

Summary of the Convenings of National Organizations and Foundations for the National Judicial Task Force to Examine State Courts' Response to Mental Illness

March 16, 2021

MEADOWS
MENTAL HEALTH
POLICY INSTITUTE

Introduction

The National Judicial Task Force to Examine State Courts' Response to Mental Illness (Task Force) convened three meetings in October 2020 to share the work of the Task Force, learn about areas of focus and current initiatives from national organizations and foundations, and identify potential opportunities for collaboration and partnerships to reduce the overrepresentation of people with mental illnesses in the justice system. These convenings were also intended to allow the Task Force and others to avoid duplication of efforts and to leverage limited resources.

Each participating organization was asked to

- Briefly describe up to three major initiatives and
- List up to five reports or studies of interest and/or websites.

The participating organizations and links to their responses as provided are in Appendix A.

Key Themes from the Convenings

Several themes emerged from the discussions. These included:

- The continuing and critical commitment of the state courts to addressing the needs of justice-involved people with mental illness while reducing reliance on the judicial system as the first response to a mental health crisis;
- A continued reliance on strategies (such as specialty courts) that have given the courts adjudicative mechanisms for addressing the needs of people with mental illnesses;
- A shift to a broader, systemic framework that emphasizes diverting people entirely from the justice system rather than relying principally on innovations within the justice system, and also emphasizes the role of crisis care and health care systems; and
- The emergence of philanthropic interest in funding scalable innovations.

Two additional themes (the strengthening of collaboration with non-traditional stakeholders, and the promotion of greater access to evidence-based treatment) highlighted important future areas of focus and are discussed in the concluding section on opportunities.

The Critical Role of the Judiciary

State chief justices' leadership on issues involving people with mental illnesses has been a constant at least since the adoption in 2006 of Resolution 11 in support of the Judicial Criminal Justice/Mental Health Leadership Initiative. In that resolution, the Conference of Chief Justices encouraged each state chief justice to address the impact of mental illness on the court system through a collaborative effort involving stakeholders from all three branches of government. The resolution emphasized the convening role of the courts, and it is that role as convenor that has had a continuing impact on the policy framework. These efforts have continued through the establishment of the current Task Force in March 2020. All presenters at the October meeting

emphasized the ongoing importance of the role of the judiciary, including at the trial and appellate level, as convenors.

The Development and Continued Reliance on Strategies Within the Justice System

Several presenters commented on and/or have worked with specialty courts, the development of Crisis Intervention Team training for officers and first responders, and the development of bench books and related materials for courts to address the needs of people with mental illnesses and behavioral health disorders. Since the adoption of Resolution 11, certain practices within the justice system such as therapeutic courts have evolved from innovation to standard practice. These tools continue to have practical value, both operationally and because they change conversations about mental illness and the justice system within individual communities. The development of specialty courts, in particular, has given judges the opportunity to establish a convening role across various systems in order to make such courts work.

In addition, traditional issues, particularly competency to stand trial, have assumed greater importance for two reasons. First, use of competency assessments and adjudications occurs not only in felony cases (which historically was the practice until the 1990s), but also in cases with less serious charges. This has resulted in many states having long lists of people waiting in jails to be admitted to a state hospital for competency restoration. This practice burdens both the individual (because jail is not therapeutic) and jail staff, while making the scarce resource of a state psychiatric bed even more difficult to access. Second, many jurisdictions have responded to this issue by implementing competency restoration in non-hospital settings such as jails and outpatient clinics. Restoration of competency outside of hospital settings has begun to gain traction, though issues with waitlists persist in many states, according to those presenting to the Task Force. Finally, as noted in the discussion of opportunities, discussions have begun in some jurisdictions about using alternatives to the competency process itself, to provide quicker access to necessary treatment and reduce the reliance on competency restoration.

The Emergence of a Broader Systemic Framework to Prevent Entry to the Justice System

One of the most striking parts of the Task Force's discussions was that several participants had shifted their thinking from considering specific innovations (such as specialty courts) to thinking more broadly about how to organize community responses to keep people out of the justice system entirely. For example, some participants described advances in crisis services to ensure that the response to mental illness more closely resembled the response to medical crises, a task given more urgency because of the COVID-19 pandemic and calls for police reform. This has resulted in an emphasis on Intercept 0 in the sequential intercept map; the development in some places of crisis response that uses a multi-disciplinary response team that combines a paramedic with a licensed mental health professional and a law enforcement officer; or, in

other jurisdictions, attempts to eliminate law enforcement response to some types of crisis calls. In addition, communities such as Miami are taking steps to assure that identification and assessment of people who otherwise would have been booked to jail occurs in an assessment center located outside of the jail. In the aggregate, these responses create innovation that includes but does not solely rely on the justice system.

