

# Memorandum

## City of Lawrence

### City Attorney's Office

TO: David L. Corliss, City Manager  
FROM: Maria Kaminska, Assistant City Attorney  
CC: Toni Wheeler, City Attorney  
DATE: March 23, 2015  
RE: Mental Health Court

#### **Background**

Mental health courts (MHC's), sometimes referred to as alternative sentencing courts, specialize in addressing and assisting defendants with certain mental illnesses. Rather than seeking to punish, like the traditional criminal justice system, MHC's seek to: (1) improve public safety by reducing the recidivism rate of the mentally ill; (2) provide alternatives to incarceration which reduces the cost of corrections; and (3) help those suffering from mental illness by connecting them with treatment resources.<sup>1</sup>

MHC participants usually undergo a mental health screening assessment prior to being accepted into the program, and voluntarily participate in the highly supervised treatment plan developed by a care team<sup>2</sup>, which may include a judge, prosecutor, defense attorney, and treatment provider.

MHC's are becoming increasingly prevalent in the United States, having first been established in 1997 and currently totaling over 250 nationwide.<sup>3</sup> Some studies indicate there is significant need for more of these programs. In 2014, the Kansas Director of Corrections reported that 38 percent of state prisoners suffer from a mental illness—a 126 percent increase since 2006.<sup>4</sup> In an earlier study conducted by the United States Department of Justice, it was found that the recidivism rate was high among inmates with mental illness, with half of inmates having three or more prior convictions.<sup>5</sup>

The number of inmates with mental illness is lower in jails across the state, though still significant. In 2013, the Kansas City Star reported that approximately 17 percent of jail inmates in Johnson County were mentally ill. And in 2010, the Topeka Capital Journal reported that 16 percent of inmates in county jail suffered from mental illness. Similarly, according to a 2009 story from the Wichita Eagle, approximately one-third of inmates at the Sedgwick County Jail

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<sup>1</sup> Mental Health Courts: A Guide to Research-Informed Policy and Practice; [https://www.bja.gov/Publications/CSG\\_MHC\\_Research.pdf](https://www.bja.gov/Publications/CSG_MHC_Research.pdf), page 2.

<sup>2</sup> Id at 5.

<sup>3</sup> Id at 3.

<sup>4</sup> The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey, The Treatment Advocacy Center, <http://tacreports.org/storage/documents/treatment-behind-bars/treatment-behind-bars.pdf>, citing *Wichita Eagle*, Jan. 22, 2014

<sup>5</sup> Mental Health Courts: A Guide to Research-Informed Policy and Practice; [https://www.bja.gov/Publications/CSG\\_MHC\\_Research.pdf](https://www.bja.gov/Publications/CSG_MHC_Research.pdf), page 1.

took medication for mental illness, with 49 of the jail's inmates reporting that they each had been arrested about seven times within the previous year.<sup>6</sup>

### **Wichita**

In 2009, Wichita became the first city in Kansas—in conjunction with Sedgwick County—to establish a MHC after obtaining a federal grant. Initially, Wichita had a diversion and probation program but its city attorney's office advises that after its grant money ran out only the probation program continued. By ordinance<sup>7</sup>, Wichita's City Attorney is authorized to create a MHC Program and to develop a handbook outlining policies and procedures. Defendants are eligible for the diversion and/or probation program if they are diagnosed with a "severe mental illness," which, under the ordinance, means a diagnosable mental disorder of sufficient duration to meet criteria spelled out in the Diagnostic and Statistical Manual of Mental Disorders (Manual). Substance abuse is not included in the definition and does not qualify someone for MHC, unless it co-exists with another diagnosable disorder under the Manual.<sup>8</sup>

Judge Bryce Abbott from the City of Wichita Municipal Court testified before the House Corrections and Juvenile Justice Committee during the 2012 legislative session and shared his experience helping to set up Wichita's MHC.<sup>9</sup> He said that the MHC was established to address non-violent defendants who were being seen repetitively in court. He explained that under the program, law enforcement and booking personnel undergo extensive training to identify potential candidates for the program. Candidates are then referred either by law enforcement or court personnel to Comcare for a mental evaluation. If they qualify for MHC, the defendants usually stay away from jail and instead are referred for treatment. Judge Abbott said in 2012 that he estimates the program has saved millions of dollars in part based upon the "significant" reduction in the number of days served in jail.<sup>10</sup>

I contacted an assistant city prosecutor in Wichita, who expanded on the referral process. She stated that before each docket she reviews the police report and can usually identify an offender who may have mental illness—either by notes the police officer makes, witness statements, or by self-reporting by the defendant. She then approaches the defendant's attorney and suggests MHC. If the defendant and counsel are amenable to MHC, the defendant is screened by a mental health care provider, and the process begins. Note that this process is similar for defendant's not having counsel, though in many cases the court will appoint one for the defendant so there will usually be defense counsel.

Wichita's program works by engaging the defendant in the mental health program for one to two years, which may be shortened in special circumstances. The defendant is initially ordered to appear in court once a week, but if the terms of the program are being met then the court appearances will decrease. Some things the defendant is ordered to do include: (1) attend all treatment as required by the treatment plan; (2) abstain from drugs or alcohol; (3) abstain from violating the law; (4) pay applicable court costs and fines; (5) abstain from purchasing,

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<sup>6</sup> The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey, The Treatment Advocacy Center, <http://tacreports.org/storage/documents/treatment-behind-bars/treatment-behind-bars.pdf>, citing *Topeka Capital-Journal*, Jan. 7, 2010 and *Kansas City Star*, Mar. 13, 2013; *Wichita Eagle*, Apr. 30, 2009;

<sup>7</sup> See Wichita Code 1.07.010 (establishing the Mental Health Court Diversion and Probation Program).

