National Alliance on Mental Illness

Beyond Punishment

Helping Individuals with Mental Illness in Maryland's Criminal Justice System

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IN PROCESS OF REVISION 2022

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Contacting NAMI

Contact NAMI Maryland, 800-467- 0075, or namimd.org. To locate state or local NAMI organizations nationwide, or to receive information from our national NAMI helpline or website, call 800-950-6264 or go to www.nami.org.

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How to Use This Book

This book is a non-technical resource intended to help you understand basic processes and systems to enable you to be a better advocate for an individual with mental illness involved with the criminal justice system. Readers are not expected to read this book from start to finish. When faced with a question or concern, you should first consult the Table of Contents to determine what section is most likely to address your concerns. That section may then refer you to other sections that relate to the topic, or provide additional information.

Section I of this book briefly discusses some preparations that may help prevent a mental health crisis from leading to an arrest and subsequent involvement in the criminal justice system. Section II briefly addresses how to get mental health crisis services, including voluntary and involuntary evaluations. Section III, the largest section of the book, describes in roughly chronological order what typically occurs when an individual intersects with the criminal justice system – from calling 911 to get police help in a mental health crisis to actual involvement in the criminal justice system, from arrest and booking to interactions with lawyers and the courts, including sentencing, probation and parole. Section IV contains certain useful, miscellaneous information. Finally, a Glossary that defines commonly used mental health and criminal justice terms and acronyms is included at the end of this book.

The information presented is generally applicable to all Maryland jurisdictions (and beyond), with indications where there are local differences. Where possible, we have noted Baltimore City and/or Baltimore County procedural and programmatic differences, indented with key contact information.

NAMI Marylan is very interested in your ideas about how to improve this resource. Pleaseprovide your feedback using the survey at the back of the book. The form can also be obtained online byclicking on the Criminal Justice Resources section at www.nami.org/sites/namimetrobaltimore.

Covering Maryland

This book deals with the mental health and criminal justice systems of Maryland.

It does not cover the rules of other states.

For more information or to access services in other jurisdictions, contact your local or state NAMI organization. To locate the NAMI organization closest to you, contact NAMI Maryland (800-467-0075 or namimd.org) or NAMI National (800-950-6264 or www.nami.org and click on "Find Support".) Thisbook is available for use as a template for your local organization. Please contact info@namimd.org.

This Book Does Not Contain Legal Advice

This book is intended to provide introductory non-technical information about the Maryland criminal justice and mental health systems with a focus on various counties. It does not contain legal advice.

Even the Maryland criminal justice system, with its statewide legal rules, practice and available resources, varies considerably from county to county. Each jurisdiction can have distinct local police enforcement, laws, courts, jails, and post-incarceration services. Your city or county may determine whether criminal justice personnel are trained to handle mental health crises or treatment, whether there is jail diversion at different points in the system, and what rules and structure apply in jails and other stages of the system. In addition, the types of available public psychiatric services, procedures for their access, and pertinent legal provisions also vary widely. All of the information in this book will not be applicable to each specific jurisdiction. Please consult appropriate mental health, advocacy, and/or legal resources to learn about the applicable service mechanisms, procedures, and laws for the jurisdiction with which the person with mental illness has intersected.

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Acknowledgments

I am a family member of someone with schizophrenia. I am in contact with many others affected by mental illness as a NAMI teacher/trainer, support group facilitator/trainer, and as the Executive Director, first of NAMI Metropolitan Baltimore, and now of NAMI Maryland. I have learned firsthand how many families, friends, and even mental health workers need the most basic information to cope with a mental health crisis when it intersects with any part of the criminal justice system.

Our book is possible because many criminal justice and mental health workers, family members, individuals with mental illness, and others have shared their firsthand experience and practical wisdom. NAMI Metropolitan Baltimore partners with many caring people in the mental health and criminal justice systems who readily offer advice. In 2001, we partnered with Baltimore City and Baltimore County mental health professionals to develop an original NAMI Metropolitan Baltimore resource packet, What to Do if Your Friend or Family Member with Mental Illness is Arrested. Requested more than 10,000 times since 2001, the packet provides valuable resources for families facing this situation. In 2009, we developed the booklet, Beyond Punishment: Helping the Mentally Ill Individual in the Criminal Justice System, which updated and expanded that original information, covering crisis services, arrest through sentencing to post-incarceration and release, with a focus on the Baltimore metropolitan area. The online version can be found in the Criminal Justice Resources section at www.nami.org/sites/namimetrobaltimore. This effort was funded primarily by the Harry and Jeanette Weinberg Foundation.

Since 2011, and since I have been at NAMI Maryland, we have developed fact sheets based on the sections of the booklet, and periodically worked to engage experts in updating and expanding the content, with a hope that we could develop inserts which would address county by county differences and resource information. To date, we have not found funding or the capacity to complete this project. **This version, therefore, is based on the original version, without local Baltimore information, and is no longer completely accurate in all aspects. We look forward to finding collaborators and funding to revive this project. Meanwhile, we continue to produce and disseminate this version. .**

I was/am extremely grateful for being granted permission to make extensive use of materials from several public and private sources. For their valuable contributions, I wish to thank: Heather Barr • NAMI New York State and the Urban Justice Center • The Criminal Justice/Mental Health Consensus Project and the Council of State Governments • J. Massaro and the GAINS/TAPA Center • National Alliance on Mental Illness (NAMI) W. Lawrence Fitch, Director, Office of Forensic Services, Maryland Mental Hygiene Administration.

Many other people contributed content and worked to make this book possible. Like so many NAMI Metropolitan Baltimore projects, this book was truly a collaborative effort and would not have been completed without the dedicated work of: • Carol Bocchini • Julie Cook • the Honorable Charlotte Cooksey • Maxine B. Cunningham • Sue Diehl • Joanne Dudeck • Larkin H. Farinholt, Jr. • Lois Fisher • Barbara Gwynn • Deborah Handy • Adilah Haris • Sharon Lipford • Cathy Lips • George Lips • Phyllis McCann • Darren McGregor • Richard Ortega • Mary Porter • Melissa Reuland • Alfreda Robinson • Erik Roskes • Judith Sachwald • Mark Slater • Susan Steinberg • Jane Tambree • Christopher Farinholt Ward • staff of the Maryland Department of Public Safety and Corrections • and the great number of dedicated State of Maryland, Baltimore City, and Baltimore County mental health and criminal justice professionals who anonymously contributed their time, expertise, and insights to this project.

To everyone who has contributed: on behalf of NAMI and the thousands of appreciative families and others who will turn to this book in times of crisis, thank you. If I have neglected to mention anyone, I apologize for the oversight. Your work is appreciated.

Kathryn S. Farinholt, JD
Coordinator, NAMI Metropolitan Baltimore's Criminal Justice Resource Project (2000-2019) and NAMI Maryland Executive Director (2010-present)

IN PROGRESS

Introduction

Mental illnesses are brain disorders. The symptoms are behavioral and cyclical. Often those behaviors require intervention. When an individual has a mental illness, it is likely that, at some time, there will be a psychiatric crisis. Despite everyone's best efforts, the crisis may lead to a situation that requires police assistance or intervention, and may even result in arrest. This book will help you understand what happens if the individual becomes involved with the criminal justice system, and what you can do to help.

Individuals with mental illness who are manic or delusional or even just confused exhibit behavioral symptoms or lack of control over their behaviors that may draw complaints from community members or calls for the police. The behaviors may result in their breaking the law.

> *"I wish the only thing that happened to me was that I was admitted to a hospital I wish now that the doctor had recommended that my family 'EP' me for an emergency psychiatric evaluation or take me to an ER. Instead, I broke into someone's house, was arrested the next day, and taken to a detention center, where I stayed for two weeks. I had a competency hearing and was found competent. I never went to a hospital, but I was lucky to get medication and support from a counselor at the detention center. During my stay, I was in solitary confinement for a week. I cleared up mentally only to find myself locked in a cell. I was lucky and was referred to a new psychiatrist and given intensive outpatient treatment. I have been with the same psychiatrist since 2001. I have only been hospitalized once since, fora weekend!"*
>
> *Karen - a NAMI member and speaker*

Individuals with mental illness can cycle in and out of the courts and jails, charged with repeated petty offenses. This revolving door burdens the courts and the criminal justice system, the individuals with the illnesses and their families, and society as a whole. If an individual is not linked to treatment or services early in the process, or on release, it is likely he will re-offend. This is not just unfortunate for the individual and family, but it further burdens our already overstretched criminal justice system and workers.

> *"My experience with the criminal justice system actually saved my life, which was spiraling out of control due to rapid-cycling bipolar disorder. Regardless of how angry I felt at being processed like a criminal and spending*
>
> *$15,000 in legal and bail fees, I accepted responsibility for not allowing passengers to leave a vehicle. I served 24 months' probation by following all the conditions, like maintaining mental health treatment. If I could have done one thing differently, I would have taken my mood stabilizer while in jail and advocated for an increased dosage earlier. I would have benefited from diversion to a mental health court given my prior spotless criminal record. My experience has allowed me to realize that saying, 'I need help' are the toughest three words to utter, but I'm not afraid to seek help if the need arises in the future."*
>
> *Ted - a NAMI Peer to Peer graduate and speaker.*

A 2006 NAMI report[1] that graded public adult mental health care systems nationwide states that jails and prisons have become de facto psychiatric treatment facilities. The report conservatively estimates that16 percent of all inmates in U.S. jails and prisons, more than 300,000 people, suffer from serious mental illnesses. Statistically this would rank the Los Angeles County Jail and New York City's Riker's Island the two largest mental health treatment facilities in the country.

Conservatively, there are at least four million Americans with identifiable mental illness, many of whom are not receiving treatment. The effects of these illnesses can be staggering. Approximately 150,000 to 200,000 individuals with mental illness are homeless. More than 10 percent of people with mental illness will die from suicide. A smaller percentage will commit acts of violence against family, friends, or strangers. Stigma, lack of insurance coverage, lack of effective community-based treatment, and refusal to accept treatment all contribute to homelessness, incarceration, victimization, or death for many individuals who are so ill they are unable to care for themselves.

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NAMI envisions a future when people with mental illness are not heavily represented in the criminal justice system. NAMI advocates for a well-funded, community-based mental health system using proven quality treatments. Such a system would benefit individuals with mental illness and our society by lowering the number and associated cost of calls to the police, stays in hospital emergency rooms, and incarceration in jails and prisons.

One element necessary to realize such a future is jail diversion. This refers to the redirection of individuals from jail and the criminal justice system to community services and such supports as subsidized case management, rehabilitation and supported employment. Collaboration between the criminal justice and mental health systems is designed to link individuals, primarily nonviolent offenders diagnosed with serious mental illnesses or with co-occurring mental illness and substance abuse disorders, with appropriate services instead of incarceration. Jail diversion strategies include pre-booking diversion (initiated before or instead of arrest or prior to booking), and post-booking diversion (initiated after arrest and often with ongoing court supervision.) Each jurisdiction in Maryland has a different assortment of criminal justice diversion programs.

The criminal justice and mental health systems in Maryland work within a society that does not give priority to fully funding quality services. Society respects the legal right of individuals with psychiatric issues not to be required to get and stay in treatment. At the same time, it stigmatizes mental illness by prioritizing limited tax dollars for punishment and criminal justice over mental illness education, detection, and treatment.

Individuals with mental illness who do become involved with the criminal justice system face special challenges. Individuals with mental illness are often not good historians and therefore cannot always advocate for themselves effectively. They are often incarcerated longer because they cannot conform well enough to jail or prison rules to be released early on good behavior or to receive privileges. Individuals with mental illness may exhibit behaviors that lead to their being placed in isolation, but this can worsen schizophrenia, depression, and anxiety. They are also at higher risk for suicide when incarcerated.

This book is designed to help the uninitiated who do not know the types of community and criminal justice system services and how to access them, much less how to divert someone from one system to another. Family members and friends who call NAMI Maryland for help are often at a loss about what to do. Beyond Punishment is for them.

This book contains basic information about services and procedures in Maryland, without County-specific resources (at this time.). This book is a non-technical primer and does not address specific situations, or services or procedures in other jurisdictions. It does not contain legal or mental health advice. To obtain such advice, consult legal or mental health professionals.

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I. Mental Health Crisis Prevention and Preparation

A. Crisis Prevention

Voluntary treatment of an individual with mental illness is the best defense against involvement with the criminal justice system. Such care can prevent behavior that might lead to community complaints or emergency intervention. It is always best to attempt crisis prevention through treatment, while preparing for the possibility of future crisis. Family members and friends should learn everything they can about the illness and best available treatments, seek skills training, and take care of themselves by getting help. The free 12-session NAMI Family to Family Education Program, NAMI's peer-led family support groups, counseling on the family's role in the treatment process, and personal research are all useful in learning how to best support and advocate for the individual with mental illness. In addition, these tools can help prevent relapse and crisis.

Despite your best efforts to prevent one, a mental health crisis may occur. If a mental health crisis does develop, the preferable first step is to access voluntary local mental health crisis services, which exist in many parts of Maryland. (See Section IIA, Voluntary Crisis Services.) It is often possible to persuade the individual to accept voluntary mental health crisis services or to go voluntarily to the emergency room fora psychiatric evaluation.

However, problems often arise for an individual with mental illness when he:

- is unwilling to accept help, but is highly symptomatic,
- stops treatment and/or medications for various reasons,
- is taking medications that stop working (decreased efficacy),
- has behavioral symptoms that attract complaints from the public, and/or
- demonstrates inappropriate behaviors, in some anxiety-producing situations, that escalate and require involuntary intervention.

When intervention is required, call a crisis hotline, 911, or plan for an emergency petition for a mental health evaluation. For more detailed information on handling a crisis, see Section II, When the Mental Health Crisis Occurs.

B. Preparation for Crisis[2]

Create a crisis file. A crisis file is comprised of materials you can quickly share with treatment professionals in a crisis. In a three-ring binder, file box, or other easily transportable container, gather all of the documentation that might be helpful. An essential component of a crisis file is a one-page summary which includes the individual's current health treatment and medication (see below.) The crisis file should also include names of current and past mental health service providers, and, if the individual is willing, regularly updated, signed permission forms for release of information, and copies of the individual's advance directive, as well as a recent photograph of the individual. It is helpful to have multiple copies/originals of permission forms and advance directives when you deal with multiple providers or agencies. It is also helpful to have information about emergency evaluations and handling crisis situations.

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In the brief summary, include the individual's

- full legal name,
- Social Security number,
- date of birth,
- psychiatric diagnosis or diagnoses,
- contact information for his therapist and psychiatrist, if he is being treated by these professionals, including names, addresses, phone numbers, and emails for verification and/or treatment information,
- the medical doctor's name, address, phone number and email for verification and/or treatment information,
- all prescribed medications by name, dosage, and time of day to be administered,
- any side effects to any medication (note whether any medication has proven to be ineffective or has dangerous or uncomfortable side effects),
- history of suicide attempts, threats, or other violent intentions, if any, in the recent past; describe succinctly the events and when they occurred, and
- medical condition(s) that might require immediate attention, such as diabetes, high blood pressure, seizures, and heart problems, and any medications currently prescribed for those conditions.

For more information about legal permissions and releases and ideas about developing a crisis file, contact the Treatment Advocacy Center, 703-294-6001, or go to www.psychlaws.org.

Keep good records of your activities. Keep a record of everyone you talk with, and write down exactly what they say. Note the date and any actions promised by yourself or others.

Carry contact information. Make sure the individual carries the names and phone numbers of his mental health service providers (including after-hours contact information), family members, and any otherpotential advocates at all times. (You can also work to help the individual memorize this information.)

Build relationships and be an advocate. Communicate with the individual's mental health service providers and demonstrate that you want and expect to be included as a member of the treatment team. Be organized, have the facts at your fingertips, and be respectful of the professionals' time and expertise. If you can't find satisfactory answers, however, ask to speak to a supervisor. Be prepared to present your issue(s) clearly, concisely and without confrontation.

Get support and education for yourself. This book is a good first step. Expand your support network and ask others in your community for help in advocating for the individual. Join a peer support group where you can begin to get advice and support from others who have dealt with similar issues. Be proactivein educating yourself. Learn the vocabulary and the services at NAMI's free 12-session Family to Family Education Program and monthly NAMI informational meetings and workshops. Attend classes and groups sponsored by other local organizations and providers. For more information, contact your local NAMI, local mental health authority, or see www.networkofcare.org.

Trust your instincts. Families and friends need to learn as much as they can, and then trust their instincts. Families are often able to predict a relapse by observing idiosyncratic behaviors that tend to arise several weeks before relapse. Such behaviors might include social withdrawal, increased anxiety, a change in sleep habits, pacing, and involuntary tics, for example.

Familiarize yourself with medical privacy laws. Sometimes confidentiality is used too broadly. Mental health service providers often cite concerns about breaching confidentiality when refusing to talk to someone trying to help another person receiving or in need of treatment. But know that no privacy law prohibits them from listening.

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Although providers usually cannot tell you about an individual's condition or treatment without the individual's permission, they can receive information about a patient's symptoms and psychiatric history. Families and friends expect that a responsible mental health professional will gather as much information about the individual's condition as possible (as an example, the Diagnostic Statistical Manual IV (DSM IV), which defines psychiatric diagnoses, states that the diagnosis of bipolar disorder requires gathering observations from close friends and family.)

Persistent but respectful contact with mental health service providers can also build beneficial bonds. Try to develop cooperative relationships—it will be easier to advocate if a difficult situation arises.

