due process protections and issues presented

by a mental health court system will be substantially different, but the ordering of out-patient treatment, linkage to mental health services, monitoring of such plans, and assessment progress are issues that the courts currently address in commitment proceedings.<sup>68</sup>

### **Challenges to Implementing a Statewide Mental Health Court System**

For a statewide mental health court system to be effective, certain issues will have to be addressed, including who qualifies, what crimes qualify, whether there will be voluntary participation, and the implication for the ultimate resolution of the criminal charge. Another major challenge will be funding the psychiatric, medical, and integrated case management services capable of addressing the wide variety of mental health illnesses presented by this population and the availability of appropriate community health care providers throughout the state.<sup>69</sup>

There is no “magic pill,” and the system will require medical professionals capable of prescribing and monitoring psychiatric medication issues. Since the prescription of psychotropic/antipsychotic drugs is an art and as individuals may respond differently to a medication, an integrated case management system will require qualified medical staff to prescribe, and case manage medication issues. Medical professionals will need to work directly with the participant, the County Prosecutor’s Office, counsel, and court system to establish a medicine protocol that is both effective and accepted by the participant.<sup>70</sup>

Frequently, no single medication may provide the relief of psychiatric symptoms. Effective treatment may require a combination of medications which complicate treatment, create polypharmacy,<sup>71</sup> and side effect issues. Creating a system that can balance an individual’s rights<sup>72</sup> to control their medication decisions with the management of symptoms and

side effects is a challenge. Medication issues will require the cooperation of the individual as well as staffing, with qualified case management, and medical personnel to address medication issues.

### **Conclusion**

Managing serious mental health issues arising out of the criminal justice system is complicated and will require adequate funding to provide the services necessary to make the system work. Implementing mental health courts on a statewide basis presents challenges at every stage of criminal proceedings. In addition to public policy concerns about the humane treatment of persons who have mental illness, there are issues involving the cost of incarceration, the failure to accurately diagnose and treat, the resulting deterioration of the inmate’s level of functioning, complicating medical issues, and recidivism. These concerns compel the need for action to be taken to reform the system.

The Drug Court/Recovery Court system took years to implement and through the efforts of pilot programs is being effectively implemented on a statewide basis that will reduce the loss of life and reduce the prison population. New Jersey is now rolling out pilot programs and experimenting with programs to address mental illness, treatment, and diverting those suffering from mental illness to take them out of a punitive correctional approach.

The ultimate challenge for New Jersey’s 21 counties is having the availability of community mental health providers with sufficient training, staffing, and funding, to work in an integrated case management program with county prosecutors’ offices, pre-trial services, probation, defense counsel, and the court system to provide the necessary services to stabilize, monitor, and maintain the mental health of the population of defendants who struggle with serious mental illness. Understanding these

obstacles, the implementation of a statewide mental health court system is likely several years in the future. The patchwork of programs currently in place are setting the groundwork for determining how, as a society, we deal with mental illness in the criminal justice system. Establishing a more humane and just approach to addressing the complex issues presented by serious mental illness in the criminal justice system is necessary and in society's interest. ■

