



**The Association of the Bar of the City of New York  
42 West 44 Street, New York, NY 10036**

**COMMITTEE ON MENTAL HEALTH LAW**

October 5, 2004

Honorable Charles Schumer  
United States Senate  
313 Hart Senate Building  
Washington, DC 20510

Honorable Hillary Rodham Clinton  
United States Senate  
476 Russell Senate Office Building  
Washington, DC 20510

Dear Senators Schumer and Clinton:

The Committee on Mental Health Law of the Association of the Bar of the City of New York (“our Committee”) urges you to ensure that this year Congress allocates \$10 million of funding pursuant to “America’s Law Enforcement and Mental Health Project” (PL 106-515, 42 U.S.C. §§ 3796ii et. seq.) (“the Project”).

In 2000, Congress enacted the Project, which authorizes \$10 million per year to fund court-based programs involving continuing judicial supervision for non-violent offenders with mental illness. The amount of money Congress has actually allotted over the years, however, has gradually decreased, so much so that in FY 2004, Congress appropriated no money whatsoever for the Project.

Congress’ failure to appropriate this money is counter to ensuring that mentally ill offenders effectively manage their illness. Approximately 283,000, or 16%, of the nation’s inmates have a mental illness.<sup>1</sup> The Los Angeles County Jail and New York City’s Riker’s Island are de facto the largest psychiatric inpatient facilities in the United States.<sup>2</sup> Yet, inmates often do not receive necessary medication, and surely are not in a rehabilitative environment.

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<sup>1</sup> Paula M. Ditton, “Mental Health Treatment of Inmates and Probationers,” Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1999.

<sup>2</sup> E. Fuller Torrey, *Reinventing Mental Health Care*, CITY JOURNAL, 9:4, Autumn 1999.

Further, criminalizing actions committed while experiencing mental illness has proven futile in terms of recidivism. When mental health courts are not available, within one year after mentally ill offenders go through the standard channels of the criminal justice system, 70 percent commit new crimes or supervision violations.<sup>3</sup>

In contrast, evidence demonstrates that jail diversion programs have reduced recidivism, while simultaneously ensuring that mentally ill defendants get the treatment they need. For instance, in Broward County, Florida, from October 2001 through September 2002, only 27 percent of mental health court participants had been rearrested, and 8 percent had returned to the mental health court.<sup>4</sup> Likewise, in the Seattle Municipal Court Mental Health Court (“MHC”), only 32 percent of the defendants were reincarcerated for charges filed after the MHC referral.<sup>5</sup>

It is also less costly to divert mentally ill defendants into the community mental health system. For example, after the Santa Clara Mental Health Court in California graduated 56 participants, court officials estimated that the effect of moving these clients, who had been recidivists, from jail custody to community treatment resulted in a savings of \$395,655.<sup>6</sup> Notably, it costs approximately \$62,000 a year to keep an inmate in a New York City jail.<sup>7</sup>

Anecdotal success of a jail diversion program can also be seen in our own backyard. The Brooklyn Mental Health Court, presided over by Justice Matthew D’Emic, has been operating since April 2002. Created through the Center for Court Innovation,<sup>8</sup> this court is structured to permit

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<sup>3</sup> David Lovell, *Recidivism and Use of Services Among Persons With Mental Illness After Release From Prison*, 53 PSYCHIATRIC SERVICES 1290 (2002).

<sup>4</sup> Jenni Bergal, *New voluntary court system helps mentally ill inmates get their lives back on track*, SUN-SENTINEL.COM, Nov. 24, 2001.

<sup>5</sup> Eric Trupin et al., *Mental Health Court Evaluation Report*, City of Seattle Municipal Court (2001).

<sup>6</sup> Santa Clara Bar Association, “Time for a Change: The Mental Health Court of the County of Santa Clara,” Press Release of April 3, 2001 reprinted in SANTA CLARA BAR ASSOCIATION LEGAL LINKS, Santa Clara, Ca: Superior Court of California, County of Santa Clara.

<sup>7</sup> See The Correctional Association of New York, “Fact Sheet” (March 2003), <http://www.correctionalassociation.org/basic%20prison%20and%20jail%20fact%20sheet.pdf>.

<sup>8</sup> The Brooklyn Mental Health Court has been developed as a joint project of the New York State Unified Court System, the New York State Office of Mental Health and the Center for Court Innovation, with the technical assistance of other government and nonprofit partners. The New York Community Trust, the United Hospital Fund and the Ittleson Foundation have also provided support for this project (see [http://www.courtinnovation.org/demo\\_mhealth.html](http://www.courtinnovation.org/demo_mhealth.html) ).

nonviolent felony offenders who have a serious mental illness to plead guilty in exchange for receiving mental health treatment for at least twelve months. If the defendant successfully completes his designated treatment plan, and does not commit any new offenses, his guilty plea will be vacated and all charges dismissed.

As of September 9, 2004, out of the 126 individuals accepted for program participation, 24 have “graduated” after successful program compliance, while 90 continue to be active participants. (Eight defendants have been terminated from the program and sentenced due to non-compliance, while eight eligible candidates are awaiting services or approval from the Brooklyn District Attorney’s Office.)

Unlike the other criminal parts at the Brooklyn Supreme Court, Judge D’Emic allows defendants to lean over on the bench only several inches from him. The judge asks questions like, “Everything all right?” and “How’s the baby?”<sup>9</sup> It has been suggested that many participants perceive that Judge D’Emic is the first person to really care about their welfare.

Judge D’Emic’s approach reflects the important policy of promoting society’s interest in reducing crime while also ensuring mentally ill offenders get the services they need. The Brooklyn Mental Health Court is also presumably saving its taxpayers money by keeping people who are better served by treatment than punishment from deteriorating in the City’s jails.

Therefore, our Committee urges you to do your part in reducing crime and implementing humane policies by ensuring that Congress allocates the full \$10 million of funding pursuant to the Project so that more mental health courts can be created.

Respectfully submitted,

Virginia K. Trunkes, Esq.  
Chair  
Committee on Mental Health Law

cc: Senator Peter Dominici

Committee on Mental Health Law

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<sup>9</sup> See Jennifer Gonnerman, *Where Justice and Mercy Meet*, VILLAGE VOICE, Aug. 5, 2004.

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\* Mr. Estes took no part in the preparation of this letter.