

Statistics Identify the Benefits of Addressing Mental Illness Within the Criminal Justice System

by the Honorable Joseph A. Migliozi Jr. and Tracie M. Jefcik



In 2004, the first mental health specialty docket was established in the Commonwealth of Virginia in the Norfolk Circuit Court.¹ Since then, several Virginia jurisdictions have followed Norfolk's example, and numerous mental health specialty dockets have been created within the state.² The purpose of this article is to evaluate the effectiveness of the mental health specialty dockets within the Norfolk Circuit and General District Courts, with a specific focus on the recidivism rates of those individuals who have participated in such dockets in recent years. The study examines the re-offending patterns of former

participants of the mental health dockets at various stages within the programs. The sample represents those participants from the inception of the Norfolk General District Court's mental health docket in 2011, as well as participants from the Norfolk Circuit Court since 2012.

Mission of Mental Health Dockets

While the organizational structure of mental health dockets varies, the overall mission of such dockets is generally the same: to improve public safety by reducing recidivism rates of people with mental illness, to provide alternatives to incarceration, and to improve the quality of life of people with mental illness.³ Mental illness is not a crime; it is a disability that requires appropriate evaluation and specialized treatment plans to provide

an individual diagnosed with a mental illness an opportunity for rehabilitation. Moreover, pre-adjudication mental health dockets seek to improve jail services for the mentally ill and ensure timely mental health hospital admission for inmates in need of inpatient treatment and services. Those with mental illness find themselves in jail for any number of reasons; often the reason is linked to their mental state. A mental illness is defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) under an umbrella of various types of diagnoses ranging from depression and mood disorders to schizophrenia.⁴

The goal is to equip these individuals with the tools to make long-lasting lifestyle adjustments, rather than the mere short-term struggle not to get arrested again.

Until the underlying issue is appropriately addressed, mentally ill defendants will continue to encounter the criminal justice system. The Norfolk mental health dockets seek to address the underlying issue. With proper treatment and accountability, participants of the mental health dockets are provided an opportunity to re-claim a positive position within their communities and their families, rather than continuing to overpopulate state and regional jails. Reducing the number of non-violent, mentally ill defendants that are incarcerated, along with expedient inpatient treatment for inmates, provides an added incentive because of the overall effect of reduced costs in funding the jail systems. But, most importantly, the dockets provide individuals with an opportunity to gain an understanding of how to help themselves. The goal is to equip these individuals with the tools to make long-lasting lifestyle adjustments, rather than the mere short-term struggle not to get arrested again.

The National Alliance on Mental Illness reported that in 2007, 18.5 percent of Virginia jail inmates had a mental illness.⁵ More recently, a 2017 report from the Virginia

Compensation Board reported that a total of 7,451 (17.6 percent) inmates were known or suspected to be mentally ill in Virginia jails during the month of June 2017, out of a total of 42,257 in the general inmate population.⁶

A 2015 report from the Mental Illness in Jails stated that 22.04 percent of the individuals in jails identified as having a mental illness were being held on a misdemeanor offense. An additional 2.12 percent were being held for an ordinance violation. The same report stated nearly one of four individuals in jail with mental illness are facing charges for which there likely are alternatives to incarceration. Further, 49 percent of the individuals with mental illness were incarcerated on a non-violent crime, 22 percent were incarcerated on a drug offense, and only 29 percent of the mentally ill defendants were facing what constitutes a violent offense.⁷

As stated, the mission of mental health dockets is to provide opportunities and alternatives to incarceration for qualified individuals suffering from a mental illness. With that goal in mind, however, docket participants are held strictly accountable for their actions while receiving proper treatment. Defendants who qualify for admittance to a mental health docket are essentially given an opportunity to use community services in conjunction with the criminal justice system to treat their symptoms and gain a new outlook on life. Nevertheless, for the individuals who are re-integrated into the community, when they fail to comport with their probation stipulations, the judge has the discretion of placing them back in jail and/or repudiating them from the docket altogether.

Most importantly, these dockets seek to reduce recidivism rates among mentally ill offenders and endeavor to prevent future encounters with the criminal justice system. The data provided here demonstrates the benefits the City of Norfolk has realized through the efforts made by both the Norfolk Circuit and General District Court to carry out the mission of mental health dockets and reduce recidivism rates among mentally ill offenders.

History of Norfolk Circuit Court Mental Health Docket

Recognizing the essentiality of specialty dockets within the state, effective January 16,

2017, the Supreme Court of Virginia adopted rules governing the creation and operation of specialty dockets within Virginia.⁸ Specialty dockets include drug treatment court dockets, veterans' dockets, and behavioral/mental health dockets. Yet, over a decade prior, the City of Norfolk began to set the stage for addressing mental health in Virginia's criminal justice system.