## Endnotes

1. Given the complexity of the human mind and the variations in diagnosed mental health illnesses and developmental disabilities, there is no easy or simple definition for "chronic mental illness" or what conditions would qualify one for acceptance into a mental health court/recovery court program. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is a system of classification, a manual for the characterization and setting the criteria for diagnosis, a common language, for Mental Health Providers. It is constantly evolving and provides a system of diagnosing, defining, and characterizing a constellation of symptoms and behaviors presented by a subject. Due to the complexity of symptoms and behaviors it is not a "Bible" and has limitations that should be accounted for in its use. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2022); Jeffrey Guterman, *Limitations of the Diagnostic and Statistical Manual of Mental Disorders – also known as the DSM5*, Medium (Feb. 4, 2017), <https://jeffreyguterman.medium.com/limitations-of-the-diagnostic-and-statistical-manual-of-mental-disorders-also-known-as-the-dsm-f864149da182>; Anna Bredstrom, *Culture and Context in Mental Health Diagnosing: Scrutinizing the DSM-5 Revision*, J. Medical Humanities 40, 347 (2019); *Diagnostic & Statistical Manual of Mental Disorders (DSM): Strengths & Weaknesses*, Study.com, <https://study.com/academy/lesson/diagnostic-statistical-manual-of-mental-disorders-dsm-strengths-weaknesses.html> (last visited Oct. 25, 2022).
2. See Gen. Assemb. 1700, 220th Leg., 2022 Sess. (N.J. 2022).
3. Amy Watson, M.A. et al., *Mental Health Courts and the Complex Issue of Mentally Ill Offenders*, 73 *Psychiatric Servs.* 477, 479 (2001).
4. *Mental Health Courts*, Council of State Gov'ts Just. Ctr., <https://csgjusticecenter.org/projects/mental-health-courts/> (last visited Oct. 20, 2022).
5. Interbranch Advisory Comm. on Mental Health Initiatives, *Improving Responses to Individuals with Mental Illness in New Jersey* 1, 4 (Dec. 2012).
6. See News Release, Supreme Court Forms Mental Health Advisory Committee, N.J. Cts. (Nov. 12, 2019), <https://www.njcourts.gov/pressrel/2019/pr111219c.pdf>.
7. Interbranch Advisory Comm. on Mental Health Initiatives, *supra* note 5, at 4.
8. *Id.* at 6.
9. *Id.* at 4.
10. *Id.*
11. *Id.*
12. *Id.* at 2-3.
13. *Id.* at 6.
14. See News Release, *supra* note 6.
15. Mental Health Advisory Comm. Roster, N.J. Cts., <https://www.njcourts.gov/host/pr/mhaccommroster.pdf>.
16. N.J. Assemb. Judiciary Comm., *Statement to Assembly Bill No. 1700*, 220th Leg., 2022 Sess. (Sept. 29, 2022), *available at* [https://pub.njleg.state.nj.us/Bills/2022/A2000/1700\\_S1.HTM](https://pub.njleg.state.nj.us/Bills/2022/A2000/1700_S1.HTM).
17. See Gen. Assemb. 1700, *supra* note 2; see also N.J. Assemb. Judiciary Comm., *supra* note 16; Fast Democracy, <https://fastdemocracy.com/bill-search/nj/2022-2023/bills/NJB00043244/> (last visited Nov. 22, 2022).
18. See Gen. Assemb. 1700, *supra* note 2; see also N.J. Assemb. Judiciary Comm., *supra* note 16; see also Fast Democracy, *supra* note 17.
19. The Assembly Judiciary Committee reported favorably Assembly Bill No. 1700. Gen. Assemb. 1700, *supra* note 2.
20. Gen. Assemb. 1700, *supra* note 2; see also Fast Democracy, *supra* note 17.
21. *Id.*
22. While studies show a wide variation in the percentage of inmates with serious mental illness, the common thread is that the percentage of inmates with serious mental illness is significant. U.S. Dep't. of Just., *Mental Health Problems of Prison and Jail Inmates* (2006), <https://bjs.ojp.gov/content/pub/pdf/mhppji.pdf>; see also *Mental Health: Policies and Practices Surrounding Mental Health*, Prison Pol'y Initiative (Oct. 19, 2022, 12:28 PM), [https://www.prisonpolicy.org/research/mental\\_health/](https://www.prisonpolicy.org/research/mental_health/); see also Lorna Collier, *Incarceration Nation*, 45 *Monitor on Psych.* 56 (2014); see also Treatment Advoc. Ctr., *How Many Individuals with Serious Mental Illness are in Jails and Prisons?* (Nov. 2014), <https://www.treatmentadvocacycenter.org/storage/documents/backgrounders/how%20many%20individuals%20with%20serious%20mental%20illness%20are%20in%20jails%20and%20prisons%20final.pdf>; Edward Lyon, *Imprisoning America's Mentally Ill*, *Prison Legal News*, Feb. 2019, at 22; *Access to Mental Health Care and Incarceration*, Mental Health Am.,



