



# Mental Health Association of San Francisco

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## **Behavioral Health Courts Policy Statement**

The Mental Health Association of San Francisco (MHA-SF) is a non-profit citizens' organization founded in 1947 to advocate for the rights of people with mental disabilities and to educate the community about mental health. Central to MHA-SF's mission and throughout its history, is the belief that meaningful change can only be achieved with active participation by consumers and that mental health consumers must be empowered to pursue their own goals.

As an organization dedicated to improving the mental health of residents in the diverse communities of San Francisco through advocacy, education, research and service, MHA-SF has a particular interest in how individuals with mental illness are treated in the criminal justice system. Mental health courts, such as San Francisco's Behavioral Health Court (BHC), have been created in numerous jurisdictions across the United States, largely as a response to the increasing number of defendants with serious mental illnesses who are caught up in the criminal justice system. On a national and local level, the National Mental Health Association, the Mental Health Association of San Francisco and other mental health advocacy organizations are working to ensure that mental health courts do not lead to greater criminalization and stigma for persons living with mental illness and fragmentation of the mental health system.

### **DISCUSSION**

The presence of defendants with mental illnesses in the criminal justice system imposes substantial costs on that system and substantial harm on defendants. It is difficult, if not impossible, to provide humane and just treatment to persons with mental illnesses in prisons and jails. Thus, MHA-SF strongly supports thoughtful efforts to reduce the number of defendants with mental illnesses in the criminal justice system and in prisons and jails.

To the extent that mental health courts are an effective mechanism for reducing the number of persons with mental illnesses in prisons and jails and subject to the concerns expressed in this position paper, MHA-SF supports the creation of mental health courts. We also enthusiastically support efforts to use new or existing criminal justice funding – federal, state or local--to provide community mental health services to persons with mental illnesses being diverted from prisons and jails through well-designed mental health court programs.

However, mental health courts can also be used to criminalize persons with mental illness, for “lifestyle” offenses. Mental health courts are a highly inappropriate way to treat homeless people and people with mental illness whose offenses flow from their troubled life on the street, and MHA-SF strongly opposes the use of mental health courts for this purpose or with this effect.

There are many other successful and innovative ways to divert persons with mental illnesses from the criminal justice system, including the creation of law enforcement-mental health liaison programs, increased training of law enforcement personnel and a general improvement in the funding and effectiveness of community mental health services. In order to prevent the misuse of mental health courts, such courts should be but one part of a coordinated community effort to reduce the number of persons with mental illnesses in the criminal justice system. The filing of actual criminal charges against persons with mental illnesses which would result in their assignment to a mental health court should be the last resort after all reasonable efforts at diversion have been exhausted.

## **CONCERNS**

The following concerns are important to consider in the delivery of any behavioral health court service.

The greatest danger is that mental health courts will assume a coercive role, both in allocating scarce treatment resources and in further criminalizing and stigmatizing persons with mental illness who get caught up in the criminal justice system. Secondly, there is a risk of fragmentation, both of the struggling community-based mental health treatment system, and of the already-fragmented criminal justice system.

At the extreme, mental health courts may become a preferred means of access, with mental health judges granting treatment preference to persons accused of crimes over others. In addition, unless citizens are vigilant in monitoring the development and implementation of mental health courts, court processes may lead to even greater criminalization, stigma and fragmentation.

## **TRANSFORMATION OF THE MENTAL HEALTH SYSTEM**

In terms of planning and transforming San Francisco’s mental health system, MHA-SF would like the following guidelines to be taken into consideration when determining the needs of our community and the behavioral health court.

1. **Comprehensive mental health outreach** – Access to community-based mental health treatment services for all people needs to be improved, and should not depend on the existence of mental health courts. Equally

