

# Wayne County's Mental Health Court

By William J. Heaphy Jr.

**A**t any given point, between 15 and 20 percent of the inmates in the Wayne County jail are receiving services for a severe mental disability. This poses challenges not only for medical staff within the jail, but for the community at large.

A very small percentage (less than one-half of one percent) of these inmates will be found not guilty by reason of insanity and committed to a psychiatric facility. A larger group is eventually sentenced to a term of incarceration within the Michigan Department of Corrections following a plea or trial. But under current sentencing guidelines and with the state's corrections budget under severe strain, only the most serious cases involving the most dangerous defendants conclude with a prison term. Most county jail inmates, including those suffering from mental illness, developmental disability, or severe emotional disturbance, are sentenced to a term of probation and return to the community within a few weeks or months.

The challenge to both the criminal justice system and the community mental health system is creating terms of probation that improve the quality of life for the county and for some of its most vulnerable residents.

## Mental Health Jail Diversion

Under MCL 330.1206, the Detroit-Wayne County Community Mental Health Agency is responsible for providing a comprehensive array of mental health services appropriate to conditions of individuals located in the county, regardless of an individual's ability to pay. MCL 330.1207 requires that these services include efforts to divert persons with mental disabilities from jail and into treatment. At the same time, the Wayne County Prosecutor's Office has long been an advocate of alternative sentencing programs such as drug court and the Holmes Youthful Trainee Act,<sup>1</sup> recognizing

## Fast Facts

**Mentally ill defendants present a problem for the whole community.**

**The challenge to both the criminal justice system and the community mental health system is creating terms of probation that improve the quality of life for the county and for some of its most vulnerable residents.**

**Mental health court provides treatment and extra supervision for defendants who need it.**



that meaningful treatment should be part of any probationary sentence involving mentally ill defendants.

In 2002, the Detroit-Wayne County Community Mental Health Agency and the Wayne County Prosecutor's Office established the Expedited Plea Program, more commonly referred to as Mental Health Jail Diversion. Prosecutor Kym Worthy later expanded the program following her appointment to the office in 2004. The program focuses on mentally ill inmates, mostly charged with lower-level theft and drug offenses, who are eligible for probation. These defendants are offered expedited plea agreements early in the criminal process. Detailed psychiatric assessments are conducted in the jail, and recommendations prepared by jail staff are made available to the court before sentencing. The recommendations then become part of the sentence of probation.

One of the most important aspects of Wayne County's jail diversion program is that it represents a collaborative effort between the Wayne County Prosecutor's Office; Detroit-Wayne County Community Mental Health Agency; Wayne County Circuit Court; Wayne County jail; Wayne County Child and Family Services; the Michigan Department of Corrections; and a number of community service providers, including Northeast Guidance Center, Detroit Central Cities, and Community Care Services. After several years of meeting and working together, these agencies recognized the need for a more involved approach in the supervision and treatment of mentally ill offenders. This led to the creation of the Mental Health Court Task Force in 2006 under the leadership of retired Wayne County Circuit Judge William Leo Cahalan. After Judge Cahalan's passing in early 2007, Wayne County Circuit Judge Timothy M. Kenny assumed leadership of the task force. The mental health court began taking cases in April 2009 with Judge Kenny presiding.

## Mental Health Court

The original jail diversion model left post-sentencing supervision to the probation department, with very little follow-through by the court. At the same time, a growing national trend was utilizing "problem-solving" courts, such as drug court or domestic violence court, as a way of focusing on individual behaviors and conditions.

The mental health court has the same goals as jail diversion:

- Ensuring that mentally ill defendants are referred for treatment in lieu of incarceration, thus reducing jail overcrowding
- Stabilizing mentally ill defendants and reducing the short-term risk of illicit behavior
- Reducing the risk of long-term recidivism
- Reducing the overall costs to society created by "revolving-door" jails for the mentally ill

The mental health court recently completed its first year of operation, and the early returns are encouraging. It currently operates as a pilot program, drawing participants from the same group of defendants that might otherwise be eligible for the earlier jail diversion program. A brief description of the mental health court follows.

## Procedure

### Referral

The process begins with the referral of a potentially eligible participant for evaluation. Most referrals originate within the Wayne County jail, but a significant number are made by attorneys and judges.

