

**Improving Compliance and  
Producing Positive Outcomes in  
the Mental Health Court Setting,  
with a Brief Look at Dynamic  
Risk Management**

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## **Abstract**

*Criminal behavior and the resultant large scale incarceration of persons with mental illness causes public concern and are associated with illness relapse, hospital recidivism and poor outcomes in treatment. The present approach produces poor outcomes but there is an alternative, therapeutic mental health courts can divert people out of the criminal justice system and engage in effective dynamic risk management. The court can make more efficient use of existing resources and mandate for the community mental health system to provide adequate services for people who need them, such as medication management, psychotherapy, rehabilitation and case management -- services which the patient might not otherwise receive. Court clients can be motivated to engage in positive behavior. All this can be accomplished while protecting the rights of mentally ill individuals and victims.*

## **About the Author**

Randal B. Fritzler is a senior researcher and principal with Pacific Policy and Research Institute, Inc. and teaches at Western Oregon University. His professional experience includes fifteen years experience as an attorney in private practice and seventeen years as a state trial court judge. As a judicial officer, he served several terms as the American Judge's Association representative to the Conference of Chief Justices and advocated for court reform. He has written and published extensively on the subject of specialty courts, court innovation and therapeutic jurisprudence. He has also served on many state and national boards and committees and received state and national recognition for his public service.

## **Improving Compliance and Producing Positive Outcomes in the Mental Health Court Setting, with a Brief Look at Dynamic Risk Management**

### **The present criminal justice system fails to protect the public**

The traditional values of the justice system including punishment and retribution come into play whenever a court processes cases but in criminal matters, the safety of the public is always of paramount concern. Often, we assume that deterrence and incapacitation are the only tools our justice system has to protect the public. Today we know this is not the case.<sup>1</sup> Dr. Bernadette Olson (in her contemporaneous paper for this publication) points out that crime rates have not declined with increased incarceration and there may be unwarranted faith in the power of deterrence. New research and the experience of problem solving courts using principles of therapeutic jurisprudence demonstrate that this assumption based on belief in the efficacy of deterrence theory is wrong (Wexler and Winick, 1996; Stolle, Wexler and Winick, 2000; Casey and Rottman, 1998).<sup>2</sup> There are numerous references in the general literature to support this statement. (Mental Health Consensus Project, June 2002). Several studies of Mental Health Courts applying principles of Therapeutic Jurisprudence document their efficacy when compared to traditional deterrence and incapacitation approaches. Among those, are studies of the Broward County, Florida court, Seattle Municipal court and perhaps most notably the Clark County, Washington Mental Health Court (Herinckx, 2003).

In serving seventeen years as a trial court judge the author of this article concludes that the public has developed new expectations of our criminal justice system. Today the public expects that the judicial branch of government will produce positive outcomes for society and manage risk to reduce public exposure to criminal acts.

Unfortunately, these concurrent expectations can not and will not be fulfilled unless court reform and major changes to our system are supported. Many people feel our system is constrained by traditional adversarial constructs. Historically legal education has reinforced this limited view, which is often supported by unimaginative but appealing sports analogies. Our new United States Chief Justice, John Roberts views judges as impartial umpires simply “calling balls and strikes.” Under this very traditional view the court merely impartially processes the case, imposes the sentence abstractly set by the legislature and then washes its hands of the matter. This may create an illusion that society is receiving some tangible benefit but we know this does not work.<sup>3</sup> The process is complex, slow, and expensive. It is very poor risk management. Presently our justice system simply fuels its own caseload while incarcerating millions of our citizens at a very high cost. Neither the public at large nor the criminal defendant is being well served. Our system is touted as one that protects the rights of the individual and gives the defendant the benefit of the doubt but in actual practice the vast majority of individuals caught in the criminal justice system does not experience this.