- effective services should be assured for the treatment needs of persons not accused of crimes. This requires an investment in outreach services to promote voluntary treatment as an essential complement to any mental health court program.
2. **Maximum diversion** – Pre-booking diversion should be assured for all persons accused of crimes for whom a voluntary mental health treatment plan is a reasonable alternative to the use of criminal sanctions. Pre-booking diversion occurs at the point of contact with law enforcement officers and relies heavily on effective interactions between police and community mental health and substance abuse services. Most pre-booking programs are characterized by specialized training for police officers and a 24-hour crisis drop-off center with a no-refusal policy for that is available to receive persons brought in by the police. Timely and accurate mental health screening and evaluation is the single most critical element in a successful diversion program. Mental health courts may be helpful in assuring such diversion, but should never be the only way, or even the primary way, that it can occur.
  3. **Meaningful diversion** – Meaningful diversion would require that when appropriate, no charges would be filed, and the individual is sent directly to treatment without entering the criminal justice system using a pre-booking program. In the alternative, when charges must be filed and the client enters into a post-booking program such as a behavioral health court criminal proceedings should be deferred for a set period, usually not exceeding a year. Dismissal of criminal charges would then be resolved in a way that takes the seriousness of the offense and the seriousness of the mental illness into account after a set period of successful treatment participation.
  4. **No requirement for a guilty plea** – A guilty plea should not be required to enter a mental health court program. This requirement precludes diversion from the criminal justice system at the earliest possible point in time and further criminalizes a person because of his or her mental illness. As indicated above, the preferred method is to hold charges in abeyance until the successful completion of the treatment program.
  5. **Voluntary/Non-coercive** – While the threat of criminal charges influences any decision, participation in any mental health diversion program should involve the same level of voluntary choice required of a criminal plea. No one should have to decide whether or not to accept diversion until the description of the program has been fully explained and discussed and the nature of the proposed treatment plan have been fully discussed and documented.
  6. **Least restrictive alternative.** – All persons participating in diversion programs should be treated in the least restrictive alternative manner available, and all unnecessary institutionalization should be avoided. Jails

are generally an inappropriate place for persons waiting for diversion as jail experiences tend to exacerbate underlying symptoms of mental illness. Long jail stays should be avoided in all diversion cases.

7. **Right to refuse treatment** – The qualified right of a person with mental illness accused of a crime to refuse a particular treatment, including a particular medication, should be protected in a manner at least as protective of the consumer as the civil commitment process. A process should be established to review treatment refusals of persons diverted from the criminal justice system so that any decision to terminate the clients from the court or reinstate charges is made in an informed manner after all reasonable alternatives have been exhausted.
8. **Advocate/Counselor** – In addition to competent legal counsel in any criminal case, an experienced counselor, who may be a peer or other non-lawyer counselor, independent of any treatment facility, should be available to help the accused person to reach an informed decision. This person should also serve as an advocate to ensure that necessary services that have been mandated as part of a treatment plan are provided in a timely and appropriate manner. Mental Health Associations and other consumer advocacy groups may take on this important role.
9. **Confidentiality** – Networking to find an appropriate treatment setting, without safeguards, could compromise client confidentiality. Systems must be put in place to ensure confidentiality from the time that a person enters a mental health program.
10. **Cultural competence** – Cultural competence is essential to treatment success. MHA-SF believes that services must be tailored to the specific needs of communities and individuals in order to effectively address public health problems.
11. **Community coalitions** – The development of community coalitions, including partnerships between criminal justice, mental health and substance abuse treatment agencies, is essential to successful diversion programs. Such coalitions also should be involved in the creation and oversight of mental health courts. Consumers of mental health services and family members affected by mental illness need to be included in all such coalitions to assure that they address the real barriers to effective mental health treatment in that community.
12. **Comprehensive outreach and training** – Community coalitions need to reach out to all criminal justice system personnel and ensure that training is provided at all levels to deal with issues of mental illness, wherever and whenever they occur.
13. **Co-occurring disorders** – In addition, persons with co-occurring disorders, and especially substance abuse, must be treated in an integrated way using a harm reduction model, so that substance abuse is not an impediment to diversion.

14. **Convening role** – The focus of mental health courts should be on convening prosecution, probation, treatment and social services agencies to promote interagency collaboration in the interest of the individual. The focus should not be on the use of criminal sanctions to compel treatment.
15. **Consolidation and coordination of cases** – Cases should be consolidated to assure that the individual is the focus rather than the case. Centralized, coordinated case management and a single treatment plan are needed to avoid fragmentation, with or without a mental health court.
16. **Evaluation** – Timely monitoring of court processes, waiting lists, and consumer outcomes are essential to ensure that mental health courts are responding appropriately to persons with mental illness, that waiting lists are kept to a minimum, and that treatment providers are held accountable for consumer outcomes.

## CONCLUSION

We insist on mental health court standards that assure a non-coercive and de-stigmatizing approach and leave civil commitment as the central standard for the authorization of coercion, when it is needed and justified, not the criminal courts. A criminal record should not be a cost of getting mental health treatment.

Adopted by the Mental Health Association of San Francisco Board of Directors  
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