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29. Mich. Sup. Ct., *supra* note 27, at 35.
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39. The New Jersey Public Safety Assessment (PSA) is a standardized assessment tool used by pre-trial services and courts to evaluate whether a defendant is a low, medium, or high risk for flight, presents a risk to the safety of the community, or may obstruct the criminal justice process. ACLU NJ et al., *The New Jersey Pretrial Justice Manual* (Dec. 2016), <https://www.nacdl.org/getattachment/50e0c53b-6641-4a79-8b49-c733def39e37/the-new-jersey-pretrial-justice-manual.pdf>; see also N.J.S.A. 2A:162-16.
40. Ted Romankow, N.J. prosecutors combining compassion with justice for defendants with mental health issues: Opinion, NJ.com (Dec. 12, 2014 4:47 PM), [https://www.nj.com/opinion/2014/12/nj\\_courts\\_using\\_more\\_compassion\\_with\\_justice\\_for\\_defendants\\_with\\_mental\\_health\\_issues\\_opinion.html](https://www.nj.com/opinion/2014/12/nj_courts_using_more_compassion_with_justice_for_defendants_with_mental_health_issues_opinion.html); N.J. Dept. of Human Servs. Div. of Mental Health & Addiction Servs., *Request for Proposals – Mental Health Screening, Referral, and Support Pilot Diversion Program for Criminal Justice Reform (CJR) Pretrial Released Defendants* (May 18, 2022), <https://www.nj.gov/humanservices/dmhas/provider/funding/MH%20Pilot%20Diversion%20Program%20RFP.pdf>; N.J. Judiciary, *Pretrial Services Program* (May 2017).
41. N.J. Dept. of Human Servs. Div. of Mental Health & Addiction Servs., *Request for Proposals – Mental Health Screening, Referral, and Support Pilot Diversion Program for Criminal Justice Reform (CJR) Pretrial Released Defendants* (May 18, 2022), <https://www.nj.gov/humanservices/dmhas/provider/funding/MH%20Pilot%20Diversion%20Program%20RFP.pdf>; N.J. Judiciary, *Pretrial Services Program* (May 2017), [https://www.njcourts.gov/forms/12088\\_cjr\\_pretrial\\_svcs\\_brochure.pdf](https://www.njcourts.gov/forms/12088_cjr_pretrial_svcs_brochure.pdf).
42. Serious Mental Illness includes but is not limited to schizoaffective, bipolar, and depression disorders, and is generally defined as: “adults aged 18 or older who currently or at any time in the past year have had a diagnosable mental, behavioral, or emotional disorder (excluding developmental and substance use disorders) of sufficient duration to meet diagnostic criteria specified in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders and has resulted in serious functional impairment, which substantially interferes with or limits one or more major life activities.” Rachel N. Lipari, Ph.D. et al., *State and Substate Estimates of*