### **Reforms are needed to manage the problem of the mentally ill offender**

The trial record of defense counsel representing criminal defendants with mental disabilities is abysmal. Attorneys generally do not have the training, experience, or practical skills to represent the mentally ill effectively.<sup>4</sup> There is an alternative to our costly, abusive and ineffective process. Research conducted by social scientists in the United States and other countries tell us what works but there are not many listening.<sup>5</sup> (NCSC) While reform is difficult, the situation is not all bleak - there are some encouraging signs. Notably there is leadership advocating innovation at the highest

levels of the state court systems and a grass roots movement at the lowest. Solid leadership has come from such individuals as the Honorable, Judith Kaye, Chief Judge of the State of New York and a Maura Corrigan, Chief Justice of the Michigan Supreme Court. These visionaries and others, have encouraged the implementation of evidence based practices, adopted features of therapeutic jurisprudence and created problem solving courts. Change can come from either the top or the bottom and the legal culture in some communities seems much more receptive to change than in others. Anecdotally, the grassroots movement has shown that needed reforms may occur and individual rights can still be valued and protected. The proof is in mental health courts and other therapeutic specialized courts which have been developed at the trial court level in many communities. Where established upon sound principles and good organizational models, these courts manage risk and salvage lives. As good as they are, these courts often are not given due respect and are not treated well by the rest of the judiciary and court administration. In spite of the fact that they produce results and demonstrably save the system money, in this hostile environment, they lack resources and are limited in their scope and application. Given equal opportunity, they can do much more to produce good results for society. Simply put, we can both reallocate resources and make the necessary changes to our judicial system and its methods of case processing, or we can just keep doing the same old thing repeatedly with the same ineffective and costly results.

The court reforms I am suggesting do not have to be expensive or overly complex. They do require a change in Judicial thinking however and ultimately the most effective approaches will need assimilation into the entire system. Academicians have pointed out that the court system is in the perfect position to be an effective risk

management tool.<sup>6</sup> In contrast to focusing exclusively on risk prediction, academic models and private industry developed and tested the principles of effective risk management. This dynamic risk management model is easily adapted to the legal process where it has several distinct advantages. It can be more useful to legal decision makers. It is likely to produce better outcomes furthermore; it involves an interactive component that is calculated to reduce the extent of risk.<sup>7</sup> To protect the public without massive incarceration and incapacitation programs all we need to do is empower the courts to take a different role and use appropriate tools effectively. Effective risk management processes are, simpler and more effective than people commonly believe and the approach is also very cost effective when applied to the court caseload.

Recent research demonstrates that most individuals with mental illness are slightly less dangerous than the general public (Swanson, 1999).<sup>8</sup> However, a person with mental illness who abuses drugs or alcohol is substantially more dangerous. (Monahan, 1997) Effective risk management may therefore, involve proactively scheduled review hearings, good case management, and effective monitoring of alcohol and illegal drug use. Numerous studies conclude that persons suffering from mental illness who follow prescribed medication regimens are significantly less dangerous than those who are not treated or who are noncompliant with prescribed medication regimens. (Bartels, 1991).<sup>9</sup> It follows, then, that providing quality treatment and medical care will reduce violence by persons who suffer from serious mental illness.

### **An example of effective risk management in the judicial process**

Effective low cost risk management may involve mentoring programs, education, restorative justice programs, motivational interviewing, proactive scheduling of court

reviews and efficient, coordinated application of local resources. Re-arrest prevention is important and compatible with diversion programs and the principles of therapeutic jurisprudence. A good example of how this can work is the mental health court that began operation in Vancouver, Washington in the year 2000.<sup>10</sup>

Reduction in the number of mentally ill people arrested and the extrication of mentally ill individuals already in the criminal justice system through diversionary programs were goals of the Vancouver Mental Health Court. In addition, the court worked to improve the quality of life for mentally ill offenders by addressing their basic needs and providing the support and supervision they need to stabilize their lives, and to reduce service barriers between mental health, community-based agencies, the courts, law enforcement, and corrections. The court was extremely effective in accomplishing its goals in the first several years of operation (Herinckx, 2003 ).

