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Using Data to Maximize the Results of Diversion Programs Targeting People with Mental Illnesses: What Other Counties Can Learn from Hillsborough County (Manchester), NH

No one needed to tell Hillsborough County Jail Superintendent James O'Mara or New Hampshire District Court Judge James Leary that more people with serious mental illnesses were locked up in the local jail than ever before. What they didn't know--until they requested an analysis from the Bureau of Justice Assistance (BJA) looking at who was admitted to the jail and how long they stayed--was what was driving that growth.

In a report prepared by the CSG Justice Center, which was made possible through BJA funding support, county officials learned that the average length of stay for pretrial detainees was three times longer than other pretrial detainees who were not identified as having a serious mental illness.

"The numbers were a slap in the face," said Judge Leary. "We suspected that people with mental illnesses might stay in jail pretrial a little bit longer than the general population, but I don't think anybody realized the extent of the difference."

Further analysis demonstrated that this differential in length of stay existed regardless of whether the defendant was charged with a misdemeanor or a felony. In other words, people with mental illnesses were not staying in jail pending their trial simply because they were charged with committing more serious crimes than people without mental illnesses.

Hillsborough officials had different theories why it took three times longer to release a person with a serious mental illness on bond, sentence him or her to time served, or process him or her to state prison than it did for a person who was not identified as having a serious mental illness.

Defense attorneys noted that clients with mental illnesses often couldn't make bail because they, and their families, lacked the resources to assist them. Corrections officials observed that defendants with serious mental illnesses frequently did not advocate effectively before the court for their pretrial release. Mental health professionals explained that the county's lack of affordable housing and a shortage of short- and long-term psychiatric beds meant there were few options available to court officials other than releasing these defendants to the streets. At the same time, judges and prosecutors expressed concern that in many instances releasing people with serious mental illnesses to the community on personal recognizance could compromise public safety.

Whatever the reason, the additional length of stay was costing the county a lot of money without providing any commensurate increase in public safety, as the defendants, who had languished in jail for an additional 36 days on average, were returned to the community without the necessary connections to community-based mental health treatment and services.

“The report opened everyone’s eyes to issues we’ve been wrestling with for years,” said Superintendent O’Mara. “We realized we needed to pay closer attention to why they stayed so long prior to trial and what we could do to address the problem.”

Led by Judge Leary, who helped launch, and subsequently oversaw, the county’s first mental health court, Hillsborough officials formed a task force. The group included the county commissioner, Superintendent O’Mara and other corrections officials, and a dozen or so other Hillsborough county officials, including judges, prosecutors, public defenders, advocates and service providers.

The task force’s conversations were shaped by a keen awareness that the federal grant supporting the mental health court was set to expire within a year; its continuation and expansion depended on whether county commissioners decided to continue funding the program. Accordingly, the task force first asked why the mental health court wasn’t having a greater impact on the average pretrial length of stay for people with mental illnesses. (For more on Hillsborough County’s mental health court, [click here](#).)

The court was designed to serve individuals both prior to and after adjudication. The CSG analysis, however, revealed that most mental health court participants were either sentenced to the mental health court or referred to the program post-arraignment. As a result, mental health court participants often remained in jail for weeks or months as the judicial process unfolded.

Focusing on this logjam, the task force found that an indigent defendant wasn’t assigned defense counsel until after arraignment. As a result, defendants with serious mental illnesses were often unaware of the existence or the advantages of the mental health court during arraignment. Furthermore, judges were understandably reluctant to refer a defendant to a mental health court until the individual could consult an attorney, as participation in a mental health court can extend the period of court supervision beyond a traditional sentence.

The task force, with the support of the defense bar, took steps to ensure people with serious mental illnesses are assigned defense counsel prior to arraignment. Now, 40-50 percent of the court’s clients are in pretrial status, according to Judge Leary.

But the analysis provided by CSG demonstrated that Hillsborough officials would not be able to decrease length of stay by focusing on mental health court operations exclusively: though the court served over 230 people in its first full year of countywide operation, researchers, applying the national prevalence rate for people in jail with mental illnesses (16.9%), estimated that over 1,000 individuals booked into the jail each year likely had a mental illness.

Members of the task force also focused on the waiting period before a defendant received an evaluation of competency to stand trial, which could last as long as three months. The task force partnered with disability rights advocates and the [Chief Justice’s Task Force on Mental Health and Criminal Justice](#) to push for statutory change requiring a maximum of 60 days from initial request to evaluation (the cap had been 90 days). It worked: in its 2009 session, the legislature [amended the relevant statute](#).

The task force also found that some prosecutors and judges--especially those from Superior Court, where cases involving more serious offenses are heard--were often hesitant to recommend mental health court for people who presented a high risk of recidivating. They felt that the program’s supervision and sanctioning strategy--participants are not supervised by probation officers (but rather by mental health case managers), and are not frequently reincarcerated--was not well suited for this group.

So the task force designed a pretrial supervision program for individuals with mental illnesses who could benefit from community-based services but whom judges and jail officials felt require more stringent supervision than the mental health court provides. The planned program will connect people to the same services as the mental health court, coupled with higher intensity supervision. Participants, who will be released on bail, will be supervised by pre-trial officers reporting to the jail superintendent. The officers

will use graduated sanctions up to and including reincarceration, and may monitor individuals using electronic bracelets. (County officials submitted a proposal to BJA for 2012 JMHCP funding for the program.)

“We felt that if the infrastructure is in place, we can put people [in pretrial status] back into the community in a highly structured environment,” said Superintendent O’Mara. “The cost of doing business is far cheaper in the community than in jail. We can reduce the jail population and have better case management outside the walls.”

The task force also recommended that the county jail adopt a tool for assessing an individual’s risk of recidivating to administer at intake. The results of this risk assessment, coupled with recommendations from jail officials, would inform judges’ decisions whether they issue bail and refer a person to one of the two programs.

“Hillsborough County has taken the important step of determining that they need to utilize risk assessment to determine what individuals should receive what types and degree of intervention to best assure public safety and impact mental health needs,” said David D’Amora, Director of the Criminal Justice/Mental Health Consensus Project, which is coordinated by the Council of State Governments Justice Center.

Between 2009 and 2011, Hillsborough’s jail population decreased by 60 people--a drop Superintendent O’Mara attributes to the expansion of the mental health court across the county. Citing this development, along with its new comprehensive strategy for addressing disproportionate length of pretrial detention, the task force appealed to county officials to fund the mental health court after JMHCP funding expires. In July, county officials, who had to cut over \$7 million in county services, agreed to fund the mental health court through the end of 2012.

“What Hillsborough has been through and where they’re now headed should resonate with county officials everywhere,” said D’Amora. “They worked together as a team to examine the data and develop consensus on how to improve on what was already a very good mental health court. Now, by developing a tiered response to populations at different levels of risk of recidivism, they will have a truly comprehensive strategy.”