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43. See *Request for Proposals – Mental Health Screening, Referral, and Support Pilot Diversion Program for Criminal Justice Reform (CJR) Pretrial Released Defendants*, *supra* note 41; see also Press Release, N.J. Dept. of Human Servs., NJ Human Services Announces Pilot Program to Provide Mental Health Screening & Support to Individuals on Pretrial Release (Sept. 6, 2022), <https://www.nj.gov/humanservices/news/pressreleases/2022/approved/20220906.html>; see also Final Award Notice for Mental Health Screening, Referral, and Support Pilot Diversion Program for Criminal Justice Reform (CJR) Pretrial Released Defendants, N.J. Dept. of Human Servs. Div. of Mental Health & Addiction Servs., [https://www.state.nj.us/humanservices/dmhas/provider/funding/RFP\\_Awards/MH%20PDP%20Final%20Award%20Notice.pdf](https://www.state.nj.us/humanservices/dmhas/provider/funding/RFP_Awards/MH%20PDP%20Final%20Award%20Notice.pdf).
44. NJ Human Services Announces Pilot Program to Provide Mental Health Screening & Support to Individuals on Pretrial Release, *supra* note 43.
45. *Id.*
46. *Id.*; *Pretrial*, Nat'l Inst. of Corrections, <https://nicic.gov/projects/pretrial> (last visited Oct. 30, 2022); Hallie Fader-Towe, J.D. & Fred C. Osher, M.D., *Improving Responses to People with Mental Illnesses at the Pretrial Stage – Essential Elements* (Council of State Gov'ts Just. Ctr. 2015).
47. Ted Romankow, *N.J. prosecutors combining compassion with justice for defendants with mental health issues: Opinion*, NJ.com (Dec. 12, 2014, 4:47 PM), [https://www.nj.com/opinion/2014/12/nj\\_courts\\_using\\_more\\_compassion\\_with\\_justice\\_for\\_defendants\\_with\\_mental\\_health\\_issues\\_opinion.html](https://www.nj.com/opinion/2014/12/nj_courts_using_more_compassion_with_justice_for_defendants_with_mental_health_issues_opinion.html).
48. *Jail Diversion Program*, Union Cnty. Prosecutor's Off., <https://ucnj.org/prosecutor/jail-diversion-program-jdp/>. Gloucester, Hunterdon and Warren Counties, have initiated similar diversion programs. N.J. Assemb. Judiciary Comm., *supra* note 16.
49. *Mental Health Diversion Program*, Ocean Cnty. Prosecutor's Off., <https://oconj.gov/units/special-offenders-unit/mental-health-diversion-program/#:~:text=The%20mission%20of%20the%20MHD,or%20dismissal%20of%20their%20charges> (last visited Nov. 4, 2022).
50. *Essex County Mental Health Diversion Program*, U.S. Dept. of Just.—Bureau of Just. Assistance (Sept. 23, 2019), <https://bja.ojp.gov/funding/awards/2019-mo-bx-0020> (Award Information); *Pre Trial Intervention, Drug Court, Mental Health Initiative*, Essex Cnty. Prosecutor's Off., <https://njecpo.org/legal-units-group/pre-trial-intervention-drug-court-mental-health-initiative/> (last visited Nov. 4, 2022).
51. Special thanks to Meg Rodriguez, Chief Assistant Prosecutor, Pre-Trial, Diversion and General Investigations Units, Carrie Totten, Mental Health and Veterans Program Coordinator, Pre-Trial Services Unit, Morris County Prosecutor's Office, and Deanna Ackerman LSW, DRCC, Director, Collaborative Justice Services, Morris, AOT Morris/Sussex, for their input and contribution to this section.
52. *Id.* Hope Hub is a multidisciplinary panel consisting of “law enforcement, social services, mental health services, healthcare providers treatment providers and recovery specialists.” *Hope Hub*, Morris Cnty. Sheriff's Off., <https://www.morriscountynj.gov/Departments/Sheriff/Community-Programs/Hope-Hub#:~:text=The%20Hope%20Hub%20will%20be,at%20an%20acutely%20elevated%20risk> (last visited Nov. 22, 2022).
53. *Id.*
54. *Id.*
55. *Id.*
56. See N.J.S.A. 2C:35-1; see also Directive #2-02: Manual for Operation of Adult Drug Courts in New Jersey (Jul. 22, 2002), [https://www.njcourts.gov/assets/directives/dir\\_02\\_02.pdf](https://www.njcourts.gov/assets/directives/dir_02_02.pdf); see also News Release, New Jersey Drug Court Switches Name to Recovery Court, N.J. Cts. (Dec. 29, 2021), <https://www.njcourts.gov/press-releases/2021/12/new-jersey-drug-court-switches-name-recovery-court>; see also *Application to the Recovery Court Program*, NJCourts.gov, [https://www.njcourts.gov/sites/default/files/forms/10753\\_dc\\_appl.pdf](https://www.njcourts.gov/sites/default/files/forms/10753_dc_appl.pdf); see also *Judiciary Brochure, Recovery Courts Work* (2022), <https://www.nj.gov/defender/documents/Recovery%20Court%20Brochure%201-2022.pdf>.
57. Directive #2-02, *supra* note 56.
58. N.J. Dept. of Human Servs., *Report of the New Jersey Co-Occurring Mental Illness and Substance Use Disorders Task Force* (Sept. 2010), <https://www.nj.gov/humanservices/dmhas/initiatives/wellness/CoOccur>