Access your local mental health agency. If the individual is having difficulty obtaining services, call the Core Service Agency (the term in Maryland for the local mental health agency) and explain that you are having a service delivery problem. If you still can't get information or access services, report the problem to the State's Mental Hygiene Administration.

Learn about emergency psychiatric evaluations and commitment. Review Section II, When the Mental Health Crisis Occurs. See NAMI Maryland, www.namimd.org

Reach out to your local mental health crisis unit. Outreach workers in a crisis unit typically conduct on-site evaluations and can usually initiate emergency psychiatric evaluations and commitments. Ask to briefly speak or meet with the supervisor or director. Ask if they will accept some information about the individual for their files. (See Section IIA, Voluntary Crisis Services.)

Reach out to your local law enforcement agency. Many police departments throughout the United States have police officers specially trained in responding to and interacting with persons with mental illness who are in crisis. Officers with additional training can assist the family member or friend in keeping the person from escalating into dangerous behaviors if they are de-compensating (beginning to experience a psychiatric crisis.) If an unstable environment develops, the officer might have to take measures to protect themselves, bystanders, or the person in crisis. Such situations have the potential to escalate very rapidly and can lead to injury.

Unfortunately, many departments do not have specialized training available to their officers due to budget issues, staffing, or time constraints. If you live in a community that does not have this valuable training, it is imperative to contact the local police department and discuss how to have this training given to their officers. (For more information, contact the national NAMI CIT Technical Assistance Resource Center, under the Inform Yourself/Public Policy link at www.nami.org or by calling 1-800-950-6264.)

Whether your local law enforcement agency has specially trained officers or not, it is a good idea to contact the local police precinct or district station to discuss your concerns with the station commander. It may also be a good practice to meet with the officers who patrol the beat or post that has your address and have them meet the individual prior to any emergency situation. This allows the officers to establish a relationship prior to a stressful situation.

Anticipate crisis. Alert your contacts at the mental health crisis team (see Section IIA, Voluntary Crisis Services) and law enforcement when you suspect that the individual is on the verge of meeting commitment criteria. Fax or deliver copies of your one-page treatment summary for their records. (See Section IB, Preparation for Crisis, Create a crisis file.) If an individual is beginning to experience a psychiatric crisis and is de-compensating, it is always a good practice to contact the individual's doctor or local mobile crisis team to assist the person in crisis before it gets out of control.

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II. When the Mental Health Crisis Occurs

A. Voluntary Crisis Services

The first best choice for an individual in a psychiatric emergency is to seek treatment voluntarily. If the individual has a mental health service provider, contact him for advice. The individual with mental illness may qualify for in-home intervention services from the provider or a local mental health crisis unit. If the individual is insured, Maryland law requires that the insurance company provide coverage for emergency hospitalization or residential crisis services.

Encourage an individual with no mental health service provider to go to an urgent care center (such as the Psychiatric Urgent Care Unit at the University of Maryland Hospital), a psychiatric hospital, or an emergency room at a hospital (preferably a hospital that has a complete psychiatric unit.) NAMI recommends hospitals that are connected with teaching institutions (such as University of Maryland or Johns Hopkins hospitals, both of which have schools of psychiatry in their medical schools.)

To obtain a list of local hospitals with complete psychiatric units, contact your local Core Service Agency (your local mental health agency.)

Insert local information

If the individual will not go for services, but is not assaultive or an imminent danger to himself or others, it may be possible for a mobile psychiatric crisis team to come to the individual rather than taking the individual to the treatment facility. You can locate these services by calling your local mental health crisis lineif there is one in your area. If the crisis unit is unable to come at that time, call them again later, especiallyif the situation escalates.

When you call, be prepared with a brief, specific description of the current behaviors being exhibited, including psychotic or manic behaviors, when the behaviors began, whether the individual has made any threats, and anything else you think might be relevant. If possible, stay with the individual in crisis so you can provide information about the illness and current behavior, but *do not stay in a dangerous situation*.

Insert local information

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B. Involuntary Evaluation – Getting an Emergency Petition

This section describes procedures that can be used to obtain an involuntary evaluation of an individual experiencing a mental health crisis. If the situation is life threatening or there is serious property damage being inflicted, call 911 instead. Be sure to explain that the individual has a mental illness and ask if officers with training about mental illness are available. (See Section IIIA, Interacting with Police.) Responding police officers have the option of taking the individual to a hospital emergency department; you can suggest that they use their authority to authorize an Emergency Petition and take the person to the hospital right then.

Anyone 18 or older can petition the court to order an involuntary mental health evaluation to determine if involuntary hospital admission is appropriate when the individual will not seek treatment voluntarily. Police officers and certain qualified health workers do not need to petition the court but can execute the emergency petition themselves.

If you are not a law enforcement officer or otherwise permitted to authorize an emergency involuntary psychiatric evaluation of an individual, you must petition the court by filing an Emergency Petition (EP) to obtain the evaluation. For the necessary forms, you can visit www.courts.state.md.us/courtforms/joint/ccdc013.pdf or go to any District Court or some Circuit Courts. The Emergency Petition form can be filed at any District Court. It may be several hours before the judge reviews and rules on the petition.

The Emergency Petition form must be reviewed and approved by an administrative law judge unless it is completed by a police officer or a qualified health professional. The petitioner must have reason to believe that the individual has a mental disorder and presents a danger to his own safety or life or that of others. The law no longer requires that there be *imminent* danger of bodily harm and expands the definition of qualified health professionals. It is the experience of NAMI Maryland staff and volunteers that some police and mental health workers are not aware of this change. A succinct fact sheet outlining these changes that can be provided to police officers and others can be accessed through NAMI Maryland.

You must be prepared to justify your petition to get the judge to approve the Emergency Petition. The judge will grant the petition if the court finds probable cause to believe the individual has shown symptoms of a mental disorder and meets specific dangerousness criteria. The petitioner must describe the individual in mental distress in a manner that meets a standard of serious dangerousness that demands evaluation.

Details matter. Include as many facts on the petition form about the current situation and history as possible. Attach additional pages to the petition form if necessary. Bring the individual's medical records, including hospital records, doctor reports, a one-page summary (see Section IB, Preparation for Crisis, Create a crisis file) of diagnoses and a list of current prescribed medications. Focus on the situation at hand; you can also provide information about dangerous behaviors in similar past scenarios.

It is important to include information about where and when the individual can be located by the police, since action may not be taken right away. If the individual is not always available at a fixed place, but you are in contact with him, you may be able to offer to meet him at a specific site at a specific time, perhaps with something he wants. Include this in the petition. Make sure you follow up with the police precinct responsible for serving the Emergency Petition, probably the precinct where the Emergency Petition states the individual can be found.

Insert local information

C. After Emergency Petition is Granted

If the judge grants the Emergency Petition, a patrol officer from the precinct where the individual is believed to be located will be given the petition, tasked with delivering it to (serving) the individual named, and then transporting the individual to the hospital emergency department. It is the policy of most police agencies to require the officer to place the individual in handcuffs prior to placement in the police vehicle, for the safety of the officer and the individual. If time has passed and you are concerned that the assigned police officer was unsuccessful in serving the petition, you can follow up with the precinct desk officer to see if the petition was assigned to an officer in the next shift, and to offer information on locating the individual.

Many local police departments, in concert with the local public mental health system and NAMI, have undertaken considerable training efforts about responding to individuals with mental illness and about the Emergency Petition process, but there is still a chance that some officers may not have up-to-date information. If possible, meet the officer at the scene and provide information about the situation before he encounters the individual in crisis. (See also Section IIIA, When the Police Respond.)

Mental health emergency petition laws require the police officer(s) to take the individual to the nearest designated hospital, but the petitioner or other concerned family member or friend can request the officer go to a different hospital that may be closer to a care-takers residence, or be a more appropriate facility (for example, if that hospital has a specialized psychiatric unit or has treated the individual before.) The final decision remains with the officer.

D. Emergency Department Evaluation

Once an individual arrives in the hospital's emergency department (ED), usually accompanied by a police officer, the law requires that the individual receive a psychiatric evaluation by a physician within six hours.If the person is at risk of fleeing the hospital, notify the ED staff right away. It is their responsibility to keep the individual in the ED until an evaluation is completed.

If the individual is willing and able to be a voluntary psychiatric patient, he will be allowed to sign a Voluntary Agreement.

If the individual does not sign a Voluntary Agreement, and a physician determines that the individual meets the criteria for involuntary hospitalization, then the physician and a second physician or psychologist will complete a certificate for involuntary admission. A third medical professional will fill out the Application for Involuntary Admission and attach the certificate. If the examining physician determines that the individual does not meet voluntary or involuntary criteria, the physician is obliged, by law, to discharge the individual. There are useful suggestions regarding how to get the hospital to keep the individual in the Crisis Resource Packet. (See Section IB, Preparation for Crisis, Create a crisis file.)

The more the ED health care professionals know about the individual, the better prepared they'll be to provide appropriate care. If possible, arrange for the individual's outpatient mental health service provider (either a psychiatrist or therapist) to speak to the ED personnel.

IN PROCESS

If you accompany the individual, give the ED physicians and medical staff information relating to the criteria for involuntary hospitalization, including current symptoms, dangerous behaviors (past and present), history of the illness, past psychiatric hospitalizations, medications, and recent outpatient treatment or refusal of treatment. In addition, tell the ED examining physician if you are unwilling to accept the individual back in your home or if the individual would be homeless if released from the ED. Be concise. ED staffs are busy and won't have time for long histories. A brief summary should be able to cover the important points. This is a situation where the crisis file can prove its value. (See Section I, Preparation for Crisis.)

If you or another advocate cannot be present in the emergency room, fax the written summary. Follow up with a call confirming that the fax was received, and note the name of the person who received it and who will ultimately review it.

E. Involuntary Treatment

Under Maryland law, involuntary treatment generally comes only as a result of involuntary admission to the hospital pursuant to the Annotated Code of Maryland: Health - General Article §§10-613-10-619. (See Section IID, Emergency Department Evaluation.)

Contrary to general belief, judges cannot commit an individual to involuntary treatment by granting an emergency petition or by "outpatient civil commitment" (available in some other states when an individual who fails to comply with court-ordered outpatient psychiatric treatment is hospitalized involuntarily.) But as a condition of pretrial release or probation in connection with criminal charges, judges can require a person to seek voluntary hospitalization or a drug treatment program. The individual can be sent back to jail for failing to comply with treatment. A person committed under Maryland Criminal Procedure Article §3-106(b) as incompetent and dangerous due to a mental disorder can be treated involuntarily to restore competency and involuntary commitment can also occur after a finding of Not Criminally Responsible (NCR.) (See Section IIIK, Competency vs Criminal Responsibility.)

IN PROCESS

III. When Individuals with Mental Illness Interact with the Criminal Justice System

Unfortunately, even when every appropriate preventive step is taken, an individual with mental illness may interact with some aspect of the criminal justice system. This section will assist you in understanding the processes, points of intervention, and possible outcomes.

A. Interacting with Police

Families and friends of an individual with mental illness may call the police for many reasons. They may call for help finding an individual who has wandered off without his medications. They may anticipate a crisis, based on experience, well in advance of the legal criteria for an emergency petition. They may call for help because the psychiatric crisis meets the criteria for an emergency petition or there is a public safety issue for the individual or others. They may call because they have tried everything they know, they are not aware of other community or crisis services, and they think this is the only way to get treatment. Sometimes, individuals with mental illness and their families are told to call the police when treatment providers are unavailable.

Families and friends who call police are often angry and frustrated when the officers do not intervene to help the individual get care or to transport them to a mental health services facility because the officer believes the situation is neither criminal nor requires an emergency petition. Family, friends and others may not know that intermediate interventions are available that do not require police involvement. In many cases, families can reduce calls for police if they receive support and education on how to recognize psychiatric symptoms, to effectively communicate with someone with disordered thinking or emotions, and how to access community resources to prevent and even de-escalate crises.

Understanding What Police Can and Cannot Do

Police investigate when someone in the community makes a complaint or a police officer sees aberrant behavior. Officers are trained to collect information from people to understand a situation. It is important to appreciate that police are not mental health professionals. They are public safety officers taught to control a scene.

If a psychotic individual is not directly threatening another person or himself, it helps to give the individual time to calm down. But officers are usually trained to intervene quickly, resolve the safety issues, and be available for the next call. In some jurisdictions, the pressure to resolve a call quickly is immense.

To ensure safety, officers are trained to take command of a situation, typically using their body language and voice to compel people to cooperate with stated instructions. When dealing with an individual with a mental illness, however, especially someone in a delusional or crisis state, such an approach may make the crisis worse.

Depending on the severity of symptoms, an individual may find it difficult to follow directions, to respond quickly and accurately, or even to respond to his name. If the officers on the scene have no special training in mental disorders, and there are no obvious signs of disturbed thinking, it can be easy for them to overlook the possibility that an individual has a mental illness. They may therefore interpret the individual's inappropriate behavior as lack of cooperation or even defiance.[3]

When officers believe an individual is deliberately disobeying their instructions, they may increase their compliance tactics, as trained. In a situation involving someone whose mental illness is preventing him from following the officer's instructions, the stage may be set for a confrontation. The individual may become irrationally fearful and may strike out in what he believes is self-defense. People with mental illness often

have poor impulse control and have trouble controlling their anger or frustration. If the individual is under the influence of alcohol or drugs as well, he will have even less impulse control and be more likely to exhibit higher levels of aggression.[4]

Depending on symptom severity, it may also be difficult for the individual to understand his rights during the process of police investigation, questioning, or arrest. He may have difficulty explaining his behaviors or presenting his side of a given situation.

Specialized Training and Teams

Officers who receive special training and the support of their department can add mental illness crisis de-escalation tools to their other strategies where appropriate. When officers are trained to recognize signs of mental illness and to communicate effectively with people who may have a cognitive or emotional disturbance, they can often de-escalate a crisis entirely. If they are aware of available mental health and crisis response resources, they can often divert people to available community resources which can prevent repeat calls for police.

Police departments across the country, partnering with mental health service providers and advocacy organizations like NAMI, have developed training to provide police officers with additional skills needed to best manage delicate, yet potentially volatile, crisis situations. The first recognized program model, the Crisis Intervention Team (CIT), was developed in Memphis, TN. These programs require specialized training about mental illness for police officers, and typically have a 24-hour crisis drop-off center, with a no-refusal policy for individuals brought in by the police. Other models of pre-booking diversion involve collaboration between police and specially trained mental health service providers, who "correspond" to calls involving apotential mental health crisis. Many Maryland Police Departments have developed basic and specialized training for their officers. NAMI has played a major role in the development of those police trainings.

Insert local information

Calling 911

Call 911 if you are concerned for your or another's immediate safety. If you are not concerned for your or another's immediate safety, call the individual's mental health service provider or a local crisis hotline first.

When you call 911 your information will be taken down by an operator and they will forward what they consider the key information to a police dispatcher, or directly to officers (or in some jurisdictions, in non-emergencies, to a mental health crisis team.) If you are the one who calls 911, explain that the individual needs a psychiatric assessment and that you need assistance. Ask if an officer trained to deal with a mental illness crisis is available.

Providing useful information to the 911 dispatcher, and then again to officers who arrive, can ensure the safety of all involved. Recognize that this is merely the first step in getting help—all of your information may not have been received by the officers who come to the scene. If you have time, take a brief moment to organize your thoughts and jot down the key points in writing. This will help you be specific and brief.

Give the following information to 911 and again to the officers who arrive to help them engage the individual and better understand how to protect themselves and others:

- your relationship to the individual
- the individual's current problematic behavior
- the mental health diagnosis or diagnoses
- additional relevant medical diagnoses
- whether the individual is in treatment
- prescription medication the individual is taking

- any history of alcohol or drug abuse
- any history of self-harm
- any history of violence toward others and whether they are specific people or types; be sure to state if there is *no* history of violent acts.
- anything that might trigger or escalate the situation that the responding officers might need to know
- anything that could help de-escalate the situation that the officers should know
- access to weapons or history of use (knives, broken glass, etc.)
- age, height, and weight
- physical fitness, weight training or martial arts experience
- preference of hospital (this can sometimes be accommodated)

When the Police Respond

You can expect two or more officers to respond. This is standard procedure to maintain safety for everyone. If possible, have someone known to the individual stay with him, while someone else meets directly with the police officers. Remember, the officers may not know who is in crisis when they arrive, so, for their safety, the officers must assume anyone may be that individual. When discussing the situation, do so away from the symptomatic individual (e.g., if possible, meet the officers before they enter the home.) Describe the crisis, repeating the information given to 911 and let the officers know of anything that has changed since you called for help. Explain how the individual might react to multiple officers. When you speak with the officer(s) convey the message that the individual has a mental illness that may make communicating or interacting difficult. Explain specifically, if you can, what happened, and what happens when the individual isin crisis. For instance, if an individual hears voices and cannot easily follow verbal instructions, he may appear to disregard the officer's orders. If this is the case, explain to the officer that delusional individuals may perceive the police officers as aliens or some other threat and may be unreasonably afraid and unable to comply with commands. Remember, the police officers are not mental health professionals and have to follow certain department directives and policies and are first required to protect the safety of everyone involved.

Once you lay out the facts clearly, stand back and allow the police to follow their procedure. Police officers have numerous responsibilities when they respond to a 911 call. They must stabilize the situation, ensure everyone's safety, resolve the situation, and return to radio calls as quickly as possible. Their priorities include not only the care of the individual, but also you, themselves, and the community. Interference with their management of the scene usually hinders the officers' ability to control the situation and can even lead to the arrest of the person causing the interference.