The accomplishments of this court contain lessons for the entire criminal justice system. It should be noted that if favorable outcomes can be accomplished working with severely mentally ill individuals who are unfortunate enough to become enmeshed in the criminal justice system it should be much easier to accomplish these goals with individuals who are not so severely disabled. Mentally ill individuals have been historically extremely resistant to traditional criminal justice “rehabilitation.” (Swanson et al., 2000). Additionally, any court or agency working with the mentally ill must also comply with the Americans with disabilities act (ADA). This can be a daunting task. The new mechanisms that must be developed to safeguard rights and participation in mental health court programs may have to be voluntary. Some mentally ill individuals have had a very bad experience with police and the courts and therefore do not respond well to the



system's conventional methods. There is a special challenge in protecting the rights of disabled persons in the criminal justice system. It is necessary to recognize and address the mental illness barrier to behavior modification. Trained mental health courts teams can overcome these obstacles.

### **The Vancouver Mental Health Court Model**

Recognizing these challenges, the original Vancouver mental health court avoided the drug court model, regarded as too punitive. An effort was made to play to the strengths of the mentally ill and provide positive reinforcement and motivation based upon economic analysis and incentives, something the Japanese have done in their programs for the mentally ill. Avoiding the police and probation officer trap by providing support through skilled caseworkers rather than law enforcement monitors was a strategic maneuver. A program that address stigma was another crucial component. This is important because there is a particularly diabolical effect that occurs when the judgmental blame machine of the traditional court system intersects with public attitudes concerning the mentally ill. A system more concerned with perceptions of effectiveness and efficiency than with human life often reinforces feelings of worthlessness and self-loathing that develops among criminal defendants. The success of any risk management program is contingent upon individual client perceptions of how the system views and treats those clients. It seems clear, at this stage of development of mental health court programs, that effective risk management involves a comprehensive coordinated community response to help mentally ill individuals responsibly address life's challenges.

Essential mental health court tactics include using the convening power of the court to bring together stakeholders and insist upon cooperation and effective

communication. The court then can create an atmosphere that focuses on acceptance of responsibility without being excessively punitive. At the heart of any risk management program is proactive scheduling of court reviews to constantly monitor the defendant/client progress. A reward and positive reinforcement program should be an important part of this review and monitoring process. The court together with service providers and representatives from the community may construct creative proposals for importing promising evidence based behavioral science developments—such as important research on rehabilitation—into the risk management program. The court may encourage defendants to engage in relapse prevention planning, and involve healthcare professionals in improving patient adherence to and compliance with medical advice. Some of the principles of risk management necessary to secure compliance are commonsensical, such as speaking in simple terms. Patients sometimes may not comply with medical advice because they never really quite get the message. Principles of adult education are also important. There are different individualized learning styles. Some people learn better and respond to written direction. Some need simple direct verbal communication and yet others learn better with visual, pictorial presentations. An effective mental health court, and risk management program, will use all of these techniques to enhance communication with its clients. Other principles involved in securing compliance are somewhat less obvious. For instance, when patients sign “behavioral contracts”—agreeing to follow certain medical protocols, for example—they are more likely to comply with medical advice than if such a contract is not present. (Wexler, 2001). The court should set up a process to encourage and enable supportive family members, friends and community representatives to be present at critical court

hearings. If medical patients make a public commitment to comply with persons beyond the health care provider, their compliance is likely to increase. Similar achievements occur with the mentally ill. Courts are in the perfect position to obtain public commitment to comply and involve the mentally ill person (and sometimes their family or friends) in a real meaningful bargaining process to develop the compliance contract. The compliance contract is essential and the person's "buy in" in the bargaining process is what makes it effective. Experience in mental health courts support the idea that if family members are aware of a defendant/mental health patient's promise, and if they also agree with the terms of the compliance contract confirmed by the court the defendant is more likely to live up to the agreement. Under this scenario, a case disposition or sentencing hearing becomes a process for establishing an effective compliance contract. Effective risk management in the mental health court setting requires a dynamic process. There must be constant review and frequent adjustments made as conditions dictate. The assumption is that this process is extremely burdensome for the court. That is not the case. Review dockets may handle clients in a streamlined manner if the mental health court team is organized and properly prepared.