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59. See N.J.S.A. 38A:1-3; N.J.S.A. 2C:43-26b; N.J.S.A. 2C:43-26; *see also* *Statewide Veterans Diversion Program*, N.J. OAG, <https://www.njoag.gov/programs/statewide-veterans-diversion-program/> (last visited Oct. 30, 2022); *see also* *Veterans Diversion Program*, Camden Cnty. Prosecutor's Off., <https://camdencountypros.org/community-page/47> (last visited Nov. 4, 2022).
60. See *Statewide Veterans Diversion Program*, *supra* note 59; *Statewide Veterans Diversion Program*, N.J. OAG, <https://www.nj.gov/oag/vdp/> (last visited Nov. 4, 2022); *see also* *Veterans Diversion Program*, N.J. Dept. of Mil. & Veterans Affs. (Sept. 6, 2022), <https://www.nj.gov/military/veterans/services/diversion-program/>; *Statewide Veterans Diversion Program – Eligibility*, N.J. OAG, <https://www.nj.gov/oag/vdp/eligibility.html> (last visited Nov. 4, 2022).
61. Involuntary Outpatient Commitment, N.J. Dept. of Human Servs. Div. of Mental Health & Addiction Servs., [https://www.state.nj.us/humanservices/dmhas/resources/services/treatment/mh\\_ioc.html](https://www.state.nj.us/humanservices/dmhas/resources/services/treatment/mh_ioc.html) (last visited Nov. 4, 2022); *see also* Forms, N.J. Dept. of Human Servs. Div. of Mental Health & Addiction Servs. <https://www.state.nj.us/humanservices/dmhas/forms/#4>; *see also* CLINICAL/SCREENING CERTIFICATE FOR INVOLUNTARY COMMITMENT OF MENTALLY ILL ADULTS, N.J. Dept. of Human Servs. Div. of Mental Health & Addiction Servs., [https://www.state.nj.us/humanservices/dmhas/forms/Screening%20Documents/Clinical\\_Screening\\_Certif\\_Invol\\_Commit\\_Sept2014.pdf](https://www.state.nj.us/humanservices/dmhas/forms/Screening%20Documents/Clinical_Screening_Certif_Invol_Commit_Sept2014.pdf).
62. PRESSLER & VENIERO, *Current N.J. Court Rules*, R. 4:74-7, Civil Commitment—Adults. The involuntary civil commitment system includes short-term, long-term commitment, and out-patient commitment for those patients in need of psychiatric intervention who are unwilling to voluntarily enter treatment. A full discussion of the highly structured commitment process is beyond the scope of discussion in this article and to address it properly it would deserve an article dedicated to it alone. Involuntary Civil Commitment for in-patient out out-patient commitment is a highly structured system for referrals, screening, evaluation, temporary commitment, judicial review, conversions of status, modifications, judicial review according to a strict review schedule, and ultimately for discharge; *see also* *Involuntary Outpatient Commitment*, *supra* note 61; *Judges' Quick Reference Guide to the New Jersey Involuntary Commitment Code and Related Rule of Court (2014 Revisions)* (Treatment Advocacy Ctr., 2015), [https://www.treatmentadvocacycenter.org/storage/documents/NJ\\_Judges\\_Guide.pdf](https://www.treatmentadvocacycenter.org/storage/documents/NJ_Judges_Guide.pdf).
63. R. 4:74-7(b)(3)(A); N.J.S.A. 30:4-27.2hh.
64. “‘Reasonably foreseeable future’ means a time frame that may be beyond the immediate or imminent, but not longer than a time frame as to which reasonably certain judgments about a person’s likely behavior can be reached.” N.J.S.A. 30:4-27.2kk.
65. N.J.S.A. 30:4-27.2h; N.J.S.A. 30:4-27.2(m).
66. *Id.*
67. N.J.S.A. 30:4-27.2h; N.J.S.A. 30:4-27.2(m).
68. See Footnotes 60–65
69. 36 Seton Hall L. Rev. 971 (2005-2006) *Mental Health Courts: No Longer Experimental*
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71. *Id.*
72. See N.J.S.A. 30:4-24.2. Rights of patients regarding the administration of medication.