The officer may be able to take the individual to a hospital or crisis unit for evaluation instead of arrest. You can also offer to accompany the individual or to meet the ambulance or police transport at the hospital or crisis unit.

Options Available to Officers

Officers typically have three choices when determining how to resolve situations involving individuals with mental illnesses.

Officer Discretion: Pre-booking Diversion and Encounters without Arrest

The first option: if the individual's behavior does not meet the criteria for an emergency petition and the criminal violation, if any, is minor, officers may have the discretion to resolve the situation informally. (See Section IIB, Involuntary Evaluation – Getting an Emergency Petition.) For example, if the officers have diffused the crisis to the point where the individual agrees to get treatment voluntarily, they may leave the scene without taking formal action. In some cases, the officers may provide referrals to mental health crisis or other community resources. But if the individual's behavior is too erratic or disturbing, the police may take the individual into custody to take to a hospital or even to jail to maintain safety.

The second option: if the behavior meets the criteria for emergency mental evaluation, police have the authority to transport the individual to a designated mental health facility, usually an emergency department or general hospital. (See Section IIB, Involuntary Evaluation – Getting an Emergency Petition.)

Arrest

The third option: if the individual's behavior is a significant violation of the law, police officers are required to arrest the individual, as they would anyone else who had violated the law.

To make a lawful arrest, police officers must believe that an individual has committed a crime. This belief can be the result of observing a crime or through information provided by a reliable witness. An individual maybe arrested for apparent criminal behavior. Or an individual may be arrested as a result of an investigation or because of an outstanding warrant relating to an offense or violation of a judge's order, failure to appear in court, or to pay a fine. (See Section IVD, Warrants.)

In some jurisdictions, police officers may decide to issue a citation rather than arrest the individual, in which case the individual is released. The citation describes the charge and lists the court hearing date and place. Police are more likely to issue a citation if the individual has adequate identification, has a place to stay, and is not a flight risk. If the individual does not show up at the hearing, an arrest warrant will be issued.

Any information obtained by police, even if obtained before a formal arrest is made, can be used against the person. If an arrest is made, and the individual is taken into custody, the individual must be given a Miranda warning informing him of his constitutional rights before being interrogated. Heard often on television, the Miranda warning states that the individual has the right to remain silent, that anything said can and will be used against the individual in court, that the individual has a right to consult with an attorney during interrogation, and that if the individual is indigent, an attorney will be appointed to represent him.

After an arrest, the police can search the individual and any illegal items found (for example, illegal drugs, drug paraphernalia, weapons or possible weapons) can be taken as evidence for additional charges.

Arrest Issues. Officers are trained to gain control over an arrestee and to control the setting and any people nearby who might interfere. Observers at a crisis scene sometimes feel that the law enforcement officers have used inappropriate or excessive methods. The best thing observers can do, despite their concerns, is to stand back and to advise the individual calmly to cooperate with the officers.

Observers who appear to be escalating a situation take the chance of being arrested themselves. After a situation is under control, most officers will listen to your description of an individual's special needs. If you still have concerns about the officers' handling of the situation, write down what happened as soon as possible, and discuss it with the police community affairs office or the individual's defense attorney at a later date. You needn't worry about getting officers' badge numbers. When needed, this information can be easily obtained through a defense attorney.

B. Booking and Pretrial Detention

An individual under arrest will be transported for processing to an intake processing (booking) facility or jail. (See Section IIIC below.) In general, the booking process takes longer if there is difficulty identifying the individual. The booking process can feel humiliating and is traumatic. Although the order of the booking process may vary, the following will occur:

- The individual's name and the crime for which the individual was arrested will be recorded.
- A photograph, or mug shot, will be taken.
- The individual's personal property will be taken and held by police. In some places, their clothing will be taken and a uniform issued. (The individual may be required to list the names of people allowed to pick up his property.)
- Fingerprints will be taken.

- The individual will be searched.
- The police will check for any outstanding warrants.
- The individual might receive health tests, mental health tests, and suicide screening.

An individual under arrest will be kept in a holding cell, sometimes referred to as a holding pen or jail, until he sees a court official, usually a commissioner. The court official will set bail, determine whether the individual should be released on personal recognizance, or retained. (See Section IIIE, Bail.)

Abating by Arrest. A prosecutor will review the charge or charges against the individual at or after booking. If the attorney chooses not to prosecute, the charges are dropped and the individual is released. Even if a case is not prosecuted, the arrest will remain on the individual's record. (See Section IVB, Arrest and Conviction Records.)

C. Locating an Individual after Arrest

Although not mandatory, many police departments will allow an individual as many phone calls as necessary (to doctors, attorneys, relatives, etc.) to help him resolve his situation. An individual must make the phone calls out; he cannot receive calls. If you are not sure whether an individual has been arrested or if you understand that he has been arrested and do not know what precinct is holding him, you may have to locate him. Processing of an arrest can take a long time, and during that time you may not be able to confirm the individual's location.

Insert local information, which will vary greatly (see original for templates) Include procedures and low police precincts, detention centers, etc.

Other Maryland jurisdictions. If the individual is arrested in any other Maryland jurisdiction, contact your local mental health agency (called the Core Service Agency in Maryland) or police department, which should be able to provide you with the location the arrested individual will be taken.

D. Jail

Although in some situations, jail may be the only safety net for an individual with mental illness and his family, (see Section IIIE, Bail, Whether to Post Bail), imprisonment can be extremely damaging to the individual's stability. Being in a single cell, locked down, or confined in "isolation" can worsen symptoms of schizophrenia, depression, and anxiety. On the other hand, the individual may be more likely than others to be victimized when in the general jail population. He is at a high risk for suicide. Yet he may not receive adequate medication and treatment, especially if his illness is not recognized by jail personnel.

Correctional officers who lack specialized, intensive training on mental illness may not understand the individual's difficulty in processing information and understanding directions or rules. Difficult and non-conforming behaviors may increase as a result of the individual being over stimulated, isolated, confined, or searched.[5]

Mental Health Treatment in Jail

In the Maryland jail system there are treatment options available if an individual is identified as having a mental illness. Psychiatrists provide evaluation and medication treatment and monitoring if they consider it to be necessary and appropriate. Family members and mental health service providers should give a clear, written summary of pertinent diagnoses and treatment information to jail health or mental health services personnel. (See Section IB, Preparation for Crisis, Create a crisis file.) This information may be considered by jail staff in determining medications.

An individual can refuse any and all mental health services offered in the jail. However, if the jail staff determines he is a danger to himself or to others, treatment options will be exercised to ensure their safety as well as the safety of others. Prompt identification of suicide risk is critical, because most jail suicides occur within the first few days.

Insert local information

Other Maryland jurisdictions: In other Maryland jurisdictions, the Core Service Agency or mental health authority can direct you to the appropriate department to contact to try to provide information about diagnosis, medication, and other relevant information about the individual's mental illness.

Post-booking Diversion to Mental Health Services

Communication with the Mental Health and Criminal Justice Systems

Correctional facility mental health staff is generally prohibited by law from giving information about a client's status unless they have the client's consent. HIPAA confidentiality rules do provide an exception to ensure continuity of care, which should enable doctors, psychiatrists, and psychologists to share information with jail treatment staff. In all cases, staff can receive information from others without the client's consent.Limit the information you provide to medical information only.

(Never address any impending charges against the individual in written or oral communications, since it may affect the individual's defense.)

The mental health staff will conduct its own assessment of the individual's condition and may not necessarily prescribe the same medications or dosages. However, the medical information you provide—mental health history, treatment, medications, etc.—can be tremendously valuable in assisting them in their assessment and can help them select the most effective treatment for the individual.

As always, keep a copy of the information you provide for future reference. For example, if the individual is transferred to a different facility, you may have to give this information again—a good reason to prepare the crisis file summary. (See Section IB, Preparation for Crisis, Create a crisis file.) Be prepared to provide it to the jail medical office, jail diversion programs, detention center and jail staff, the Public Defender's Office, and the Core Service Agency (the local mental health agency.)

When communicating with the jail staff or designated liaison, focus on making sure the individual is screened for treatment and possible placement in a mental health unit:

- Inform them that the individual suffers from a mental illness, and describe the diagnosis and any other concerns.
- Inquire about the individual's status and estimated length of stay at this facility.
- Ask when the individual is expected to be released.
- If the individual is to be released soon, which sometimes occurs for minor offenses, ask for the time and place so that you can plan to pick him up.
- If the individual is severely symptomatic, ask if the mental health staff can apply for transfer to a mental health stabilization unit or other crisis intervention unit, or evaluation of need for involuntary treatment if necessary.

Also, be sure to ask for the following information, and keep it handy for future reference:

- the expected date and time of departure for any other detention facility
- the court arraignment date and location
- the individual's booking number

If you cannot reach anyone by phone, prepare a fax requesting that the individual be screened for treatment and possible placement in the mental health unit. Include the concise summary described in Section IB, Preparation for Crisis, Create a crisis file. Ask any questions that remain unanswered.

IN PROCESS

As soon as you are notified that the individual is in jail, you can fax the summary described above to the jail medical office, the local mental health agency, any jail diversion programs such as Baltimore City's FAST, detention center or jail staff, and the Office of the Public Defender.

Communication with Jailed Individuals and Property Issues

Many rules and restrictions apply to communication and visitation with an individual in detention or jail. There are also rules relating to the individual's property, what happens to property upon arrest, including medications, and what will be given back to the individual upon release. These rules are strictly enforced and may vary according to the jurisdiction.

Visits. Call ahead to learn the rules and specific visiting hours. Different rules may apply for initial or first-time visits and later routine visits. Social visits from family and friends may be available at certain times subject to compliance with institutional rules. Special rules for the first 60 days of detention may also apply, and visitation during this time may require written approval from the warden. There are limits on the number of visits the individual can receive in a specific period of time, and the number of visitors who can come at one time. Clergy, health professionals, and attorneys are subject to separate rules. The jail administration has the right to refuse or terminate a visit for a variety of reasons.

All visitors must provide specific types of photo identification. Visitors must wear appropriate clothing as defined by the regulations of the detention center or jail. All visitors are subject to search and a variety of search methods may be used to determine whether the visitor is hiding contraband. Visitors can be barred from visiting for misconduct and can be arrested for having contraband.

A visit is counted once the individual sits down in the visiting booth. The detained individual may refuse a visit by not sitting down and informing the visiting area supervisor.

Clothing. Each detention facility has rules about clothing, restricting what type and how much the individual can keep or receive and when you can drop off or pick up. Clothing and other personal items not picked up within a certain time may be destroyed. During the booking process, the arrested individual may have been required to list the names of people who will be allowed to pick up their personal property while theyare in detention.

Medication. At intake, medical personnel examine all medication in the individual's possession and log them on a medical chart. The standard procedure is to administer medication supplied by the on-site pharmacy only; however, medical staff may elect to administer personal medication if it is necessitated by a medical emergency. (See also Section IIID above, Mental Health Treatment in Jail.)

Phone calls and letters. Each facility has its own rules.

To get more information, including directions:

Insert local information

Helping an Individual in Jail[6]

Make sure there is an appropriate attorney. The individual should be represented by a criminal defense attorney (See Section III I, The Defense Attorney.)

Listen to the individual. Visit the individual in jail to provide emotional support and encouragement. Observe the individual's mental and physical condition, stay alert to problems such as increased withdrawalor agitation, and report any changes to the jail nurse, doctor, or other jail staff and to the attorney.

Be an advocate for the individual. Be the voice of the individual since he may not be able to speak for himself.

Do not let confidentiality issues prevent you from advocating. Jail staff may be reluctant to talk to you because of confidentiality rules. Explain that you are not asking for confidential information, but want to provide them with information. Any information that you want to provide should be in writing and include the individual's name, diagnosis or diagnoses, medication, mental health service provider contact information, and any indicators that the individual may be homicidal or suicidal. (See Section IIID above, Communication with the Mental Health and Criminal Justice Systems.)

If the individual has not previously signed a form allowing a release of information to you or his mental health service provider, ask that he sign a release or request that jail medical staff offer the individual a form authorizing release of information to you.

Inform the individual's mental health service provider. The individual's mental health service provider should be made aware that the individual is in jail and be involved in planning for appropriate post-release services. A mental health service provider may be able to see the individual in jail. HIPAA confidentiality rules provide an exception to ensure continuity of care, which should enable doctors, psychiatrists, and psychologists to share information with jail treatment staff.

Use experts. If the individual has been counseled by jail diversion staff, stay in contact with them and ask how you can best assist them in caring for the individual. If you are working with the Office of the Public Defender, contact its mental health unit and ask that the individual receive its services in a jail or correctional facility.

Stay organized. Keep track of everything. As you would with any major medical or legal situation, get the name of everyone you talk with and the name of each person's supervisor. Document every attempted contact. If you have difficulty getting responses, send a certified letter to supervisors and the State Directors of Mental Hygiene and of Corrections. Detail each of your concerns and any relevant prior conversations, and request an immediate response. Keep an updated brief summary of your notes handy. You can get contact information for both the Maryland Secretary of Health and Mental Hygiene and the Director of Public Safety and Correctional Services at www.maryland.gov.

Family and friends should find support for themselves. It is normal to feel anger, frustration, and grief while struggling to support and advocate for an individual in crisis who may not want your help. At the same time, many of our usual social supports fall away during these times of need, and the systems involved can appear unresponsive or even actively negative. Call your local NAMI affiliate (www.nami.org) and askfor available support groups, education programs, and written resources to help both you and your family member or friends through this difficult time.

Take someone with you. Ask someone calm and authoritative to accompany you when you are raising major issues in person with a staff person or an official. You can often find help from your faith or business community, NAMI support group, or friends or neighbors to demonstrate community support and to help you gather (and remember) information accurately.

Advocate for discharge planning. While the individual is in jail, ask that a community-based treatment plan be developed to provide the necessary support for the individual to live successfully after release. (See Section IIIN, Release from Incarceration, Planning for Release.)

If necessary, use grievance processes and go to supervisors. Every city, county, state, and other governmental entity has its own methods for handling grievances. These procedures must be made available to the public upon request. Law enforcement and corrections have established chains of command. Using a concise summary of your concerns, work your way upward to try to get the results you want. For example, the chain of command may start with the person who answers the phone, then to his supervisor, on up to a section or department chief, and on to the head of the system.

If you suspect mistreatment of the individual, report this suspicion to the mental health service provider acting as liaison to the criminal justice system and to the individual's criminal defense attorney. Do not negatively

impact the individual's case or care by stridently raising issues if the mental health liaison or the attorney can help smooth the way.

If a problem persists or you're not receiving help, contact your local state and/or federal legislator. Call your local, state, and Congressional legislators' offices, and ask who on the constituent service staff can help you. Submit a concise written description of the situation, confirm that the information was received, and follow up with the staff.

Last resort only: contact local media. Be careful. Media combined with the stigma of mental illness and criminal behavior can backfire. Local television and newspaper reporters will not cover every story, but may report situations that are especially heartrending or demonstrate systemic issues. Contact a local reporter who has covered mental illness or crime issues. Summarize your story in one sentence; keep your comments focused on one main issue (for example, treatment, lack of insight, or a systemic problem.)

E. Bail

What is Bail?

Bail is property or money paid to the court as a guarantee that an individual, if released from custody, will return for future court dates. The protocol for setting bail varies from place to place. It may be set at the initial appearance, which may also be the arraignment, or at a separate bail hearing.

The individual with mental illness, or another person 18 or older, can post the bail amount on the individual's behalf or get a bail bond from a bail bondsman.

The person posting bail assumes responsibility for the individual's appearance in court. The individual will be released after payment and required to show up at the arraignment on his own accord. If bail is set and the individual or his advocate cannot afford to post it to the court, they are held in custody until the arraignment, which, in most cases, would not be more than 72 hours later. If the defendant, released through a bond, fails to appear as required, a warrant will be issued for his arrest, and the bail will be forfeited. (See Section IVD, Warrants.)

Bail Hearing or Review

On weekdays, usually within one day of the arrest, a pretrial investigator conducts interviews to gather information for the court, relevant to eligibility for release or bail. At the bail hearing, a judicial officer reviews the case and determines if the individual is eligible for release or if bail should be set. The officer considers the individual's risk for violence, risk for escape, likelihood to appear in court, residency, employment status, and previous arrest record, as well as the severity of the charge. He also considers factors such as stability in the community (length of time at an address and job record, for example) and potential public safety risks in granting bail or any pretrial release. Bail is set to ensure that the individual comes to trial and to ensure public safety. Certain previous convictions or other pending charges may prevent the judicial officer from releasing the individual prior to trial.

Generally, if the individual cannot pay the bail or is not released at the bail hearing, a bail review is scheduled so that a judge can determine if the bail set by the judicial officer was appropriate or should be adjusted. Bail

review usually occurs the following business day. The judge also determines if the individual should be released pending the adjudication of the case, and if so, under what conditions.

The judge weighs the risks of failure to appear in court and the potential threat to community safety if the individual is released. A final bail amount is set, and the individual is given a trial date. Following the bail review hearing, if the individual is not released, he is transported to the local detention center and then to the appropriate courthouse on the specified trial date. If the individual is released on bail, he is expected to appear in court for the trial. (See also Section IIIF, Arraignment and Preliminary Hearings, since bail may also be considered at arraignment.)