<sup>8</sup> *Id.*

<sup>9</sup> See Legislative Committee minutes at

[http://www.kslegislature.org/li\\_2012/b2011\\_12/committees/misc/ctte\\_h\\_corr\\_juv\\_jus\\_1\\_20120201\\_02\\_other.pdf](http://www.kslegislature.org/li_2012/b2011_12/committees/misc/ctte_h_corr_juv_jus_1_20120201_02_other.pdf)

<sup>10</sup> *Id.*

possessing, or using any firearm or other dangerous weapon; and (6) submit to random urinalysis testing.

The program rewards participants for their accomplishments, including giving priority position in the order of cases called on review—referred to as “rocket docket” by Wichita city prosecutors—praise from the judge, food items or gift certificates, and graduation ceremonies.<sup>11</sup> However, failure to comply with all provisions may result in community service requirements, GPS monitoring, or expulsion from the program, to name a few. The Wichita MHC also utilizes an aftercare program in which participants’ progress continues to be monitored up to six-months after the program ends. During that time, the probation officer keeps in contact with the participant to “assist in continued engagement and promote quality of life.”

### Cost

When MHC was implemented in Wichita in 2009, it utilized a \$238,428.00 Bureau of Justice Assistance grant, in addition to a \$340,963.00 local match that included \$102,525.00 in in-kind salaries. The grant funding lasted two years before expiring, and funded \$115,986 for staffing costs, which included:

- a) \$74,586 for a master’s level mental health clinician
  - a. This was the only new full-time position created as a result of the program
- b) \$41,400 for a part-time city prosecutor
  - a. This was a reallocation of an existing City position to the grant fund
- c) \$39,908 for 100 percent of those two positions’ benefits

Existing positions on the city’s side were reallocated to meet the remaining staff needs, including:

- (a) A probation officer split 50/50 between drug court and mental health court – part of the in-kind match
- (b) A municipal court judge split between conventional dockets and mental health court – part of the in-kind match
- (c) A city prosecutor split between drug court and mental health court – part of the in-kind match

On the county side, those positions were:

- A Sedgwick County Offender Assessment Program (SCOAP) program manager – part of the in-kind match
- Case managers, therapists, and other COMCARE staff who were already in place.

Aside from staffing needs, the grant also funded \$8,475 in travel expenses; \$22,923 for training; \$10,472 for equipment; \$30,000 for supplies; \$10,439 for administrative charges; and \$8,700 for miscellaneous expenses.

### Topeka

MHC—called Alternative Sentencing Court in Topeka—launched in early January 2015 after a year and a half of study and research, which included staff traveling to Wichita and observing MHC there. The program has both diversion and probation, and since January has nine active clients. The program is currently being funded by two grants: (1) A Department of Justice<sup>12</sup> grant worth approximately \$100,000 and (2) A Kansas Health Foundation grant for approximately \$25,000. Staff levels did not change significantly with the implementation of the

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<sup>11</sup> City of Wichita Mental Health Court Handbook

<sup>12</sup> “Federal grant creates Alternative Sentencing Court in Topeka,” <http://www.khi.org/news/article/federal-grant-creates-alternative-sentencing-court/>

program, as only one part-time coordinator was hired by the city. There were no hard costs for the city of Topeka, which mostly utilizes its existing resources including two judges that alternate in alternative sentencing court every other week. Each week, a team of staff members, including the judge, prosecutor, and case worker, meet for approximately four hours to review existing cases for progress.

### **Implementing MHC in Lawrence**

Municipal Court Judge Scott Miller, Court Administrator Vicki Stanwix, and Supervising City Prosecutor Elizabeth Hafoka generally support establishing a MHC in Lawrence. However, all agree that additional research is warranted to analyze staffing needs, the program's cost, its effectiveness, how it could be set up and how many citizens it could assist. Tentative thoughts are that additional staff, including a case manager, prosecutor, and judge, may need to be added to help implement the program in Lawrence. Generally, there are far fewer resources in Lawrence Municipal Court than there are in Wichita. For example, Wichita has five municipal court judges and four courtrooms, whereas Lawrence has one judge and one courtroom. Similarly, Topeka has two judges and two courtrooms. Resource limitations can cause the court's docket to be extremely full, but it is important to note that MHC would not add additional defendants to the docket and would instead re-assign them to a different docket during the week. If time cannot be found during regular court hours, Judge Miller has suggested implementing night court as an alternative.

It would be critical to the success of such a program to collaborate with treatment providers who would be willing to cooperate by frequently checking in with the court. Treatment providers at Bert Nash, for example, should be contacted before starting such a program.

It would be possible to implement only a diversion program in Lawrence, in which certain qualified defendants could enter a diversionary agreement that would require them to undergo treatment at Bert Nash, for example. There are cons to implementing only a diversionary program, however. As the assistant city prosecutor in Wichita noted, because offenders suffering from mental illness are usually in court for different cases, their repeat-offender status may preclude them from being qualified for diversion. Similarly, some state statutes preclude certain offenders from entering diversion, like repeat DUI defendants. Lastly, diversion is a choice and many offenders decline it in lieu of serving jail time that will last shorter than the diversionary period. Accordingly, it may be most effective to implement both diversion and probation, or probation only.

### **Grant Funding**

There are federal grant programs available that may assist in implementing MHC, which are currently being monitored by staff, including the Lawrence Police Department's Crisis Intervention Team (CIT).