Just as mentally ill criminal defendants need to be monitored and reviewed so do mental health courts. An evaluation and feedback program is an essential part of any effect of mental health court program involving risk management. If the practices of these courts are to be "evidence based" Innovative evaluation, monitoring and reporting systems need to be part of the overall process.

The court should be monitored not only as to the outcomes it is producing but as to the consistency and fairness of the evidence based practices it is using. There should be

monitoring of compliance with an accepted mental health court model and the ten principles or “features” set forth below.

### **Addressing the problem of “Abuse of Discretion”**

One of the criticisms of mental health court is that it provides the judge an opportunity to use unfettered discretion in dealing with mentally ill defendants. There is potential for abuse of judicial power. There are a number of ways of addressing these concerns. The approaches I suggest do not rely entirely upon defense attorneys. First of all, there should be a mental health court oversight committee (which should not be dominated by representatives of the state). An effective mental health oversight committee could include a representative of NAMI, a representative of the local medical/mental health providers and a mental health ombudsman, whose role is to represent mentally disabled individuals. It would also be good to include graduates of the mental health court program who could share their perspective. Open monitoring by an interdisciplinary panel would tend to shine a spotlight on bad, abusive practices. Another way of protecting the rights of disabled court participants is by amending the local court rules to provide for effective “abuse of discretion” or “rights” hearings. I suggest conducting these hearings at the request of any mental health court participant, without any threshold showing of “probable cause.” The hearing should be before a judicial officer who is not the “mental health court judge” and should be either open to the public and press or a closed hearing at the moving party’s discretion. The reason I suggest the option of a closed hearing is due to medical privacy issues, stigma related to mental illness and the possible adverse consequences of publicity over the hearing. There may be times however, where the moving party wants the mental health court judge’s actions

exposed to public scrutiny. The authors' experience in seventeen years on the trial court bench would indicate that these processes are not burdensome on the court system. Court effectiveness is enhanced when the process is open and transparent. Court effectiveness is also enhanced when there is an atmosphere of trust established. Public safety is enhanced and not endangered when the judge's sentencing process involves a behavioral contract. It is important to understand that when using behavioral contracts the judge is not restricted from taking action to incarcerate or otherwise incapacitate individuals who are not complying with their contract and/or other reasonable risk management procedures. Abuse of discretion hearings have not been used to hinder the judge in taking action to restrain dangerous individuals and Appellate courts support judges who sentence individuals to incarceration within the range permitted by law. Neither the public nor judges have anything to fear from the proposed review process. These specific safeguards should be combined with the following features to create an effective mental health court:

**Ten features of an effective Mental Health Court**

1. *Establishment of a Therapeutic environment*, the court should create a therapeutic environment suitable for court customers who may have a wide variety of disabilities. Appearance in court is traumatic for many people. The event may be confusing and even cause short-term memory loss in individuals. The court should take this into account and provide information to litigants in writing, as well as orally. To assist participants the Court should provide organizational tools and life skills support so participants may more easily comply with the court's directions. The "helping" environment established by the court may be enhanced by assigning defendants "caseworkers" or "mentors" rather than traditional "probation officers."

2. *No Stigmatizing Labels*, the court should take steps to make sure that persons passing through the court shall not be branded or stigmatized. It is probably better practice not to label people by their medical diagnoses. The medical labels may reinforce stereotypes of people with disabilities and portray them as being powerless and dependent. Court records should not carry any unique designation or identification for those participating in the specialized court.

3. *Diversion, stays and other deferred sentencing processes*, A mental health court may utilize a pre-plea diversion process, stays of prosecution or a post-plea deferred sentence process. Each of these approaches has its own technical procedure and advocates. The process adopted by any mental health court may be dependent upon the local legal culture and the biases of local prosecution teams. It appears to be beneficial, however, to have a built-in incentive such as avoiding conviction for criminal charges, to encourage clients to enter a specialized mental health court program. As more data accumulates it is becoming more evident based upon our current experience and limited evaluations that a pre-plea process is superior. However, additional comments on the criminal process pre-plea vs. post-plea are in order. It is noted that the effect of avoiding conviction as an incentive to participate in the mental health court varies widely according to the individual and their circumstances. A few who are newcomers to the criminal justice system may have a high incentive to avoid having conviction on their record. Others, however, that have many convictions and a long criminal history may not see a big advantage in avoiding one more misdemeanor conviction.