Insert local information

Bail Payments or Bonds

There are several ways in which to post bail:

- Cash payment.
- Property, such as a home or land, may be used to post bail, provided that the amount of equity in the property meets or exceeds the amount of bail.
- Intangible property, such as bank books, certificates of deposit, letters of credit, and stock certificates can be posted. Judicial officers may not accept intangible assets; only a court clerk may do so.
- Both clerks and judicial officers may accept credit or debit card payment as a form of bond. The card is charged in the amount of the bail plus a service fee. The card must be presented along with some form of identification.
- Purchase of a bond from a bail bondsman.

A bail bondsman is a licensed professional who charges a non-refundable fee to post bail (for example, 10 percent of the bail amount.) In addition to the fee, bondsmen usually require collateral security or property. A bond company, or bail bondsman, provides the full amount to the court, which is returned to the bond company when the individual appears at the court. Bail may usually be posted at the courthouse during business hours and at the jail at any time.

Whether to Post Bail

Sometimes it can be difficult to decide whether to bail an individual out of jail. Ask yourself:

- Is he a flight risk?
- Is he likely to appear in court?
- Is the individual exhibiting dangerous behaviors that may result in injury to himself or someone else?
- Is he refusing to accept that treatment is needed?
- Is there an opportunity to negotiate with the individual to accept voluntary treatment as a condition of providing bail?
- Is everyone in the individual's support system in agreement on what to do?

The person posting bail for the individual has to understand any conditions the individual must follow, including the basic one of showing up at hearings. If conditions are not met, the person posting bail may forfeit the money or property that was used as collateral to secure the individual's release.

Often the individual is in the criminal justice system because he cannot obtain or follow through with supportive community-based treatment services. Families may face a difficult choice. They can post bail and return the individual to the community where he may receive adequate treatment. On the other hand, they can refuse to post bail and press for diversion from jail on the condition that the individual attend a community-based mental health program.

IN PROCESS

If family members choose not to post bail with the hopes of breaking the cycle of mental health crisis, arrest, and incarceration, it will not be without consequences. The feelings of anger, guilt, and duress can be devastating to the individual and to family members and friends. All involved may not agree on actions,will have different knowledge levels, and will each have emotional needs.

Obtaining support during this time is important. Family and close friends find it helpful to attend NAMI peer-facilitated family support groups to obtain information and get encouragement. It is also helpful for family members to seek personal counseling for themselves.

F. Arraignment and Preliminary Hearings

Depending on the crime, the particular jurisdiction and the court, bail hearings and review, arraignment, and preliminary hearings may be combined. Some of these proceedings may be held before a judge, and some before another judicial officer with more limited authority than a judge, such as a magistrate or commissioner. (See Section IIIE, Bail Hearing or Review.)

Arraignment

In Maryland, after criminal charges are filed against an individual, he is required to appear in court for an initial appearance or an arraignment, which generally takes place within 24 hours. During this proceeding, the individual is formally charged with a crime or crimes and is advised of his rights. If the individual goes before a District Court judge at bail review (see above), the arraignment generally occurs then.

At the initial appearance or arraignment, a judge will determine if the person should be[7]:

- released on bail, or should have the amount of his bail raised or lowered. (See Section IIIE, Bail Hearing or Review.)
- released on his own recognizance (ROR.) (See Section IIIH, Release on Own Recognizance.)
- released with conditions imposed. (See IIIH, Pretrial Release Conditions.)
- remanded or held in jail without bail.
- provided a free attorney if the individual cannot afford private representation. (See Section III.I, The Defense Attorney.

Entering a Plea

During the initial court appearance or an arraignment, the individual is asked to enter a plea to the crime for which he is charged.

A plea of guilty means that the individual admits to all crimes charged and is willing to face whatever penalty the court imposes. An individual should consult with an attorney before pleading guilty at arraignment or at any other point in the criminal case.

A not guilty plea means the individual does not admit to the actions charged. Although the individual is not necessarily denying the charges, he is holding the State of Maryland to its burden of proof. In most cases, if any doubt exists as to the individual's culpability, it is advisable to enter a not guilty plea. (A defense of Not Guilty by Reason of Insanity, or "the insanity defense," is no longer available in Maryland. For more information, see Section IIIK, Competency vs Criminal Responsibility.)

A plea of nolo contendere means the individual, while not admitting guilt, does not dispute the charge. A nolo contendere plea should not be entered unless an attorney has been consulted.

Preliminary Hearing

After the arraignment, the individual may appear before a judicial officer in District Court for a preliminary hearing to determine if probable cause exists to charge him with a crime.

The preliminary hearing is typically waived in a misdemeanor case (heard in District Court) if an attorney enters his appearance (meaning he notifies the court that he is representing the defendant.)

IN PROCESS

If the individual is charged with a felony or a crime that must be tried in Circuit Court and has not been indicted by the grand jury, he has a right to a preliminary hearing where the judicial officer determines if probable cause exists to charge the individual with the specific alleged crime. The individual cannot testify or offer evidence at the hearing, but has the right to hear the evidence against him and his attorney can cross-examine the state's witness or witnesses.

A preliminary hearing must be requested within ten days of the individual's first appearance before the judicial officer. If the preliminary hearing is waived, or if it is held and the court finds there is sufficient probable cause, within thirty days the state's attorney (the prosecutor) must (1) file a charging document in the Circuit Court, (2) enter a nol pros (indicating an unwillingness to proceed), (3) enter a stet (a stay of proceedings) in the District Court, or (4) amend the charges so that the individual can be tried in the District Court. If the court finds no probable cause, charges are dismissed. It is unlikely, but possible, that the state's attorney will re-file charges later.

The individual's bail status may be reviewed at the preliminary hearing, at which time bail can be raised or lowered. Information about the individual's mental illness and treatment availability or compliance can also be presented.

Family members or mental health service providers may be allowed, at the court's discretion, to advocate for an individual at the preliminary hearing by offering relevant information regarding whether the individual should be released and under what conditions, pending trial.

An individual with mental illness may not understand the charges against them. People with mental illness often try to figure out what the best response will be rather than answering questions in a straightforward manner. If the individual becomes confused, he may become unresponsive, or have difficulty communicating and being understood.[8] Having the support of family or friends at this stage can help reduce stress.

If there is an assigned defense attorney, ask if you can advocate for the individual. If you cannot identify an attorney, you can ask the court clerk. The clerk generally sits near the judge in the courtroom, is usually very busy, but will often answer questions if you first ask politely when he is available.

Insert local information

G. The Courts

Maryland Courts

There are two trial courts in the state of Maryland that hear criminal cases: The District Court and the Circuit Court. The District Court hears the less serious criminal matters, usually misdemeanors, and the Circuit Court hears the more serious matters, usually felonies. Detailed information about the Maryland

court system may be obtained at www.courts.state.md.us.

The Judge

Judges are high-ranking court officers, formerly lawyers, who supervise court trials, instruct juries, and pronounce sentences. They are decision makers who exercise authority over a range of available options and prefer to make informed decisions. With appropriate information and sufficient options, a judge can sometimes minimize unnecessary pretrial detention of an individual with mental illness. It is not appropriate to talk directly to the judge without the consent of the defense attorney. A mental health professional connected to the courts, if available, can inform the judge of options at his disposal.[9] (Such professionals include FAST in Baltimore City and the social workers in the Detention Center and the Public Defender's Office in Baltimore County.) (See Section IIID, Post-booking Diversion to Mental Health Services.)

District Court

There are 34 courts in 12 districts in Maryland. The District Court operates as a unified system. At least one judge presides in each county and in Baltimore City. All District Court trials are heard by a judge, and there is no right to a jury trial. In certain circumstances, a case may be removed to the Circuit Court upona request for a jury trial. The District Court has jurisdiction over traffic violations, misdemeanor charges, and some felonies. There may be a specialized court, such as a Mental Health Court or Drug Court, that can hear the case. (See Specialized Mental Health Court, below.)

Insert local information

Specialized Mental Health Court

Mental health courts are problem-solving courts with a docket exclusively for individuals with mental illnesses. The goals are to divert the individual from the traditional judicial system and to link the individual with treatment and support services to avoid imprisonment. These courts typically hear only misdemeanor cases (some also hear non-violent felony cases.) Referral is usually made by the public defender, prosecutor, or a District Court judge. Mental health courts provide continuing judicial supervision over a defined period of time and the individual's compliance with conditions of diversion. The judge and the court staff often advocate for the individual with agencies providing services, and can provide service coordination and treatment plan enhancements.

Diversion options include:

Pre-plea diversion: charges are dismissed if the individual complies with conditions.

Post-plea diversion: guilty plea is reduced or dismissed if the individual satisfies certain conditions.
Probationary sentence: the individual satisfies certain conditions in the community and reports to a parole or probation officer instead of going to jail.

Insert local information

Circuit Court

Each county in Maryland, including Baltimore City, has its own Circuit Court. Unlike the District Courts, Circuit Courts are not unified. Each is funded by the county they serve.

Circuit Courts hear serious criminal matters, felonies, jury trials removed from the District Court, and appeals from the District Court. (See Section IIIN, New Trial or Appeals.) The Circuit Court shares

jurisdiction with the District Court in cases in which the crime charged carries a penalty of three years or more in prison and/or a fine of $2,500 or more.

Insert local information

H. Pretrial Release

Release on Own Recognizance (ROR)

In many cases, the individual is released on his own recognizance (ROR, OR, or supervised OR), which means that the court has determined that the individual is trustworthy and likely to show up for court appearances on his own accord. An individual released ROR does not have to post bail.

Pretrial Release Conditions

The purposes of any pretrial release conditions are to minimize the risk of danger an individual may present to the community and to minimize the risk that he will fail to appear in court. The judge may set any conditions the judge believes will decrease these risks, including staying away from a victim, submitting to drug tests or a psychiatric evaluation, living with another responsible party, receiving mental health treatment and/or medications, or establishing bail.

An individual with a mental illness may have particular difficulty understanding and fulfilling the conditions of release. It is in the interests of both the individual and the court that assistance be given to meet the conditions. It can also be argued under the Americans with Disabilities Act (ADA) that people with mental illness must be given the assistance they need to comply with pretrial release conditions.

Pretrial services and jail diversion programs can provide information and options to the court to assist in the pretrial release decision and in establishing possible conditions for release. Therefore, the advocate should do his best to get information to pretrial and diversion services as soon as possible. (See also Section IIIE, Bail, which covers the pretrial release conditions arising out of bail or personal bonds.)

Once conditions of pretrial release are set by the court, the individual is monitored by a pretrial services program. If he fails to comply with the conditions, the program notifies the court, after which the court can issue a warning to the individual, modify the conditions, or revoke the release. (See also Section IIIN, Post Conviction, Release From Incarceration.)

The Pretrial Release Services Program (PRSP) interviews individuals prior to bail review hearings and makes recommendations at that hearing concerning the individual's pretrial status. If the individual is released to the community without bail by the judge, the PRSP may supervise the individual to help ensure he returns to court as required and remains arrest free. The PRSP then reports to the court the adjustment to supervision the individual has made. By working with various mental health service providers and the family, the PRSP's goal is to make sure the individual shows up for trial and all other court dates and remains arrest free. For further information call 410-986-5900.

Insert local information

I. The Attorneys

The Prosecutor or State's Attorney

The prosecutor represents the state and is focused on justice and public safety. In cases that involve minor offenses or some cases involving first-time offenders, the prosecutor often has the authority to support a pretrial diversion plan by dropping or deferring prosecution. (See Section IIIJ, Pretrial Options.)

Several criteria help the prosecutor make these decisions, including the type of offense, the individual's prior criminal record, the wishes of the victim, and public safety risks. The prosecutor often also considers the relationship of the individual's mental illness, the behavior that led to the arrest, and whether the individual was receiving adequate community treatment.

It is generally inappropriate for friends or family to contact the prosecutor without the defense attorney's consent. It may also be counterproductive for them to share information with the prosecutor.

If the defense attorney feels that the prosecutor assigned to the case is not knowledgeable about the influence mental illness can play in criminal behavior, the defense attorney may consider discussing the issue with the prosecutor's supervisor.

The Defense Attorney [10]

Under the U.S. Constitution and Maryland law, every individual charged with a crime for which the penalty can be incarceration, jail, or prison, has a right to an attorney, whether or not the individual has money to hire one. He is informed of this right to legal representation during the arrest (the right to counsel is part of the Miranda Warning), and during the bail hearing and bail review. Individuals who are not able to afford an attorney and who meet income eligibility requirements may qualify for Public Defender representation, at no cost. Although an individual is permitted to represent himself in judicial proceedings, it is virtually never a good idea.

A criminal defense attorney represents the individual charged with criminal behavior, known as the defendant. The defense attorney negotiates with the prosecutor for a pretrial disposition of the case, defends the individual in court proceedings, and if the individual is found guilty, provides the court with relevant information to justify mitigation, or reduction, of the sentence. (See Section IIIM, Sentencing.)

Many people, including some lawyers, mistakenly believe that people with psychiatric disorders generally understand the nature of their acts and that mental illness defenses are always attempts by guilty personsto avoid responsibility for criminal behavior. It is absolutely essential to obtain a defense attorney with the special skill and knowledge needed to be effective in a criminal case involving mental illness, because brain disorders can significantly affect the ability of an individual to defend himself in court.

- He may not understand the impact of voluntary statements, or be able to judge the appropriateness of volunteering information.
- He may not understand his legal rights, including those he received in the Miranda Warning. (See Section IIIA, Interacting With Police, Options Available to Officers.)
- His statements may not be reliable or consistent.
- Mental illness may affect an individual's ability to make considered decisions, their reasoning, judgment, volition, and comprehension.
- He might not understand cause and consequence or be able to learn from prior mistakes.
- He may inappropriately waive his rights, including the right to counsel, the right to be present, the right to trial and appeal, and the right to testify.
- In total, the individual may not be able to meaningfully participate in the preparation of his defense or trial.

All attorneys have an ethical obligation to zealously represent each client. When the client is an individual with a mental illness, the attorney is obligated to explore any mental health issues that may affect the case. An attorney's failure to obtain the assistance of qualified mental health professionals may violate the individual's Sixth Amendment right to effective assistance of counsel in some cases.[11] An individual's prior psychiatric history may indicate the need for a professional psychiatric evaluation.

If a criminal defense attorney is unwilling to learn about mental illness and the role it plays in the individual's life and how it may have impacted the behaviors leading to criminal charges, you may want to consider other available options. It can be helpful to draw attention to any special circumstances that can help an individual's case.

As an advocate for an individual, you should establish that the attorney you are thinking of hiring, or a court-appointed attorney, has the necessary skills and experience in criminal defense and is familiar with mental illness issues. Ask the following:

- What is the attorney's education and professional experience?
- How long has he been a defense attorney?
- What experience does he have in criminal courts?
- Has he handled similar cases?
- Does he understand and is he sympathetic to the mental illness involved?

Office of the Public Defender

In Maryland, the Office of the Public Defender usually provides government-paid counsel. The Officeof the Public Defender has full-time attorneys, investigators, and social workers who provide criminal defense services to individuals who cannot afford to pay. It may be helpful to ask the office to assign a social worker to the individual's case.

Most public defenders work very hard and usually provide very high-quality services. They typically have more experience working with individuals with mental illness and with local resources, and have more access to support staff, than other criminal defense attorneys. Large caseloads may limit the time a Public Defender can spend with the individual or their supporters, but heavy caseloads also provide the Office of the Public Defender attorneys with a tremendous amount of specialized experience.

Insert local information

Private Attorney

If an individual charged with a serious criminal offense is not eligible for a Public Defender, he will need to hire a private attorney. Again, it is important to determine whether the attorney has special skills and experience in criminal defense cases involving mental illness. Seek referrals from someone familiar with the criminal court system, such as your family general practice attorney; a judge; or a sheriff, police officer, or probation officer. Membership in the National Association of Criminal Defense Attorneys reflects a commitment to criminal defense work.

Confirm costs right away. Insist on a written fee agreement. Private criminal defense attorneys usually require payment of the entire fee in advance.

Assisting the Attorney in Helping the Individual

Establish open lines of communication with the attorney before any court appearances. Stay involved and helpful. Do not wait for the defense attorney to contact you, but offer to provide information. Do not expect to get confidential information from the attorney. Be brief and concise when you share information.

You may need to further educate the defense attorney about mental illness, as well as the individual's specific mental illness issues. Family members and mental health service providers can be the best and most current source of information about an individual's mental health, substance abuse treatment, and history.

Provide information in writing to the attorney. A criminal defense attorney may not have time or be available for phone calls. Provide a relevant, concise summary (see Section IB, Preparation for Crisis, Create a crisis file) that includes:

- psychiatric and other health history, hospitalizations, substance abuse treatment if applicable, past and current psychiatric medication and treatment, contact information for the current psychiatrist, case manager, and other mental health service providers
- names and contact information for witnesses who can confirm the mental illness and behavioral symptoms
- a list of any stressors at the time of the offense
- any criminal history or other legal problems
- SSI payments or other payments for a disability
- school and job history; other community supports and resources available to the individual (faith community, social services, family and friends, etc.)
- copies of medical and hospital records
- any written information provided previously to jail and other agencies

When in doubt about a particular point, include it. Let the attorney be the judge of what information is important to the case.

Keep track of court dates and times so you can attend. Confirm each court date with the defense attorney a few days in advance; the attorney can tell you if the hearing has been postponed, which is a common occurrence, and what to expect at the proceedings.