The Emergence of Philanthropic Interest in Creating Solutions that Can Be Brought to Scale

The last theme that clearly emerged from the Task Force's discussions is the interest of national philanthropic organizations in funding solutions that can be scaled beyond pilot projects. At least some of those efforts focus explicitly on strategies at Intercept 0 of the sequential intercept map and seek collaboration between health systems and the justice system to provide appropriate identification and treatment of people with mental illnesses to divert them entirely from the justice system. Some philanthropic organizations have had a long history of funding innovations in diversion efforts; what appears from the discussions to be different is the number of philanthropic organizations that are examining strategies that go beyond innovation in one area to bring new practices from initial project to scale.

Opportunities

Although there was less discussion during the October meetings of future opportunities than of current work, the themes that emerged suggest several opportunities going forward.

First, it is now commonly accepted in communities and state capitals across the United States that judges will play a role in convening discussions that involve multiple stakeholders and focus on changing the policy and practice framework. Although judges have always engaged with stakeholders in the justice system, it was clear from Task Force participants that other stakeholders (e.g., hospital administrators, local foundations, housing providers) are increasingly part of that engagement and that these parties are essential to broader systemic transformation. As judges continue to engage in convening stakeholders, the Task Force and its partners will continue to have opportunities to effect change on an issue which has largely retained its bipartisan status.

Second, innovations such as specialty courts have had a tremendous impact, but only on a small number of cases. As a broader systemic framework emerges, and as judges identify new partners to find ways to keep people away from the justice system entirely when public safety is not at risk, greater access to evidence-based treatments will be a core issue. Many people with mental illnesses come from disadvantaged communities where access to care of any type can be difficult. There are evidence-based treatments that can reduce reliance on hospitals, emergency rooms, and jails as the mental health care provider of first resort but expanding access to such care will become a key part of local efforts.

Third, there is an opportunity to rethink how competency to stand trial is applied in select cases in which the person has a demonstrable mental illness but is not a risk to public safety. Some jurisdictions have a legal framework that would permit the court to divert people into treatment through civil processes without invoking criminal competency as an issue. Innovation in this area is likely to occur over the next few years.

Finally, philanthropic interest in finding scalable solutions can help energize those in governmental, professional association, and advocacy roles. That interest can be capitalized on by the judiciary as it continues to play the role assumed by the Task Force.

Summary

The October convenings presented in succinct form the “state of the field” in creating judicial responses to mental illnesses at the individual and systemic level. The meetings made clear that judicial leadership on these issues continues to be essential, and that leadership can have an increasingly greater impact given the participation of stakeholders and funders for whom this has become a major priority.

Appendix A: Participant List
Convenings of National Organizations and Foundations
October 22, 26, and 29, 2020

[American Bar Association’s Criminal Justice and Mental Health Committee](#) — Co-Chairs Virginia Murphrey and Guy Arcidiacono

[Center for Court Innovation](#) (CCI) — Executive Director Courtney Bryan

[Corporation for Supportive Housing](#) (CSH) — President and CEO Deborah De Santis

[Council of State Governments Justice Center](#) (CSG-JC) — Director Megan Quattlebaum

[Council on Criminal Justice](#) (CCJ) — President and CEO Adam Gelb

[Group for the Advancement of Psychiatry](#) (GAP) — Co-Chairs Dr. Jacqueline Feldman and Dr. Ken Minkoff

[Judges and Psychiatrists Leadership Initiative](#) (JPLI) — Justice Kathryn Zenoff, Dr. Michael Champion, Dr. Sarah Vinson

[Matthew Ornstein Memorial Foundation](#) — President Judith Harris Ornstein

[Meadows Mental Health Policy Institute](#) — President and CEO Andy Keller, Senior Executive VP of Policy John Petrila

Mental Health Colorado/Equitas Foundation — President and CEO Vincent Atchity

[Mental Health Strategic Impact Initiative](#) (S2i)— New York University Furman Center Professor Ken Zimmerman

[National Association of Counties](#) (NACo — Stepping Up Initiative) — Executive Director Matthew Chase

[National Association of Drug Court Professionals](#) (NADCP) — Chief Operating Officer Terrance Walton

[National Association of State Mental Health Program Directors](#) (NASMHPD) — Executive Director Dr. Brian Hepburn

[National Conference of State Legislatures](#) (NCSL) — Criminal Justice Program Principal Ms. Amber Widgery, Civil and Criminal Justice Research Analyst Michael Hartman

[National Governor’s Association](#) (NGA) — Policy Analyst, Public Safety and Legal Counsel Program David Engleman

[Pew Foundation](#) — Government Performance Senior Director Yolanda Lewis, Mental Health and Justice Project Director Tiffany Russell

Philanthropy Roundtable — Director of Health Programs Anna Bobb

[Policy Research Associates](#) (PRA) — Program Area Director Travis Parker

[Sozosei Foundation](#) — CEO Dr. William Carson, Executive Director Melissa Beck

[State Justice Institute](#) (SJI) — Executive Director Jonathan Mattiello, Senior Program Advisor Michelle White