4. *Least restrictive alternatives*, in fashioning remedies and imposing sentences the court should use the least restrictive means consistent with public safety, sound treatment

considerations and the general welfare of the client. One of the purposes of the court is to get clients out of custody and into supportive programs that maximize therapeutic results.

5. *Enhancement of basic treatment*, the court should not promote any specific mode of treatment for mental illness but should act to promote, wherever possible, the welfare of the individuals who come before it. This involves the court being a neutral clearinghouse for local treatment options. Evidence exists that recidivist offenders often exhibit skills deficits in the areas of interpersonal problem solving, self-management and social interaction.<sup>1</sup> Basic mental health treatment should be enhanced, where appropriate with programs designed to teach interpersonal problem-solving skills and other cognitive behavioral approaches. The court must also consider the availability of funding for any alternative sentences imposed. Since resources are always scarce the court should serve as an advocate for increasing resources for treatment and client support. If used properly treatment may be an important part of the risk management process.

6. *Motivational interviewing and Interdependent decision making*, the court should support clients accepting responsibility for and affirmatively addressing their own mental health issues. A mental health court team should consider utilizing several models of supported decision-making for the clients of the court. This support may be in the form of assisted decision-making or some other interdependent decision-making process. The court process should allow clients to have reasonable participation and an opportunity to help determine the structure of their future. Involving the clients of the court in this way may improve compliance and help to address any issues of inferiority and powerlessness often faced by individuals appearing in court. Motivational interviewing techniques may be an important part of this process.

7. *Technical legal rules do not apply*, Hearings involving pro-se litigants or any hearings involving direct participation by court clients should have technical rules suspended, including the rules of evidence, so that direct participation by those who are not attorneys is more viable and meaningful. The court should create an environment where attorneys may collaborate to create favorable outcomes. The court should also reduce combative approaches wherever consistent with the protection of individual rights. Client initiated court reviews of procedures, established by local court rules, may assist in honoring due process and other Constitutional principles.

8. *Court Manual*, Each court will need to create a manual. Consistency is important in a manual is necessary to achieve consistency and a framework for an ongoing court improvement process. The manual should include additional specific procedures to be adopted by local court rule and new forms or documents specifically for the mental health court operations. The court should also create a comprehensive statement of principles and a statement of rights for the clients of the court and make them available to all. User-friendly explanatory material should be created and distributed to clients, providers and the general public.

9. *Coordination of treatment and efficient utilization of resources*, As in the case of other courts utilizing therapeutic techniques; the court must seize the opportunity provided by the trauma of the arrest to intervene in the perpetrator's life while he or she is still receptive. Voluntary mental health activities as well as substance abuse evaluation and treatment should be encouraged at the earliest opportunity. It should be noted that most of the criminal defendants served by the Vancouver, Washington, Mental Health Court, referenced above, were "dually diagnosed." The term "dual diagnosis" in this context,

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means that they have significant substance abuse issues as well as mental health issues. This fact makes coordination of multiple treatment providers a key court responsibility. Coordination should acknowledge the fact that substance abuse treatment providers may be much more comfortable with greater directness and varying degrees of coercion whereas other treatment modalities, by mental health providers, may not feel coercion is helpful. It is hoped, however, that the concept of mental health court clients taking responsibility for treatment decisions and taking responsibility for their own behavior will help to reverse a common stereotype of people with serious mental issues as persons who are “out of control.”

10. *A unified and pro-active court team*, the court review process is essential. A meaningful review process depends on continued involvement by the mental health court team. Building a dedicated court team with a unified perspective is an absolute necessity. Having prosecutors, defense counsel, probation officers and treatment providers with a specialized caseload enhances efficiency, performance and outcomes. This team must continually reassess the clients’ adjustment and response to changing conditions and life’s challenges. This process is referred to as “dynamic risk management.” The court rewards positive adjustment and sanctions willful non-compliance or behavior that endangers others. Judicial demeanor toward defendants and victims can also increase compliance with court orders as well as have additional therapeutic effects.