Offer to assist the attorney in locating witnesses or collecting evidence because they may not have the resources to do so. Let the attorney know that you care about the individual and what happens with the case.

The attorney represents the individual, not others, even those who pay the bills. Most attorneys will try to regularly communicate important developments with an individual's family and mental health service providers. There may be times when the attorney cannot communicate with you because the individual has requested that the attorney not speak with you. If the attorney consistently does not return calls, send or fax a letter outlining your attempts at reaching him, and describe the information you need or what you would like the attorney to know about the individual or the case.

Special Considerations for Family and Friends

Communicating with the Individual. Conversations between relatives and the individual are not confidential, and the contents can be used in court. Relatives may be called to testify at the trial either for or against the individual. If the individual wants to discuss the case, it is in his best interest, and possibly yours, to have him ask the advice of the defense attorney first. If a police officer or prosecutor contacts you about your family member or friend's case, you do not have to talk to them. If you are notified that you might becalled to testify at trial, do not talk about the individual's case with other witnesses and avoid contact with jurors or potential jurors.

Communicating with the Defense Attorney. Even if the family or friends play an active role in selecting a defense attorney or are footing the bill, the attorney's ethical obligation is to the defendant. Furthermore, an individual cannot be forced to accept an attorney selected or hired by someone else.

The defense attorney's priority is the best interest of the client. Family members may want the individual to get treatment as a result of the case, but if an individual insists that he is not ill and opposes all treatment, the defense attorney will have to represent the individual's wishes.

Communications between the individual and the attorney are privileged, and the attorney must keep them confidential. Some procedures employed by a defense attorney, such as excluding family members from strategy sessions, can seem irritating to a concerned relative; however, such practices are designed to avoid ethical

violations and to best serve the client. If the attorney allows a relative to attend an interview of the individual, even with the individual's consent, the interview content is no longer privileged, and the familymember might be compelled in court to disclose what was said. Remember, even though communications from the defense attorney may be limited, family members and friends can give information to the attorney.

If You Disagree with the Defense Attorney

The legal process can seem complicated and strategies used are not always obvious, which can lead to misunderstandings. Tell the attorney about your concerns and ask for an explanation. It is not unusual to feel that the attorney has not followed up on leads or that seemingly important evidence is being ignored. Sometimes it may appear that the attorney is too busy to fully represent the individual, perhaps requesting what seem like too many delays. You may feel that the attorney has not explained all the options available to the individual, or that the attorney does not understand the effects of mental illness.

Many times these misunderstandings can be resolved. If a Public Defender is involved and you feel that the response to your concerns is inadequate, you can contact the Public Defender who supervises cases involving mental illness and express your concerns. If the individual is unhappy with a court-appointed attorney, he can ask that the attorney be relieved from the case and that a new attorney be appointed. The individual must tell the current attorney that a different attorney is desired; then the current attorney must tell the judge at the next court date. In most cases, judges deny such requests, finding that the attorney is doing a good job or that it would take too long for a new attorney to catch up.

The person who pays for a private attorney can fire him and hire a new attorney. This will delay the case. But remember, the attorney's only responsibility is to represent and obey the wishes of the indivdual, even if paid for by the family. An attorney can also ask the judge to be relieved from representing a client, but this is rare.

In extreme cases, the individual can file a grievance against the attorney with the State Attorney Grievance Commission. However, this will not immediately solve the problem or help to get a new attorney appointed.

J. Pretrial Options

The judge or prosecutor can exercise a number of pretrial options, discussed below.

Often the individual will undergo a pre-sentence mental health evaluation to help the judge or prosecutor in determining whether to exercise a pretrial option, e.g., to dismiss the case, drop or defer charges or arrange a plea bargain. The individual may be held in jail at least until the evaluation has been completed. In addition, the individual may undergo a competency evaluation to evaluate whether he can participate in his defense. (See Section IIIK, Competency vs. Criminal Responsibility.) In many instances, even if the case is dismissed or the charges are dropped or deferred, the arrest will remain on the individual's record. (See Section IVB, Arrest and Conviction Records.)

Judge May Dismiss Case

The judge has the authority to dismiss a case entirely. This decision may be based on the actions of members of the criminal justice system (see below) or the lack of a substantial case against an individual.

Prosecutor May Drop Charges

The prosecutor may decide not to file charges. In this event, the judge will formally dismiss the case, and, unless the prosecutor asks for more time to do an additional case investigation, the individual will be released from jail. While the initial case may be dismissed, new charges may be filed if new evidence is discovered. If the case is dismissed because no charges are filed, confirm that the prosecutor has a usable address for the individual, in order to notify him if new charges are filed. This will enable the individual to surrender voluntarily and avoid the need for arrest.

The prosecutor may agree to dismissal if the mental illness and its effect on the individual's judgment at the time of the offense are clearly documented.

Involuntary Commitment. In Maryland, especially when the offense is a minor one with minimal potential for jail time, the prosecutor may agree to dismiss the case conditioned on the individual's involuntary commitment for mental health treatment. (See Section IIE, Involuntary Treatment.)

Nolle Prosequi ("Nol Pros".) Nolle prosequi, Latin for "unwilling to prosecute," is a formal entry on the record by the prosecutor stating that the case will not be pursued but will be dropped. "Nol pros" can be entered in the case any time after charges are brought, but before a plea is entered or a verdict is returned.

At the Request of The Complaining Witness or Victim. Sometimes, family or friends have brought the original charges against the individual in an attempt to get him mental health treatment and assistance. Caution: in Maryland, no victim or witness can drop criminal charges. They can ask the prosecutor to drop charges, but the decision to do so resides solely with the prosecutor and the court.

Even if family or friends ask the prosecutor to drop charges, prosecutors can, and often do, compel through subpoena witnesses to testify in a criminal proceeding. This is commonplace if the offense is violent or the individual is perceived as dangerous. A spousal privilege, protecting the privacy of communications between a husband and wife, can be invoked in very limited circumstances in consultation with the prosecutor.

Important note: Anyone, including family members, friends, advocates, and even the individual charged, who contacts a victim or witness in an effort to have charges dropped or testimony changed may face criminal witness intimidation or obstruction of justice charges.

At the Request of The Arresting Officer. In many jurisdictions, the arresting officer may be willing to ask the prosecutor to dismiss the charges if presented with evidence of the mental illness, especially if the individual is charged with a nonviolent crime or if the offense involved a confrontation with the arresting officer. Contact the law enforcement officer and ask what they want to know. A recent, brief letter signed by a doctor may help. Keep a copy of whatever you provide to the officer. Of course, the decision to drop charges rests solely with the prosecutor.

Prosecutor May Defer Prosecution (Pretrial Release)

The prosecutor may offer, and the judge may approve, a deferred prosecution of the charges if the person agrees to participate in a treatment program for a specified period of time and to successfully complete all program requirements. Upon successful completion of the treatment program, charges may be dropped or reduced. Family, friends and other advocates should not talk to the prosecutor, but can encourage defense counsel to request that the prosecutor consider deferred prosecution or diversion. An advocate may provide the defense attorney with information about the person's mental illness and the supports available to the person in the community. If reasonable, the advocate can offer to take responsibility for monitoring the person. The advocate should be careful not to promise more than he can deliver.[12]

Prosecutor May Stay Proceedings (Stet)

The prosecutor may also choose to place a case among a group of inactive cases that generally are not reopened. This group of cases is known as the "stet docket."

Plea Bargains

Prosecuting and defense attorneys often negotiate deals known as plea bargains.

- The prosecutor may offer to ask the judge for a reduced sentence if the individual pleads guilty.
- A specific probationary or final sentence may be negotiated.
- The prosecutor may offer to allow the person to plead guilty to a lesser charge.
- A negotiated sentence may include treatment conditions.

The judge must approve all plea bargains and makes the final decision about sentencing. The judge and

prosecutor must regard the safety of the community as their priority. The individual may require help and treatment of the underlying mental illness to comply with conditions of release.

While the individual's supporters may view getting the individual into treatment as the best plan, the defense attorney likely believes that accepting the least severe charge and the shortest resulting sentence are in the individual's best interest.[13] The defense attorney has the obligation to describe all of the pros and cons of any plea bargain offer to his client.

K. Competency vs. Criminal Responsibility

In Maryland, a defense of Not Guilty by Reason of Insanity or the "insanity defense" is no longer available. However, the individual's mental health status at the time the crime was committed is essential to determining whether he can be held criminally responsible. In addition, the individual's competency to stand trial also must be considered.

An evaluation of an individual's competency and a criminal responsibility evaluation are two different types of evaluation. Competency is a transitory state; levels of competency can come and go. An individual's criminal responsibility is an assessment of the individual's mental status at the time of the alleged offense. He should be evaluated for both current competency and criminal responsibility in any case in which the individual's psychiatric condition may be a factor.

Court-Ordered Evaluations – An Overview

The court can order several evaluations to address psychiatric concerns: the competency evaluation, the Not Criminally Responsible (NCR) evaluation, and the pre-sentence evaluation. The first two evaluations must be requested at a formal hearing before a judge, which could occur at bail review or the trial. The pre-sentence evaluation occurs after trial, before sentencing.

Insert local information

Competency evaluation. A competency evaluation is a formal review of the individual's ability to understand the court process, the offense being charged, the possible penalty, and the possible dispositions.If the finding is Possibly Not Competent, the individual can be transferred to a hospital for further evaluation and treatment. The issue of the individual's competency to make informed decisions can be raised by the prosecutor, the defense attorney, or the judge at any point in the trial process. (See below for more detail.)

Not Criminally Responsible (NCR) evaluation. A Not Criminally Responsible (NCR) evaluation is initiated by the defense attorney. The NCR evaluation addresses whether, at the time of the alleged offense, the individual had the ability to conform his behavior to the law and appreciate the criminality of the offense. (See below for more detail.)

Pre-sentence evaluation. A pre-sentence evaluation, including a psychiatric evaluation, can be ordered by the judge after a conviction to identify any mental health issues prior to sentencing. Information learned through the evaluation can help the judge craft an appropriate sentence, possibly including treatment recommended by the evaluator. (For more detail, see Section IIIM, Sentencing.)

The Competency Evaluation

The law presumes all adults to be competent to make informed decisions about fundamental issues such as the ability to understand charges, and whether to accept a plea bargain agreement or to proceed to trial. Once the question of an individual's competency is raised, the criminal proceeding will be suspendedwhile an assessment of the individual's mental status is completed and the competency of the individual to participate in his trial is established.

The law defines being incompetent to stand trial as:

- not able to understand the nature or object of the proceeding, or
- not able to assist in one's defense. (Maryland Criminal Procedure Article §3-101(f.))

IN PROCESS

If a defense attorney has reason to believe that the client is incompetent, a competency evaluation should be immediately requested, and the individual should not be allowed to make any decisions about the case.

In Maryland, when a question of incompetence to stand trial is raised, all adult defendants are referred to county-based forensic screeners. These screening evaluators conduct a brief assessment, usually in the jail or courthouse, during which they attempt to determine if the individual is clearly competent or may not be competent to stand trial. The evaluator's opinion is forwarded to the court, which formally finds the individual competent or incompetent.

Evaluations may be conducted on an inpatient or outpatient basis. Only those who appear seriously illor possibly incompetent are hospitalized at the time of the assessment. If the evaluator suspects either malingering or mental health problems, an individual may be admitted for observation. If the individual is referred for evaluation while out on bail or bond, he will be evaluated on an outpatient basis, and only admitted if he meets civil commitment criteria.

Court Finds Legally Incompetent

An individual found to be competent proceeds with trial or a plea. If an individual is found incompetentto stand trial and dangerous to himself or to the person or property of others due to mental illness, he is committed to the state psychiatric hospital for inpatient treatment, whether or not the individual has insurance. An individual found incompetent to stand trial, but not dangerous to himself or to the person or property of others, can be placed on pretrial release. There will be conditions to comply with prescribed treatment requirements, designed to maintain that individual in a non-dangerous state. Some courts use the competency assessment process to engage in diversion of individuals with mental illness charged with less serious offenses. (See Section IIIG, The Courts, Specialized Mental Health Court.)

An individual committed to a state psychiatric hospital must be regularly re-evaluated. If the hospital believes the individual has improved and is now competent, or if the hospital finds that the individual remains incompetent but is no longer dangerous to himself or to the person or property of others, the hospital reports this to the court, which must hold a hearing within thirty days. If after significant treatment efforts the hospital staff believes that the individual is unlikely to be restored to competency in the foreseeable future, the hospital reports to the court, which again must hold a hearing within thirty days. If the court agrees with the hospital that competency is unlikely to occur in the foreseeable future, the charges may be dismissed and the individual, assuming he meets criteria for civil commitment (see Section IIB, Involuntary Evaluation – Getting an Emergency Petition), will be civilly committed to the hospital.

Not Criminally Responsible Evaluation

The individual may decide to plead Not Criminally Responsible (NCR) for criminal conduct, in which case the defense must prove that at the time of that conduct, the defendant, because of mental disorder or retardation, lacked substantial capacity (1) to appreciate the criminality of his conduct or (2) to conform that conduct to the requirements of the law. The judge determines whether the defense has proven all the required elements of the defense.

When the individual enters a plea of NCR, he will be referred to a designated, court-approved community forensic screener for an assessment. As with competency evaluations, the screener determines if the individual clearly does not meet the criteria for an NCR, in which case the individual is referred back to court. However, if there is any possibility that an individual meets the criteria for NCR, he will be referred to the state psychiatric hospital for a more in-depth evaluation. The level of assessment depends on the severity of the crime and the possible sentence. A comprehensive mental health examination may include:

- a thorough physical and neurological examination,
- a thorough psychiatric and mental status examination,
- diagnostic studies, including personality assessment,
- neuropsychological testing,
- brain scans, and
- a blood test or other genetic studies.

Even if the hospital concludes that the individual does not meet the NCR criteria, the defense attorney may still request that the individual be evaluated by an expert of the defense attorney's choosing. Usually the issue is settled through a plea bargain, but opposing experts on NCR may be called at trial.

Court Rules NCR: What Happens?[14]

If the court determines that the individual is NCR, he will be committed to a state psychiatric hospital for treatment. He will not be released until it is proven that he is not a danger, as a result of mental illness or mental retardation, to himself or to the person or property of others. As an alternative to commitment, the court may order the individual's release, with or without conditions, if (1) an evaluation by the Department of Health and Mental Hygiene (DHMH) authorized facility within ninety days of the verdict indicates the individual would not be a danger and (2) the individual and the state's attorney agree to the release and to any conditions the court may impose.

When committed, an NCR individual is entitled to an administrative hearing within fifty days to determine if he meets criteria for release with or without conditions. To be released, the individual must prove by a *preponderance of the evidence* (see Glossary) that he would not be a danger to himself or others or to the property of others. Within ten days after the hearing, the administrative law judge reports his recommendations to the trial court. The trial court may hold a hearing within thirty days, but must hold a hearing if timely objections are filed and the hearing is not waived. The court may order continued commitment, conditional release, or release without conditions.

An individual committed to a state hospital has the right to ask for a release hearing annually, which may be an administrative hearing or a court trial. Hospital staff can propose a release and request a hearing at any time.

The individual may be released without conditions, in which case the court would no longer have any authority over him. However, most NCR individuals are eventually released with court-required conditions. When released on conditions, the individual remains under the court's jurisdictional authority, which means that the judge can impose consequences if the individual does not comply with the conditions. Initial orders of conditional release may not exceed five years, but can be extended for a second five-year period. The court can make changes in the conditional release order at any time if the mental health facility/DHMH or the state's attorney requests. Individuals may also request changes after six months. A conditional release plan will include where the individual will live, who will coordinate and/or provide mental health treatment, and contact information for all employment, vocational, rehabilitation, and other community providers, such as substance abuse or peer support programs.

The conditionally released individual will generally be referred to community mental health programs and adherence to the conditions will be monitored by the Community Forensic Aftercare Program (CFAP) of the Maryland Health and Mental Hygiene Administration's Office of Forensic Services. If the individual does not comply with the conditions, or if his illness worsens, he may be required to return to the hospital. A hospital warrant for the individual's return to the hospital may be issued and a hearing held to determine whether the conditional release order should be revoked and the individual required to remain in the hospital.

CFAP relies heavily on community service providers to give regular feedback about the individual's clinical status and adherence to the release conditions. Some individuals on conditional release return to the hospital annually because of a failure to comply with the conditions imposed, which is not surprising given the chronic and recurrent nature of mental illness.

NCR is not a typical plea, because the criteria are relatively stringent. In addition, many individuals charged with minor crimes are justifiably reluctant to plead NCR, given the indefinite nature of the commitment to the state hospital. For example, the maximum sentence for trespassing is ninety days, but many individuals will have served that time in jail before a trial even begins. Pleading NCR could result in a longer commitment.

L. Trial

The prosecutor must prove the individual's guilt beyond a reasonable doubt. This determination will be

made by a judge or jury. Any individual with mental illness who is deemed competent to stand trial will make the final decision, with their attorney, about how to proceed with the case, whether to bring up mental health issues at trial, and whether treatment should be part of any plea bargain or other disposition. (Regardless of the trial's outcome, the arrest may remain on the individual's record unless expunged, see Section IVB, Arrest and Conviction Records.)

Jury Trial vs. Bench Trial

An individual charged with a crime for which the possible penalty is ninety days' incarceration or greateris entitled to a jury trial. However, the individual may waive the right to a jury trial and be tried by a judge (often referred to as a bench trial) in either District or Circuit Court. The individual should discuss the options with the defense attorney.