The jail has a multi-layered screening process to determine if an individual has received mental health services in the past or presently needs those services. Jail staff is assisted in this process by the Case Differentiation Unit, a division of Wayne County Child and Family Services that works with both the jail and the prosecutor's office.

Defendants referred for evaluation are typically charged with drug offenses or petty theft offenses; defendants charged with assaultive offenses are generally not considered.

### Evaluation and Plea Offers

Once the jail has determined a defendant's clinical eligibility, the Wayne County Prosecutor's Office must determine legal eligibility. This is essentially a question of whether a given defendant is suitable for probation and community supervision rather than further incarceration. Factors to consider include the charged offense; the defendant's behavioral health history; the underlying conduct described in police reports or witness statements; the sentencing guidelines; the defendant's past criminal history; adjustment to past treatment; and feedback from victims, the police, or the defendant's family.

Eligible defendants are offered placement in the appropriate program (jail diversion or mental health court) in exchange for a reduced plea. With few exceptions, defendants accept the offer.

Eligible defendants are offered placement in the appropriate program (jail diversion or mental health court) in exchange for a reduced plea. With few exceptions, defendants accept the offer and the case proceeds to sentence before Judge Kenny.

### Sentence and Post-Sentence

The sentence hearing brings together reports from several different sources, all of which help the judge craft an appropriate plan that will be adopted as a sentence of probation. Medical and social workers from the Wayne County jail give a clinical overview along with recommendations for treatment and medication. The probation department provides a criminal background history, a description of the offense, and a description of the terms of probation that will apply in addition to treatment, such as monthly reporting and restitution. Finally, the mental health court case manager provides an integrated plan for housing and treatment. This plan serves as a basic reference point for later status conferences.

Status conferences occur at regular intervals after the sentence—weekly, biweekly, or monthly depending on the individual—and are held in a courtroom on the record with Judge Kenny presiding. These conferences constitute the essence of mental health court.

Representatives from the various agencies that work with the mental health court participants also attend the status conferences. The judge is able to review the progress of each participant, including compliance with recommended treatment and other terms of probation.

By design, the program focuses on habitual theft and drug offenders; not surprisingly, a large percentage of the participants have severe substance-abuse problems. Drug testing and substance-abuse counseling are frequently part of the status conference review.

Information from the status conference can be used to modify the original plan when necessary; assistance with housing or employment can also be provided. Mental health court is meant to function as a problem-solving court. Participants who fail to comply with recommended treatment can face sanctions ranging from a warning to a weekend in jail to a term of incarceration with the Department of Corrections. Fortunately, early results have been encouraging, with relatively few violators.

### Looking Forward

“The [mental health court] provides a unique opportunity to help improve the lives of the mentally ill while at the same time significantly reducing recidivism. We recently had a female in her late 30s come to us with a serious drug problem, mental health issues, and she had lost custody of her children,” said Judge Kenny. “She graduated from the program and has been able to stay clean and sober for a year. She now has several of her children back, has a job, and has turned her life around dramatically.”<sup>2</sup>

Early results of the program have yielded encouraging results, including a 2010 Achievement Award from the National Association of Counties. The only limitation on its effectiveness so far is that funding exists for only one director and one case manager. Wayne County's mental health court will continue as long as funding to sustain it exists.

Wayne County Prosecutor Kym Worthy thinks that the cost is ultimately worth it. “Prosecuting and incarcerating the same individuals over and over again without addressing the root causes of their conduct is not a wise use of limited criminal justice resources,” Worthy said. “We're very happy with the early returns from the mental health court; it represents an important innovation in the effort to change the culture of criminal behavior.”<sup>3</sup> ■



*William J. Heaphy Jr. has been the Wayne County Prosecutor's Office deputy chief of diversion since 2004. He oversees several different programs offering alternatives to incarceration. He is a 1992 graduate of the University of Michigan Law School.*

### FOOTNOTES

1. MCL 762.11 *et seq.*
2. Personal interview with Wayne County Circuit Judge Timothy M. Kenny, April 27, 2010.
3. Personal interview with Wayne County Prosecutor Kym Worthy, April 27, 2010.