By adopting the approach set forth in the ten “features” of an effective mental health court set forth above, substance and outcomes will be given priority over procedure and form. The result will be that the public’s expectations for the justice system will finally begin to be met.

The record of the American legal system in responding to the needs of the mentally ill is far from admirable. Some say the judiciary should not take an active role in attempting to address the perceived injustices. Further, it is said that government cannot legislate morality or impose in other ways, attitudes on citizens. History, however, provides us with many examples of the way in which people's values and attitudes have been changed by consistent government action. It appears that fundamental change is more likely to occur where the programs are regarded as fair and compassionate. A good example of this was President Harry Truman's integration of the armed forces after World War II. Another is the civil rights legislation of the 1960s. Over relatively short period of time these government programs changed the attitudes of a tremendous number of American citizens. Mental health courts with criminal jurisdiction utilizing dynamic risk management techniques provide an opportunity for the criminal justice system to "take the high road" and make some positive changes in the way that we address the problems of people with serious mental illness. These courts can improve the quality of life of persons suffering from serious mental illness. They apply the latest findings of the social sciences. They can assist in more equitably distributing scarce mental health resources and deal with the issue of increasing mental health expenditures on individuals caught in the criminal justice system. In the process the courts can address traditional values of the justice system: accountability and recidivism and the reduction of violence, by responding to the problems of the revolving door consumer. The new style mental health court supplements the traditional legal response to mental illness with sound principles based on the academic framework of therapeutic jurisprudence. It does not "trump" or replace existing legal processes, involuntary commitment procedures or

mental health programs. Risk management is a key best practice in the specialized mental health court setting.

The specialized court adds to the effectiveness of the existing legal system by doing things that a conventional court docket cannot. The specialized court allows a more rapid response, focus on the causes of criminal activity by a specialized staff and improved application of resources. By building linkages to support structures and serving as a clearing house for community services the judicial system enhances the effectiveness of these institutions and allows them to reach individuals otherwise neglected. Major commitment of new funds to achieve the benefits of a therapeutic court is not a necessity. The new process may operate well within the existing local budget just by applying resources more efficiently. This is really a process of reorganizing the manner in which the courts do business. Courts are no longer just processing cases and then washing their hands of responsibility for what happens next. By utilizing simple proactive dynamic risk management techniques community safety is increased. By partnering with the community and allowing community involvement in the mental health court process a court responsive to community needs is ensured. This in turn will increase the effectiveness of the courts while increasing public trust and confidence in the legal system.

## References

- Bartels, S. J. (1991). "Characteristic Hostility in Schizophrenic Outpatients," *Schizophrenia Bulletin* 17:163-166.
- Goldkamp, J. S. and C. Irons-Guynn (2000). *Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload: Mental Health Courts*. Washington, DC: Bureau of Justice Assistance, U.S. Dept. of Justice, April.
- Herinckx, H. (2003). *The Clark County Mentally Ill Re-Arrest Prevention Program, Final Report*. Portland, OR. Regional Research Institute for Human Services.
- Link, B. G. (1992). "The Violent and Illegal Behavior of Mental Patients Reconsidered," *American Sociological Review* 57: 275-290.
- Stolle, D. P., D. B. Wexler and B. J. Winick (2000). *Practicing Therapeutic Jurisprudence: Law as a Helping Profession*. Durham, NC: Carolina Academic Press.
- Swanson, J. (1999). "Violent Behavior Preceding Hospitalization Among Persons With Severe Mental Illness," *Law & Human Behavior* 23:185-186.
- Perlin, M. L. (2003). "Life Is In Mirrors, Death Disappears: Giving Life to Atkins," *New Mexico Law Review* 33: 315-335.
- Swanson, J. W., M. S. Swartz, H. R. Wagner, B. J. Burns, R. Borum, and V. A. Hiday (2000). "Involuntary out-patient commitment and reduction of violent behavior in persons with severe mental illness," *British Journal of Psychiatry* 176: 324 - 331.
- Wexler, D. (2001). "Robes and Rehabilitation: How Judges Can Help Offenders 'Make Good'." *Court Review* (Spring): 2-6.
- Wexler, D. B. and B. J. Winick, eds. (1996). *Law in a Therapeutic Key*. Durham, NC: Carolina Academic Press.
- Winick, B. J. and D. B. Wexler, eds. (2003). *Judging In a Therapeutic Key, Therapeutic Jurisprudence and the Courts*. Durham, NC: Carolina Academic Press.