If a jury trial is requested and the alleged crime carries a possible penalty of ninety days or more in jail, a case before the District Court will be transferred to the appropriate Circuit Court. The request for a jury trial must be filed at least fifteen days before the scheduled trial date; otherwise, a District Court judge will hear the case. The decision to pursue a jury trial instead of a bench trial depends on a variety of factors, which the individual should discuss with the defense attorney.

Special Considerations for Family and Friends

Presence of Family and Friends at Trial

Having family and friends at the trial helps the individual feel supported, and lets the judge and jury know that the individual has community support. Family and friends are not allowed to speak to the individual, the judge, the jury, or even to the attorneys without the court's permission.

Family, Friends and Experts' Testimony and Assistance

If family, friends, and advocates are interested in testifying on the individual's behalf, they should speak to the defense attorney before the case goes to court. The attorney will know best what will help the individual's case. Trust the attorney's experienced judgment about whether or not your testimony would help the defense.

Attorneys sometimes call expert witnesses, such as psychiatrists, to testify in a trial about mental illness because they feel it will help the case. Even if the attorney thinks it is not in the individual's best interest for you to testify, you may be able to assist the attorney in identifying a psychiatrist whose opinion you trust. You may also be able to help the attorney obtain medical, hospital, employment, and school records of the individual.

Emphasizing Mental Illness at Trial

Family and friends may disagree with the defense attorney about the role of the mental illness in the criminal incident or about how to raise the individual's mental illness. (See also Section III I, The Defense Attorney and Section IIIG, The Courts, Specialized Mental Health Court.) The defense attorney may have experience that bears on this issue. For example, he may have tried cases before juries unsympathetic to defenses based on mental illness, especially when violent crimes have been involved. He may wish to minimize the role of mental illness feeling that otherwise a jury may give a harsher sentence to the individual. Ask the attorney to explain his reasoning.

M. Sentencing

If the individual is convicted of the crime at trial, the judge, using legislatively mandated guidelines, will impose a sentence or punishment. The guidelines may allow some judicial discretion, dependent on a variety of factors. These include the individual's criminal and social background, mitigating factors (see below), the severity of the crime, the pre-sentence investigation report (see below) and, sometimes, victim impact statements. Sentences vary and can include jail or prison terms, conditional discharge, fines, restitution to the victim, community service, or probation. Probation often includes a jail sentence that is waived so longas the

individual continues to meet the probation conditions.

Mitigation

Mitigating circumstances can indicate that a lesser sentence is appropriate. Mitigation is not a defense of or an excuse for the crime. It is an explanation of the influences leading up to the crime, how a damaged brain might have led to behavior. The defense attorney must present evidence to the judge or jury showing the individual as someone with significant impairments and disabilities that limit reasoning or judgment— without justifying or excusing the crime. Mitigation evidence can be used to argue for shorter terms of incarceration, for various forms of diversion from jail or prison to other systems, or probation with special conditions instead of incarceration.

Pre-sentence Investigations

The Division of Parole and Probation provides a background investigation, conducted upon request by the court after conviction but prior to sentencing. The report contains information about the individual's criminal history, background and community supports, and the circumstances of the crime. It is used by the sentencing judge to determine the individual's risk to the community and the proper sentence to impose. (A pre-sentence investigation can also be requested by the judge at a much earlier phase in the trial process.)

Raising Mental Illness at the Punishment Phase (Sentencing)

The evidence considered by the judge or jury at the sentencing phase is much broader than when determining guilt or innocence. Diagnosis, behavioral symptoms, extent of the disability, its effect on the crime, and likely success of alternative treatments or sentences all can be considered.

The defense attorney may advise the individual to waive a jury sentencing and submit mental health evidence directly to the judge. Advice on whether to waive the right to a jury for sentencing depends on the charges involved, the experience of the judge hearing the case, and whether the prosecutor and the defenseattorney can and do come to an agreement on this and other issues.

If the defense attorney goes to the judge for sentencing and seeks probation, the defense attorney must provide a plan, which may include a stable place to live, treatment professional(s) and program(s) that are likely to ensure the individual's good behavior. The attorney may bring in witnesses who know the individual, including mental health service providers and family members to testify.

An individual who is indigent may be constitutionally entitled to the assistance of a court-appointed mental health professional at sentencing proceedings.[15] Even if the defendant does not qualify for the assistance of a court-appointed mental health professional at sentencing, it is helpful to involve one in the process by hiring a community mental health service provider who is respected by criminal justice personnel. The level of effort expended on sentencing depends on the severity of the crime and the possible punishment.

Insert local information

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Advocating for Treatment at Sentencing

Advocates can provide information to the court (and, if involved, the probation staff) that the individual has been engaged in treatment, has positive ties to the community (is unlikely to flee) and will have the active support of mental health and other community services, or can be effectively monitored (e.g., another entitycan take responsibility for the individual.)[16] The outcome will depend on several factors:

The individual must agree to treatment. The individual will not be sentenced to treatment unlesshe chooses that option when offered. The individual should be told what the attorney and mental health service providers believe are the chances of staying out of trouble if he does not accept treatment and what penalties might occur for a subsequent offense.

The defense attorney must think treatment is a "good deal." If a defense attorney thinks the treatment

offered is disproportionate to the seriousness of the offense, the length or severity of available punishments, or that the individual will not stay in or improve from treatment thus being likely to re-commit an offense, he will not support a sentence requiring treatment. His role is solely to protect the legal rights of the client in the current case. This means his job is to get the shortest or least severe sentence; this may result in choosing a shorter jail time over longer-term treatment. Advocates may be able to provide the defense attorney with supporting evidence that the individual can benefit from treatment and that there are available programs capable of preventing a re-offense.

The judge and the prosecutor must agree to a treatment sentence. The prosecutor considers public safety, the likelihood of repeat offenses, violence, and even the public visibility of the case. If the individual is already on probation or parole, then the probation or parole agency must also agree.

If the individual is currently receiving supervision from probation and parole and is facing new charges or revocation, the probation or parole agent can be helpful in convincing the judge and prosecution that treatment is a viable option and that the agent will stay on top of the individual's compliance.

The individual must be accepted by a treatment program. Defense attorneys can often use help to find a social worker or other mental health worker to get the individual into a treatment program that has successful outcomes for criminal offenders with mental illness. Social workers may be available through the defense attorney's contacts, the court, the local mental health agency, or another community agency. A history of substance abuse, use of prescribed medications that are controlled substances, and the seriousnessof the criminal behavior will have an impact on how difficult it is to find a program that will admit the individual. Many programs simply will not accept clients released from jail or prison, whether or not they can pay for the services. Unfortunately, the process of locating a program may take months and the individual may stay in jail, prison or in a state psychiatric hospital until an acceptable space is arranged.

Insert local information

The individual must stay in treatment to stay out of jail. The individual must comply with the conditions of any treatment program and will be required to report regularly directly to the court or, where applicable, to his probation officer. If the individual leaves the treatment program, refuses to take prescribed medication, uses illegal drugs, or otherwise does not cooperate with treatment, the coordinating program will notify the court directly or, where applicable, the probation officer. The judge sometimes may consider the circumstances and give the individual another chance or the judge may sentence the individualto jail or prison. Sometimes failure to comply with a treatment program can result in a longer sentence than if the individual had pled guilty and accepted a jail sentence originally. Family, friends, and advocates need to support the individual's efforts to meet conditions and make sure that the individual understands the possible consequences of failure to comply. (See Section IIIN, Post-Conviction, Probation and Parole and
Section I, Mental Health Crisis Prevention and Preparation.)

Untreated substance abuse can negatively impact success. Many individuals with mental illness also have co-occurring substance abuse problems. Individuals with such co-occurring disorders can have difficulty complying with sentencing conditions if they do not receive special "dual-diagnosis" treatment. NAMI supports integrated dual-diagnosis treatment, which treats both psychiatric and substance abuse disorders at the same time and site, preferably by cross-trained staff. Such programs should be sought out, but are not typical and are not therefore always readily available.

N. Post-Conviction

New Trial or Appeal

If after consultation with the defense attorney, the individual does not agree with the verdict or the sentence imposed, and there is a legal basis for doing so, a motion for a new trial can be filed. This is rarely granted.

In the event of a denial of an appeal for a new trial, an appeal can be filed with an appellate court. If the original trial was in District Court, the appeal will be heard in Circuit Court. If the original trial was held in

the Circuit Court, the appeal will be heard by the Court of Special Appeals. Because appellate law is a specialized area of criminal defense, it is almost certain that the trial defense attorney's role in the case has ended, to be replaced by an appellate specialist. Most individuals do not have sufficient funds to meet a bail required after trial, and judges very rarely lower bail or grant release after an individual loses a criminal trial. Therefore, unless the judge determines the individual defendant does not deserve incarceration, it will be almost inevitable that the individual defendant will remain in custody or will be remanded to jail in the event of conviction and while waiting for an appeal.

Release from Incarceration

Opportunities for Sentence Reduction, "Good Time," And Work Release

The individual can reduce the length of incarceration time by earning diminution credits (see below.) These credits, up to 15 per month, are deducted from the total number of days of the sentence and can significantly reduce the length of incarceration. A "Mandatory Supervision Release" date is derived from this deduction of credits and the final total determines the date the individual will be released back into thecommunity. Because the credits are cumulative, the Mandatory Supervision Release date changes month to month depending on the activities of the incarcerated individual.

Diminution credits can be earned in several ways. Upon being committed to the Division of Correction, the individual is automatically given five days of "good time" (or "good behavior") credit per month for the entire term of incarceration. This starting complement of credits supports and encourages cooperative behavior. These credits are added to throughout the term of sentence, unless they are lost as a sanction for misbehavior. Up to fifteen additional credits can be earned each month depending on the individual's participation in available educational, industrial, or special programs.

As the individual nears the release date, he may be offered the opportunity to leave the facility on a work release program. Qualification for work release is based on a number of factors, including sentence time remaining, the availability of an approved job, criminal history, and the potential risk to the community. An individual's family and advocates can help his chances for work release by locating, or if possible offering, an employment opportunity.

In work release, the individual is able to live in a less restrictive (lower-security) housing location, to leave to work every day at an outside job, earn the standard wage for that job and return to the facility at night. Work release provides a link to a job that could continue after release and the ability to earn money to prepare for returning to the community.

Planning for Release

Treatment as a condition of release. Mental health staff in jails and prisons can often recommend continued treatment as a condition of probation or as a condition of parole or supervised release. Compliance with treatment is often recommended to ensure public safety. If released under this condition, the individual must maintain strict compliance to remain in the community.

Discharge Planning. Discharge planning is the process of connecting the individual being released from incarceration (or "discharged" from the hospital) to benefits and services that will help him successfully transition to and stay in the community. The individual's participation in any discharge planning is voluntary. An incarcerated individual must sign a release form to allow corrections social workers and other treatmentstaff, as well as parole and probation staff, to discuss release planning with others such as community-based mental health service providers or family members. Family and close friends can often provide or reinforce background information, history of the illness, employment and treatment history, military status, veterans and other possible benefits and services etc.

It is important when trying to develop a comprehensive release plan that social workers have a complete picture of the individual they are helping succeed. A discharge plan should address at a minimum how the individual will get medications and treatment, how they will handle financial and legal issues/benefits, and where they will live. The discharge plan should take into account benefits which may have lapsed while the individual was incarcerated or for which the individual may newly be eligible (e.g., insurance, medication, financial, etc.)

A common problem that must be addressed is a post-release interruption of medication and services/ benefits, which can increase the individual's challenge of returning to the community. For example, can the individual get prescriptions immediately upon release or must they be reconnected with prescribing professionals, insurance or public benefits, etc. Often the benefits that the individual had before conviction may have been terminated or suspended when he went to jail or prison. The process of reapplication and reinstatement of suspended benefits can be time consuming and confusing. The process to requalify for various benefits can vary depending on the length of the incarceration, and the type and source of the benefit or community support, such as medical insurance or assistance, veterans benefits, Social Security (SSI), Social Security Disability (SSDI), housing, etc.

Advocating for coordinated release planning. Before the individual is released from prison, it is essential to press for coordinated release planning and case management. Community-based mental health service providers, the public mental health system, and corrections staff should all be included. Systems staff and community providers can identify issues and access resources. Corrections staff can ease the release transition and facilitate communication between the agencies and departments inside and outside the corrections facility. Advocates may wish to develop a list of advocacy agencies, community service organizations and legislators who are sympathetic to mental health issues, in case legal or transition issues arise that need additional problem-solving resources. (See also IIID, Jail, Helping an Individual in Jail.)

Insert local information

State of Maryland corrections staff release planning duties. Maryland Department of Public Safety and Correctional Services (DPSCS) social workers are required to provide release planning assistance to ensure that community-based services and supports are in place. A social worker will be

assigned within nine months before release. Concerned family members and supporters can call the social worker at the institution to alert them of upcoming needs. Social workers are not posted at every facility, so if a worker is not available, contact the DPSCS Director of Social Work and ask for a referral to an appropriate professional.

Probation and Parole

Probation

Probation is a part of a sentence that serves as an alternative to jail. Individuals on probation are supervised in the community. Terms of probation often include conditions set by the judge and monitored by the probation officer, with jail time if the individual does not follow the probation conditions. Typically conditions for individuals with mental illness include their continued treatment and medication.

Mental Illness in Decisions about Probation. As discussed previously, a judge can condition probation on treatment and can amend the conditions of probation at any time. An individual with mental illness may need special support to succeed in meeting these. He may have trouble keeping appointments, maintaining full-time employment, performing any required community service, regularly attending substance abuse treatment programs, or completing schooling. It is often helpful to advocate for conditions that can help the individual successfully complete the probation, such as assertive or intensive case management or other supportive mental health treatment services. Including such treatment as one condition of probation can help individuals succeed in meeting their other obligations. (See Section IIIM, Sentencing, Advocating that an Individual be Sentenced to Treatment.)

Supervised Probation. The Maryland Division of Parole and Probation is responsible for the supervision of all offenders placed on supervised probation by a Maryland Circuit or District Court. An individual with a District Court conviction in Maryland may be on probation in the community for a maximum of three years, which can then be extended up to five years for the purpose of paying restitution. An individual with a Circuit Court conviction may serve a maximum of five years' probation. While on probation, the individual must report to a probation officer and comply with all conditions set by him as well as by the court.

Unsupervised Probation. It is occasionally possible for a judge to place a criminal individual on unsupervised probation (i.e., not supervised by a probation officer.) If someone such as the mental health service provider or the police determines that the individual has violated the court's probation conditions, the State's Attorney for the county where the individual was sentenced is usually notified. The State's Attorney will usually request the court to issue an arrest warrant as outlined above if the court has not already done so.

Specialized Probation. The individual may be placed on a specialized probation caseload, supervised by a probation officer who typically has received special training on the needs of people with mental illness. The case officer monitors a smaller number of clients and focuses extra attention on each individual. To qualify for this type of service, contact the Division of Parole and Probation (see below), and notify the staff of the individual's mental illness and the impact it may have on his ability to meet the conditions of probation. Ask the Division of Parole and Probation to authorize a psychological exam and provide support and information to aid in successful probation outcomes.

Parole

Parole involves the supervision of someone who has returned to the community after serving a sentence in prison. It is a conditional release granted by the Maryland Parole Commission after a hearing to determine if an individual is suitable for release. The Division of Parole and Probation conducts background investigations on inmates in county detention centers for the Commission for use in the individual's parole hearing. Parolees must report to a Parole and Probation officer and comply with all conditions set by the Parole Commission.

Mandatory Supervision. Mandatory supervision is a period equal to the "good time" diminution credits that earned the individual early release. Many inmates who are not paroled early still have a period of mandatory supervision by a parole officer after their release. County detention center releases do not involve mandatory supervision.

Meeting Parole and Probation Requirements

Parole and probation officers may conduct meetings with paroled individuals in the Division of Parole and Probation offices, in their homes, at their job sites, and at other locations in the community. An officer may also meet with family members, victims, mental health service providers, therapists, law enforcement and criminal justice professionals, employers, and members of the community. These contacts help the officer determine whether the individual under supervision is complying with the conditions of his release. Parole officers will work with the individual to safely maintain him in the community by making referrals to treatment mental health service providers or potential employers.

Typical conditions of release include:

- remaining crime free,
- maintaining employment,
- reporting to the officer as directed,
- no possession of weapons,
- no use or possession of illegal drugs or abuse of prescription drugs,
- no abuse of alcohol,
- consistent substance abuse treatment,
- mental health counseling,
- taking prescribed medication as directed,
- respecting "no contact" orders directing the individual to stay away from a person or place,
- paying restitution, and
- keeping the agent informed of the current home address.

Other conditions that could be imposed include electronically monitored curfew or home detention, sex offender registration, submission of a DNA sample, and computer use restrictions.

Violations of Probation and Parole

An individual's failure to meet the conditions of parole or probation has consequences. Officers are also instructed to have zero tolerance for violations of "no contact" orders, and to request warrants or summonses as soon as the prohibited contact is reported to them. Even failure to take prescribed medications or attend required treatment and therapy sessions is seen by parole and probation officers as an indication that the public's safety will be compromised.

If the individual fails to comply with probation, the officer may ask the court to issue a warrant for the individual's arrest. If a warrant is issued and the individual is arrested, he will appear before the same judge who imposed the probation. The judge will decide whether to continue probation or sentence the individual to incarceration.

If an individual on parole or mandatory supervision violates any condition of release, the parole officer can notify the Parole Commission and request a hearing. The individual may be sent back to prison.

Advocating for Individuals on Probation or Parole

Those providing assistance and support to an individual with mental illness on conditional release should encourage him to take all prescribed medications and attend all treatment and therapy sessions.

Be proactive. With the individual's consent, call the probation or parole officer and introduce yourself, explain your involvement and the individual's treatment and illness history. Help as a member of the individual's support network. Determine which release or disclosure forms must be signed to permit the release of confidential information to the individual's supporters and community programs.

Probation and parole officers are overworked. Consequently, they usually welcome observations and regular updates on their clients' progress from non-combative members of the individual's support network in the community. Clarify the supports and treatment available to help the individual to succeed. Prompt reporting of

situations and events that could trigger noncompliant behavior will allow an agent to intervene early and possibly preclude a violation. If the individual's officer is not available when reporting an urgent concern, ask to speak to a supervisor.

Contacting the Division of Parole and Probation

The Division of Parole and Probation (DPP) has at least one office in every county and multiple offices in the larger counties of Maryland and in Baltimore City. Telephone numbers for all Parole and Probation offices appear on the Department of Public Safety and Correctional Services web site, www.dpscs.state.md.us, and can also be obtained by consulting the Blue Pages of the phone book. If a caller contacts the wrong office in this large bureaucracy, the individual's probation or parole agent can be located by any member of the DPP staff, and the caller can be directed to the correct office. The caller should have the offender's complete name and, if possible, date of birth to assist in proper identification of the correct officer.

IV. Other Useful Information

A. Fees and Fines

Court or other fees and fines are the individual's responsibility. An individual on probation may be required to pay a monthly probation fee. Failure to pay fees and fines can result in a return to incarceration. If an individual is disabled and unable to work to cover these fees, it is possible to ask the judge to waive the fees. The court may make arrangements for a payment plan or volunteer work in lieu of payment. If the judge refuses, the probation agent may request they be waived, including the monthly probation fee. Each judge handles these requests differently.

B. Arrest and Conviction Records

An arrest appears on an individual's criminal record as a conviction if the individual was found guilty or paid a fine. In addition, an arrest or citation will probably appear on an individual's record even if the charges were dropped or the individual was found not guilty.

An arrest record or a conviction for even a minor misdemeanor could cause problems for the individual. A record can mean more severe charges or punishments if he is arrested again. A record can make the individual ineligible for some employment, such as child care or adult dependant care or other businesses required to ask about an individual's criminal history, and can affect access to public benefits like public housing or eligibility to vote.

Obtaining a Copy of the Criminal Record

The individual's criminal record is available from the Criminal Justice Information System (CJIS) for a fee of $38 (money

order or a personal or certified check; cash is not accepted.) CJIS is open weekdays 8 a.m. to 7 p.m. and Saturday 8 a.m. to 4 p.m. at:

~~CJIS – Central Repository~~
Reisterstown Plaza, Room 102
6776 Reisterstown Road
Baltimore MD 21215
410-764-4501
www2.dpscs.state.md.us/publicservs/bgchecks.shtml

A criminal record is also available from a state police barrack nearest you. To locate one, see www.mdsp.org/fob/barrack_choices.asp.

Expungement of Criminal Records and Charges[17]

Expungement is a court process that may let the individual remove certain records from public inspection. In Maryland, records may be expunged from 1) Motor Vehicle Administration files, 2) police files and 3) court and police files. Each process removes very specific files and must be done through the proper agency. No process expunges the records from all agencies.

Expunging Motor Vehicle Administration (MVA) Records. Many motor vehicle records are automatically expunged after three years; other records may be manually expunged, depending upon the offense for which the individual was convicted and the length of time since the individual's last conviction. For additional information, contact the MVA.

Expunging Police Records: when no charges were filed.

Effective October 1, 2007. An individual who is arrested or detained by law enforcement on or after October 1, 2007, and then released without being charged will have his criminal record expunged within sixty days following release. Although expungement is supposed to

be automatic, it is important that an individual or his advocate confirm that expungement has indeed occurred by obtaining a copy of the individual's criminal record.

Before October 1, 2007. An individual who was arrested or detained by law enforcement before October 1, 2007, and then released without being charged, can file a petition with the court to have his criminal record expunged. To get these records expunged, contact the arresting agency and request an Investigative Release Form. Ask the agency for specific information on how its process works. Expungement must be requested within eight years of the incident.

Expunging Court/Police Records: when criminal charges were filed.

Court/Police records may exist if an individual was arrested and charged with a crime, including a traffic violation for which a term of imprisonment may be imposed, or if the individual was charged with a civil offense or infraction as a substitute for a criminal charge.

To remove these records, the individual may file a petition for expungement with the court if any of the following occurred:

- He was found not guilty.
- He was found guilty of certain nuisance crimes.
- The charge was dismissed.
- The charge resulted in probation before judgment (excluding charges of driving while under the influence or driving while impaired.)
- A nol pros was entered in the case.
- The case was placed on the stet docket (indefinitely postponed.)
- The case was compromised (settled.)
- The individual was convicted of only one non-violent criminal act and was granted a full and unconditional pardon by the Governor.

Generally, the individual must wait three years before filing the petition, but can file earlier if he also files a general release and waiver of liability applicable to anyone against whom he may have a legal claim as a result of the arrest.

When Petition for Expungement can be Filed

The waiting period required for filing a petition for expungement varies, depending on how the individual's case was concluded and whether the individual files a General Waiver and Release form.

If the petition is based on a finding of not guilty, a nol pros, or a dismissal, the individual may not file a petition within three years after the disposition, unless he also files a General Waiver and Release of all legal claims and lawsuits arising from the charge. A General Waiver and Release releases all persons and agencies from any claims regarding the arrest or detention. It must be filed in order to process an expungement if it is less than three years from the time the individual's case was concluded.

If the petition is based on a probation before judgment or a guilty verdict for a specified nuisance crime, the individual may not file until both of the following have occurred:

- At least three years have passed since probation was granted, and
- Probation has ended.

If the petition is based on a stet or a compromise (settlement), the individual may not file within three years of the case's disposition.

To Request Expungement

The process should take approximately ninety days from the time the petition is file, unless there is an objection or an appeal.

Complete the Petition for Expungement and the General Waiver and Release (if necessary.) A Petition for Expungement (ccdccr 078) and the General Waiver and Release (ccdccr 072) can be obtained at any District or Circuit Court. The forms are also available online at www.courts.state.md.us/expungement/ index.html.

To complete the forms, the individual will need to know the case number, the date of arrest, summons or citation, the law enforcement agency that the took the action, the offense with the individual was charged, and the date the case was disposed.

Use broad language indicating that the individual wants to expunge all police records, court records, and all other records maintained by the State of Maryland and its subdivisions relating to the charge. Failure to include such broad language can mean that the court will only order the expungement of the records specifically mentioned.

File the Petition and Required Copies. The forms must be filed in the court in which the case was concluded. Copies of the forms must be filed with the State's Attorney and each law enforcement agency named in the petition.

Pay the Non-refundable Filing Fee. Contact the appropriate court for more information. (See Section IIIG, The Courts.)

After the Petition is Filed

If the State's Attorney and the law enforcement agencies do not object within thirty days of receiving the petition for expungement, the court will order the expungement of all police and court records relating to the charge. The court will notify the individual that the petition has been granted or denied. If the State's Attorney does object to the petition, there will be a hearing on the petition at which the court will decide whether an expungement will be granted.

After the court orders are sent to each required agency, each agency has sixty days from the received date to comply with the court order. The individual will receive a Certificate of Compliance in the mail to notify him that the expungement has been completed. Until the individual receives the certificate of Compliance from each agency listed on the petition, he should not assume that the records have been expunged.

For additional information, and suggestions to assist an individual succeed with an expungement, see the expungement brochure available at www.courts.state.md.us/expungement/index.html.

Legal Help with Expungement

Expungement procedures are complex; consulting an attorney is advisable. Two organizations provide assistance filing for arrest and conviction expungement. The services are available for individuals who meet certain income criteria. Contact a private attorney if the individual does not meet the income criteria for these organizations.

The Maryland Volunteer Lawyers Service (MVLS)
1 North Charles Street, Suite 222
Baltimore, MD 21201
410-547-6537 (between 9 am and 1 pm)
www.mvlslaw.org

The individual must have a copy of his criminal record and will have to pay all expenses.

The Homeless Persons Representation Project (HPRP)
1800 North Charles Street, Suite 206
Baltimore, MD 21201
410-685-6589
www.hprplaw.org

HPRP helps individuals who are homeless or at risk for becoming homeless and will assist in filing for an expungement and help fill out the necessary forms. Additionally, HPRP can get a waiver of the filing fees.

C. Restraining, Peace or Protective Orders

The main purpose of a restraining order is to offer legal protection to a victim of domestic abuse, harassment,

stalking, or neighborhood dispute. The order is signed by a judge that tells an individual to cease the prohibited behavior or be subjected to legal consequences. In Maryland, a restraining order is called a peace or protective order.

An individual may find himself the subject of a restraining order on account of behaviors that are deemed threatening. It is not unusual for the person obtaining the restraining order to be a family member of the individual whom they are trying to help.

A typical restraining order mandates that an individual avoid all contact with or stay a certain distance away from another person. Some other common restraining order mandates include not to enter a family home, not to remove children from a certain jurisdiction, not to sell marital property, or not to possess or purchase a firearm. A restraining order also may order an individual to continue to make loan payments, return personal belongings to the victim, or attend counseling or another treatment program. The conditions and restrictions of a restraining order vary based on the unique circumstances of the case, and the judge can order any reasonable directives he determines necessary to protect the victim.

The filing criteria for peace and protective orders differ.

Insert local information

To review the forms necessary to request a peace or protective order, see www.courts.state.md.us/district/dctcivforms.html#dv.

D. Warrants[18]

A warrant is an order compelling an individual to appear in court. A judge can issue a warrant for an individual's arrest for failing to:

- appear on a scheduled court date,
- appear in court when required by a citation, summons, or subpoena,
- pay a court fine
- complete court-ordered community service, or
- comply with court-ordered release conditions.

The warrant to arrest the individual can be issued the same day as the missed court date, or within days or weeks of not complying with a court order.

Do Not Ignore a Warrant

It is very important to attend to ("clear up") any existing warrant. By definition, an individual with an outstanding warrant is a fugitive. There is no time limit on how long a warrant can be pending. Even if a particular warrant is not a top police priority, it is still active and will surface if the individual has an encounter with police. A warrant can be executed unexpectedly, and the family or other supporters may not know that the individual has been arrested, delaying efforts made on his behalf. In addition, the Social Security Administration now screens individual applicants and recipients for outstanding warrants anywhere in the United States and will deny benefits. Individuals cannot reinstate their benefits until warrants are cleared up.

Clearing up Warrants

To clear up the warrant, the individual may have to defend outstanding charges or complete a sentence. But if the reason for not complying with the warrant is good or the charges are minor, then the warrant and the charges might be quickly cleared. Family, friends and other supporters can help the individual understand the options and consequences, explain what you can do to help, and let him decide. Ultimately, the only person who can make the decision is the individual with the warrant.

Check first with the defense attorney representing the individual at the time he was arrested. The attorney should tell you how and where to clear up the warrant and may be able to help you. If the defense attorney is not available, then contact the court that issued the warrant for the individual's arrest or the law enforcement agency

responsible for enforcing the warrant. You do not need to reveal the individual's location to learn if there is an outstanding warrant. Procedures may require that the individual be arrested to begin the process.

Usually, the only way to clear up a warrant is to go to the court that issued the warrant and ask the judge to clear up the outstanding warrant. If the judge can be persuaded that there is a good excuse for not complying earlier, the individual may simply be required to follow through on the cause of the warrant's issuance. (E.g., the individual was in a psychiatric hospital or a mental health service provider can verify that the individual was unable to follow the court's orders because of a psychiatric disability.)

The individual will be in less trouble if they appear in court voluntarily to clear up a warrant than if the police bring them in involuntarily. Go early and plan on spending all day at court. It can be helpful if the individual's family, friends, and/or a mental health service provider are present. It is very helpful if the mental health service provider appears with the individual, or if not available to appear in person, provides a letter supporting the individual's reason for noncompliance.

The individual may be required to post bail, go to jail, pay a fine, or complete community service. Explain to the judge if a psychiatric disability makes it impossible for the individual to do community service or if he cannot afford to pay a fine.

Endnotes

[1]The NAMI *Grading the States Report 2006* is a state-by-state report card on the public adult mental health care system. It can be obtained by calling the NAMI Helpline, 800-950-6264, or can be accessed free by visiting www.nami.org/grades.

[2] A number of the suggestions in this section are from Treatment Advocacy Center, "Preparing for Crisis, Fighting for Treatment - Getting Care for Those in Crisis, Hospitalized, or Incarcerated Because of a Severe Mental Illness", *Catalyst* (Spring/Summer 2005), www.psychlaws.org/JoinUs/CatalystArchive/CatalystSpringSummer05.pdf.

[3] Jackie Massaro (2004), "Working with People with Mental Illness Involved in the Criminal Justice System: What Mental Health Service Providers Need to Know" (2nd ed.), Delmar, NY: Technical Assistance and Policy Analysis Center for Jail Diversion, 19.

[4] Massaro at 19.

[5] Massaro at 20.

[6] A number of the suggestions in this section are from Taylor P. Andrews, J.D., Treatment Advocacy Center, "Tips For Family Members About the Criminal Justice System," *Catalyst* (January/February 2000), www.psychlaws.org/JoinUs/CatalystArchive/CatalystV2N1.pdf.

[7] See Massaro at 21.

[8] Massaro at 22.

[9] Council of State Governments, Criminal Justice/Mental Health Consensus Project, New York: Council of State Governments, June 2002. See www.consensusproject.org/the_report for links to the various parts of the nearly 500 page report and to other useful information.

[10] Much of the section on legal representation has been drawn from Andrews and from Heather Barr, *How to Help When a Person With Mental Illness is Arrested* (Urban Justice Center and NAMI New York State 2001), available online at www.naminys.org/UJC.pdf.

.[11] Ake v. Oklahoma, 470 U.S. 68 (1985).

[12] Massaro at 22.

[13] Massaro at 25.

[14] Much of the information in this section has been drawn from W. Lawrence Fitch, J.D., "Competency to Stand Trial and Criminal Responsibility in Maryland: Law, Procedure, and Recent Data" (2007), private source.

[15] Ake v. Oklahoma, 470 U.S. 68 (1985).

[16] Massaro at 28; Barr at 19 – 21.

[17] Much of the information in this section is taken directly from the expungement brochure available at www.courts.state.md.us/expungement/index.html.

[18] See also Barr at 23 – 26.

IN PROCESS

Glossary

Acquittal The finding of a judge that the evidence is insufficient to support a conviction, or a verdict that the accused is not guilty.

Americans with Disabilities Act (ADA) The ADA provides the means by which Americans with disabilities can overcome barriers. According to the law, its purposes are to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, as well as a clear, strong, consistent, and enforceable set of standards addressing discrimination against individuals with disabilities.

Adjudication A judgment or decision of a court or jury regarding a case.

Appeal A request to a higher court for review of a decision or ruling of a lower court.

Appearance A coming into the court in person or by filing a paper, as plaintiff, defendant, or legal representative.

Appellate Court A court having jurisdiction to review the judgment or order of a lower court.

Arraignment The procedure whereby an accused is brought before a court to plead to the criminal charge in an indictment or information.

Bail A sum of money or other form of security given to a court in exchange for the release of an accused from custody, to guarantee that the accused will appear in court.

Bail Bond A written obligation of a defendant, with or without a surety or collateral security, conditioned on the appearance of a defendant as required and providing for the payment of a penalty sum according to its terms; includes a surety bond posted by a surety insurer or bail bondsman and backed by the insurer's pledge; a cash bond secured by deposited cash; a property bond secured by pledged personal property or a lien on real property; and an unsecured bond.

Bail Bondsman The authorized agent of a surety insurer.

Bail Hearing A hearing that occurs usually within one day after the arrest of an individual at which a Commissioner reviews the case and determines if the individual is eligible for release or if bail should be set.

Bail Review A hearing that occurs usually the day following the bail hearing if an individual is not released at the bail hearing, or cannot pay the bail set at the bail hearing, where a judge determines if the bail set at the hearing was appropriate, sets a final bail amount and establishes a trial date.

Baltimore County Bureau of Mental Health The Core Service Agency for Baltimore County.

Baltimore County Crisis System See Crisis Services.

Baltimore Crisis Response System (BCRI) See Crisis Services.

Baltimore Mental Health System (BMHS) The Core Service Agency for Baltimore City.

Behavioral Emergency Services Team (BEST) Baltimore City police officers who have received specialized, intensive training to recognize signs and symptoms of mental illness, to communicate effectively with people who may have a cognitive or emotional disturbance, and to be aware of available resources.

Bench The body of judges composing a court.

Bench Trial A trial held before a judge sitting without a jury.

BEST See Behavioral Emergency Services Team.

Beyond a Reasonable Doubt In a criminal case, the accused's guilt must be established "beyond a reasonable doubt," which means that facts proven must, by virtue of their probative force, establish guilt.

IN PROGRESS

Booking Police collection of information about an arrestee, including name, address, fingerprinting, photograph, and criminal record.