## Notes

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<sup>1</sup> There are numerous references in the general literature to support this statement. Specifically, with regard to traditional criminal approaches and the mentally ill, see; Council of State Governments, Criminal Justice/Mental Health Consensus Project xii (June 2002). The Bazelon Center for Mental Health Law, originally a Mental Health Court skeptic, has published a paper to be found at <http://www.bazelon.org/issues/criminalization/publications/mentalhealthcourts/> in which it is stated that "No rational purpose is served by the current system." The Bazelon study goes on to point out that public safety is not improved by traditional case processing and sentencing approaches. Several studies of Mental Health Courts applying principles of Therapeutic Jurisprudence document their efficacy when compared to traditional deterrence and incapacitation approaches. Among those, are studies of the Broward County, Florida court, Seattle Municipal court and perhaps most notably the Clark County, Washington Mental Health Court. See; *The Clark County Mentally Ill Re-Arrest Prevention Program, Final Report* available from the Heidi Herinckx, Senior Researcher

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at the Regional Research Institute for Human Services, Portland State University, P.O. Box 751,Portland, OR 97207.

<sup>2</sup> The basic tenants of therapeutic jurisprudence are best articulated by the movement's founders, David Wexler and Bruce Winick. Principal reference material on the subject includes: Wexler and Winick (1996); Stolle, D. P., D. B. Wexler and B. J. Winick (2000); Therapeutic jurisprudence investigates the law's impact on the emotional lives of participants in the legal system by encouraging sensitivity to therapeutic consequences that may result from the legal rules, procedures, and the roles of legal actors.

<sup>3</sup> From the perspective of mental health treatment potentially one of the worst experiences for a mentally ill person would be arrest, jail and formal proceedings in a criminal court. See Goldkamp and Irons-Guynn (2000).

<sup>4</sup> Perlin (2003: 315) notes that "The quality of counsel in providing legal representation to mentally disabled criminal defendants is a disgrace."

<sup>5</sup> The growth of alternative legal processes and notably Mental Health courts has been slow, expanding from the establishment of what was arguably the nation's first true therapeutic, diversionary Mental Health court in Broward County Florida in 1997 to approximately 140 today. See National Center for State Courts, Mental Health Court Resources available through <http://www.ncsconline.org>.

<sup>6</sup> See generally Professor Bruce Winick's writings, Bruce J. Winick, Professor of Law and Professor of Psychiatry and Behavioral Sciences at the University of Miami School of Law and School of Medicine in Coral Gables, FL.

<sup>7</sup> The foregoing assertions on risk management are supported and discussed considerably more detail in Winick and Wexler (2003), pp. 118,121-122,201-211,260,276 and 289.

<sup>8</sup> The author is far from an expert on violence and the mentally ill but it is known that prominent social scientists in the 1970's and 1980's argued that violence and psychiatric illness were not fundamentally related. Other data is conflicting. More recent research that supports the idea that outpatient treatment can be safe, save resources and reduce hospital recidivism. See Link (1992) who notes that "only patients with current psychotic symptoms have elevated rates of violent behavior."

<sup>9</sup> Bartels reported that 71% of the patients exhibiting violent behavior had medication compliance problems compared to only 17% of non-violent patients.

<sup>10</sup> The author founded and presided over a mental health court in Vancouver, Washington loosely based on the experiences of the Broward County, Florida mental health court and the theories of therapeutic jurisprudence. The court was the subject of two research and evaluation projects completed by Portland State University and Washington State University, Vancouver. Some features of this court are discussed below.