Burden of Proof The necessity of proving facts at issue; in Maryland, the criminal burden of proofis "beyond a reasonable doubt", the civil burden of proof is "by a preponderance of the evidence" or, sometimes, "by clear and convincing evidence."

Capital Case A criminal case in which the allowable punishment includes death.

CBIF See Central Booking and Intake Facility.

Central booking Insert local information

CFAP Community Forensic Aftercare Program (CFAP) of the Maryland Health and Mental Hygiene Administration's Office of Forensic Services.

Charging Document A written accusation alleging a defendant has committed an offense – includes a citation, an indictment, information, and statement of charges.

Circuit Court A trial court of general jurisdiction.

Citation A charging document, other than an indictment, information, or statement of charges, that is issued to a defendant by a peace officer or other person authorized by law to do so.

Clerk An officer of the court who maintains case files, makes docket entries, issues process, and generally serves as the ministerial arm of the court.

Commissioner An officer who is charged with the administration of the laws relating to some particular subject-matter, or the management of some bureau or agency of the government.

Common Law The case law developed by the Courts of England as it existed on July 4, 1776, except to the extent inconsistent with the Maryland Constitution and subject to being changed by statute. Also called "case law."

Community Based Treatment Mental health treatment obtained by an individual in the community, as opposed to in in-patient facilities or in the criminal justice system.

Competency Evaluation A formal evaluation to determine an individual's ability to understand the court process, the offense being charged, the possible penalty, and the possible dispositions.

Complaint A civil lawsuit, filed in the District or Circuit Courts.

Conditional Release The release of an individual from a mental health in-patient facility with certain court required conditions.

Conviction The determination of guilt based on a plea, a jury verdict, or a finding of a judge.

Core Service Agency Local management entity for public mental health services within a jurisdiction. Agency responsibilities include planning, providing for service provision according to locally determined needs, and monitoring service delivery and evaluating service outcomes. Core Service Agencies are agents of county or city government and may be a county department, quasi government body or private non-profit corporation.

Counsel An individual who is admitted to practice in a court of law and gives legal advice.

Court A judge or body of judges whose task is to hear cases and administer justice.

IN PROCESS

Court of Appeals Maryland's highest appellate court, wherein review is ordinarily a matter of discretion.

Court of Special Appeals Maryland's intermediate appellate court, wherein review is ordinarily a matter of right and is not up to the Court's discretion.

Crisis Services

Baltimore City: Baltimore Crisis Response System (BCRI) handles crisis phone calls 24 hours a day. The BCRI mobile crisis team can sometimes be called to the home from 9am to 8pm. To access the Mobile Crisis Team, call the Crisis Hotline at 410-752-2272.

Baltimore County: the Baltimore County Crisis System handles crisis phone calls 24 hours a day, countywide at 410-931-2214. The Baltimore County Mobile Crisis Team serves all of the County, from 10am to midnight. To access the Mobile Crisis Team (and other services, including the possibility of an appointment within the next few days), call the Crisis Hotline at 410-931-2214. In-home intervention services to help link people with services are available countywide.

Cross-Examination Examination of one party's witness by the other party.

Dangerousness "The individual presents a danger to the life or safety of the individual or of others" has been interpreted by administrative law judges as:

Active Dangerousness: Overt acts such as threats of violence or acts of violence.

Passive Dangerousness: Inability to care for self or others in one's care, such that the individual's life or safety is at risk. Examples include endangering oneself by not eating or drinking, neglect of serious medical conditions, or an inability resulting from the mental disorder to recognize actions with serious harmful consequences (e.g., not calling 911 if a child in their care attempts suicide, dangerously inadequate clothing/shelter in cold weather, unable to cross street safely.)

Defendant A person against whom a civil suit is filed or, in a criminal action, a person who has been charged with a violation of the law or criminal wrongdoing.

Diagnostic Statistical Manual IV (DSM IV) Diagnostic and Statistical Manual of Mental Disorders, 4th edition, revised. Manual of standard definitions of clinical diagnostic terms. Produced by the American Psychiatric Association.

Diminution Credits Credits that an individual can earn or be awarded during incarceration that reduce the length of the individual's incarceration time.

Discharge Planning The process of connecting the individual being discharged or released from incarceration to benefits and services with the goal of assisting the individual to successfully transition to, and stay in, the community.

District Court Maryland's lowest trial court; a court of limited jurisdiction.

Docket A list of cases to be heard in court (trial docket); a list of pleadings, papers, orders, etc., filed in particular case (docket entries.)

DPP The Division of Parole and Probation (DPP), a division of the Maryland Department of Public Safety and Correctional Services. Further information is available at www.dpscs.state.md.us.

DPSCS The Maryland Department of Public Safety and Correctional Services. Further information is available at www.dpscs.state.md.us.

Emergency Petition Legal petition to court to order law enforcement to transport the individual to an emergency room for a psychiatric evaluation.

ED Emergency Department.

Escalate To increase. To become or cause something to become greater, more serious, or more intense.

Evidence Proof presented at trial though witnesses, records, documents or physical objects to establish the truth or falsity of relevant facts.

Expungement The effective removal from public inspection of police or court records.

Family to Family Education Program NAMI's 12-week, free course for families of individuals with severe brain disorders (mental illnesses) such as schizophrenia, bipolar disorder (manic depression), clinical depression, panic disorder and obsessive-compulsive disorder (OCD.)

FAST See Forensic Alternative Services Team.

Felony The more serious of two categories to which criminal offenses are assigned (compare "Misdemeanor".)

Finding A determination of fact by a judicial officer or jury.

Fine A sum of money that a person must pay as punishment because of an illegal act or omission.

Forensic Alternative Services Team (FAST) The Forensic Alternative Services Team (FAST) provides an alternative to incarceration in Baltimore City, and is available to certain adult individuals who have a major mental illness or trauma diagnoses and are charged with a relatively minor offense (legal history is reviewed case by case.) The FAST program can be accessed by calling 410-878-8328.

Grand Jury A jury composed of 23 individuals who receive and hear evidence to determine whether probable cause exists that a crime has been committed and to determine whether an indictment should be returned (compare "Petit Jury".)

Guilty Plea A formal admission of guilt to an offense charged in a charging document.

Incarcerate To confine to a jail or correctional institution.

Incompetency Lack of capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in preparing a defense.

Indictment A charging document returned by a grand jury and filed in a circuit court.

Indigent Unable by reason of poverty or insufficient financial means to pay.

Infraction (Civil) A violation of a statute, ordinance, or regulation for which the only penalty authorized is a civil fine.

Initial Appearance The first appearance of a defendant before a judicial officer by reason of execution of a warrant or before the court, in person or by an attorney, in response to a summons.

Insanity Defense A claim by a defendant that he or she lacks the soundness of mind required by law to accept responsibility for a criminal act. Not available in Maryland. See Not Criminally Responsible (NCR.)

Involuntary (as in evaluation, commitment or hospitalization.) Compelled. Required or exacted against somebody's will or wishes.

Involuntary Hospital Admission Criteria

- Has a mental disorder; AND
- Needs inpatient care or treatment; AND
- Presents a danger to the life or safety of the person or others; AND
- Is unable or unwilling to be admitted voluntarily; AND
- There is no available less restrictive form of intervention that is consistent with the person's welfare and safety.

IN PROCESS

Jail Diversion The diversion of individuals from jail and the criminal justice system to community services and supports.

Judgment The final order of a court; in a criminal case, the conviction and sentence constitute the judgment, so there is no judgment until sentence is imposed.

Judicial Officer A judge or a District Court commissioner.

Jurisdiction The authority by which courts receives and decides cases.

Appellate Jurisdiction – the authority that a higher court has to review cases decided or pending in a lower court; in Maryland, the Court of Appeals, the Court of Special Appeals, and the circuit courts,

General Jurisdiction – the unlimited authority over cases brought before the court to decide rights and grant remedies available under the law; in Maryland, the circuit courts,

Limited Jurisdiction – the authority over only particular types of cases or cases under a prescribed amount in controversy or seeking only certain types of relief; in Maryland the District Court and orphans' courts.

Jury A group of citizens qualified and selected according to law and impaneled to determine the guilt or innocence of a defendant in a criminal case or to decide civil law cases over a prescribed amount in controversy (see "Grand Jury", "Petit Jury".)

Mandatory Supervision A supervision period equal to the good time credits (diminution credits) earned by an individual that result in early release prior to the individual's maximum sentence expiration date. Mandatory supervision does not apply to county detention center releases.

Medical Assistance A government program that pays medical costs for very low-income people.

Mental Disorder statutory definition in Md. Code §10-620. The behavioral or other symptoms which indicate

to a lay person: a clear disturbance in the mental functioning of another individual; or
to a physician, psychologist, clinical social worker or licensed clinical professional counselor doing an examination: at least one mental disorder that is described in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM.)

Mental Health Court Problem-solving courts with a dedicated mental health docket, focusing exclusively on individuals with mental illnesses, and linking them to treatment and support services instead of imprisonment.

Minor An individual under the age of 18 years.

Minor Offense A misdemeanor offense.

Miranda Warning A requirement based on a United State Supreme Court decision that a person be advised of certain Constitutional rights against self-incrimination at the time of arrest and before questioning.

Misdemeanor The less serious of two categories to which criminal offenses are assigned (compare "Felony".)

M**itigation** Circumstances suggesting that a lesser sentence is appropriate.

Mobile Crisis Services See Crisis Services.

NAMI National Alliance on Mental Illness; www.nami.org.

NCR See Not Criminally Responsible.

Nolle Prosequi ("Nol pros") Translated: "will not further prosecute"; termination of prosecution and dismissal of a charge by a State's attorney on the record, in open court. A defendant need not be present in court when a nol pros is entered, but, in that event, the clerk of court must send notice to the defendant,

if the defendant's whereabouts are known, and to the defendant's attorney of record.

Nolo Contendere Translated: "I will not contest"; a plea that has the effect of a guilty plea, although guilt is neither admitted nor denied, which plea may be used as an admission of guilt in a civil suit for the same offense. A defendant may plead nolo contendere only with the consent of the court.

Non-Capital Case A criminal case in which the allowable penalty does not include death.

Not Criminally Responsible (NCR) A finding that an individual, at the time of the alleged offense, did not have the ability to conform his behavior to the law and appreciate the criminality of the offense.

Not Criminally Responsible (NCR) Evaluation A formal evaluation to determine whether, at the time of the alleged offense, the individual had the ability to conform his behavior to the law and appreciate the criminality of the offense.

Offense A violation of a criminal law.

Order A ruling of a court, on a motion, objection, or other matter relating to a preliminary point or some step in a proceeding.

Outpatient civil commitment Where a judge has ordered an individual to comply with psychiatric treatment and if the individual fails to do so, he will be hospitalized involuntarily. Such a law is in place in other states, most notably in New York where the law is called "Kendra's Law."

Own Recognizance (aka Personal Recognizance) A guarantee of a defendant's appearance in court based solely on his signed promise (no bail bond required.)

Pardon Relief from a conviction (full pardon) or from any further punishment imposed by a conviction (particular pardon) granted by an executive official (governor or president.)

Parole A conditional release from imprisonment that is made by a parole board and entitles a defendant to serve the remainder of a sentence outside of prison as long as all of the conditions of release are met (compare "Probation".)

Peace Order A type of restraining order issued by a court and directing an individual to abide by certain conditions or directing the individual not to do certain things.

Personal Recognizance (aka Own Recognizance) A guarantee of a defendant's appearance in court based solely on his signed promise (no bail bond required.)

Petit Jury An ordinary jury for the trial of an action in Maryland, generally 12 for criminal trials and 6 for civil trials, not including alternates (Compare "Grand Jury".)

Petition for Expungement A formal request that certain police or court records be removed from public inspection.

Petitioner One who presents a petition to a court, officer, or legislative body.

Petty Offense An offense for which the authorized penalty does not exceed imprisonment for 3 months or a fine of $500.

Plea An answer to a criminal charge including: not guilty, guilty, nolo contendere, not criminally responsible by reason of insanity.

Plea Bargain Agreement between a prosecutor and defendant to exchange a plea of guilty or nolo contendere for reduction in a charge(s) or leniency in sentencing.

Possibly Not Competent A determination that an individual who is the subject of a competency evaluation may not be competent, resulting in the individual being transferred to a hospital for further evaluation and treatment.

IN PROCESS

Preliminary Hearing A hearing held in the District Court, unless waived by defendant, to determine whether there is probable cause to believe the defendant committed an offense(s); available when the offense(s) charged is not within the exclusive jurisdiction of the District Court.

Preponderance of the Evidence Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to is; that is, evidence which as a whole show that the fact sought to be proved is more probable than not.

Pre-sentence Investigation A confidential report ordered by the Report (PSI) judge and produced by the Division of Parole and Probation, prior to sentencing, to provide background information (job, finances, family status, community ties, etc.) and prior criminal record of a defendant and, in certain cases, a victim impact statement.

Pretrial Diversion Plan A plan to divert a defendant from jail and the criminal justice system to community services and supports (such as job training, counseling, and education.)

Pretrial Release Release of a defendant prior to trial, often subject to conditions the judge believes will decrease the risk that the defendant will present a danger to the community or fail to appear in court, such as staying away from the victim, submitting to drug tests or a psychiatric evaluation, living with another responsible party, getting mental health treatment and/or medications, or bail.

Privilege A person's right not to testify on a matter or communication protected by law.

Probable Cause Reasonable grounds for belief in the existence of facts that support a charge; the basis for issuing a charging document or search warrant.

Probation A conditional avoidance of some or all imprisonment granted by a judge after conviction of a defendant and before or as part of imposition of sentence.

Probation Before Judgment (PBJ) A conditional avoidance of imposition of sentence after conviction; failure to satisfy the conditions may cause imposition of sentence after a finding of violation of probation.

Prosecuting Attorney or Prosecutor A public officer whose duty is prosecution of criminal proceedings on behalf of the citizens of jurisdiction; in Maryland, most often refers to a State's attorney or assistant State's attorney but, for some crimes, can be the State Prosecutor or Attorney General.

Protective Order A type of restraining order issued by a court and directing an individual to abide by certain conditions or directing the individual not to do certain things.

PRSP The Pretrial Release Services Program.

Psychiatric Crisis In most situations, a psychiatric crisis is characterized by at least one of the following:

- ***Active danger*** to self or others (this includes suicidal thinking or behavior, high risk behavior, thinking about or doing harm to others and violence toward property)
- ***Passive danger*** to self or others (this includes serious neglect of self or of others in one's care)
- ***Sudden change in mental status***
- ***Acute psychotic symptoms***

Reason to Believe A standard somewhat less than "probable cause"; certainty is not required. The facts should "warrant the belief of a prudent person." "Reason to believe" may be based on an examination by a health care professional or observation. If a police officer observes the individual, he does not necessarily have to observe the behavior that indicates a mental disorder or dangerousness. "Reason to believe" may also be based on information obtained from family members concerning the mental disorder or dangerousness.

IN PROCESS

Remand The return of a case by an Appellate Court to the trial court or agency for further proceedings.

Removal The change of location (venue) of a case on the grounds that a party cannot receive a fair and impartial trial in the jurisdiction where the action is pending.

Restitution The act of restoring or reimbursing due to an injury, damage or loss.

Restraining Order An order issued by a court and directing an individual to abide by certain conditions or directing the individual not to do certain things. The main purpose of restraining orders is to offer legal protection to victims of domestic abuse, harassment, stalking, and neighborhood disputes and a parent or guardian can apply for a restraining order on behalf of a minor child. In Maryland, a restraining order is called a peace or protective order, each of which have different criteria.

ROR Released on own recognizance. See Own Recognizance.

Sentencing The post-conviction stage of the criminal justice process in which the defendant is brought before the court for imposition of punishment to be inflicted.

Service of Process The act of delivering an order, subpoena, summons, or other writ to the person named.

SSI/SSDI Social Security Income/Social Security Disability Income.

Stet Translated: ***"to stand"***; a conditional, indefinite stay of all further proceedings on a charge, allowed by a court on motion of a State's attorney and marked "stet" on the docket; Md. Rule 4-248 requires that, when a charge is stetted and unless the court orders otherwise, the Clerk of Court must act to recall or revoke any outstanding warrant or detainer that could lead to arrest or detention of the defendant because of the charge.

Subpoena A writ issued by a governmental entity to compel a person to appear and to give testimony at a specified time and place.

Summons A writ notifying the person named that an action has been filed against the person and:

- ***in a criminal action***, failure to appear may result in a bench warrant for the person's arrest,
- ***in a civil action***, failure to answer may result in entry of a judgment against that person.

Treatment Advocacy Center (TAC) NAMI Treatment Advocacy Center. Founded in 1998.

Victim impact statement A statement during sentencing which informs the sentencer of the impact of the crime on the victim or the victim's family.

Violation of probation When a defendant sentenced to probation acts in contradiction to a condition of probation.

Waive Relinquish; in Maryland, used commonly to refer to the giving up of a legal right voluntarily, intentionally, and with full knowledge of the consequences.

Warrant A written order issued by a judicial officer directing a peace officer to arrest the person named or to search for and seize property described.

Witness A person who testifies as to what was seen, heard, or otherwise known.

Work Release An arrangement allowing an incarcerated individual to be housed in a less restrictive housing location and to leave the facility to go to a job every day and earn a standard wage for that job. The ability to qualify for work release is based on a number of factors, including time remaining on sentence, infraction history, risk presented to the community, availability of an approved job, etc.

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NOTES

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