After a careful two-year study of successful mental health courts in San Bernardino County, California, and Broward County, Florida, the Norfolk Circuit Court was the first Virginia court to fashion a mental health specialty docket in February 2004.⁹ Despite being denied federal funding, the Circuit Court reallocated its existing resources to fund the start-up program.¹⁰ At its inception, the program involved a run of four stages over a period of eighteen months in which a defendant would have to participate and successfully complete without any further offenses or violations of supervised probation.¹¹ The Norfolk Circuit Court mental health docket currently has a run of five phases through which participants advance subsequent to pleading into the program. Participants enter the program post-adjudication; hence, they all voluntarily have pled guilty to their charges as a condition of participation.¹² Additionally, the mental illness must have a significant link to the arrest for individuals to qualify for the mental health docket. Defendants all have non-violent felony charges or misdemeanor appeals; however, sexual offenses or DUI charges are not eligible, nor defendants with prior violent charges or sexual offenses.¹³

In the entry phase, Phase I, docket participants appear before the judge once every week for a progress update. The Norfolk Circuit Court mental health docket comes to order every Tuesday at 2:00 p.m.¹⁴ Also in attendance is an attorney from the Norfolk Commonwealth's Attorney's office, Norfolk Community Services Board staff, Norfolk Probation and Parole staff, and the defendant's attorney (if necessary). Once a participant has met the expectations (i.e., testing negative for drug screens, taking medications, and attending parole and treatment meetings) over a period, the treatment team has the discretion, in collaboration with the common-

wealth's attorney and the judge, to recommend advancement to the next phase. Phase II participants appear before the judge on a bi-weekly basis, Phase III participants appear monthly, and Phase IV participants appear bi-monthly. Phase V, the graduate phase, is for those individuals who have successfully shown exemplary improvement.¹⁵

If an offender successfully completes the program, his or her charges may be reduced or dismissed, at the judge's discretion, depending upon the initial charge and his performance while in the program. Alternatively, these individuals exacerbate their likelihood of re-incarceration when they violate any of the conditions set forth in their treatment plans. Among the conditions, proper intake of the prescribed medication for treatment of the mental diagnosis is a key factor in the rehabilitation process.

In its early years, the results of the Norfolk Circuit Court's mental health docket were evaluated in a study conducted by the Social Science Research Center at Old Dominion University (ODU). The ODU Study produced evidence of the achievements and successes the mental health docket had generated from July 1, 2006 through December 31, 2007.¹⁶ Such evidence covered data which concluded the program was achieving its goals.¹⁷ Specifically, the ODU Study found that the Norfolk Circuit Court mental health docket "promoted access to therapeutic and social services for mentally ill offenders who found them helpful, especially the case management services; reduced the number of times that mentally ill offenders came into contact with the criminal justice system; reduced the number of days that mentally ill offenders spent in jail; and promoted effective interactions between the criminal justice and mental health systems."¹⁸ Moreover, the ODU Study found that the recidivism rates for individuals who graduated from the program were considerably lower than baseline rates for both mentally ill and non-mentally ill offenders.¹⁹ Specifically, the ODU Study reported that recidivism rates for graduates from the program were: 3.5 percent at 6 months, 5.0 percent at 12 months, 12.5 percent at 18 months, and 30 percent at 24 months.²⁰

History of Norfolk General District Court Mental Health Docket

The Norfolk General District Court mental health docket commenced in September 2011. The purpose for creating the docket was to ensure attention would be given to inmates suffering from a mental illness — a populace that had seen a lack of adequate attention for far too long.²¹ Unlike in Norfolk Circuit Court, where defendants voluntarily plead into the program, the individuals on the Norfolk General District Court mental

Out of the forty-four graduates from the Norfolk Circuit Court mental health docket from 2012 to June 2018, 70.5 percent had not reoffended since graduating the program.

health docket do not volunteer. The General District Court mental health docket serves instead to streamline those defendants who have been diagnosed with a qualified mental illness related to their offense. The effect of such a docket cuts down tremendously on the amount of time these individuals wait for competency evaluations and mental health services while in jail.²² Again, the upshot being a reduction in costs allocated within the criminal justice system, as opposed to wasting time, money, and individuals' livelihoods by simply housing them in jails.²³

Similar to the Norfolk Circuit Court, defendants in the Norfolk General District Court must meet certain criteria before being added to the mental health docket. Defendants with misdemeanor or pre-trial felony charges, in addition to a serious mental illness which contributed to their arrest, are accepted.²⁴ Representatives from Norfolk Community Services Board, the judge, and a public defender, as well as the sheriff's office and jail representatives, meet periodically to review each case. Unlike Norfolk Circuit Court, there are no specific phases or time-frames of which a defendant must satisfy. Each case is monitored for varying lengths of time depending on the charges and compliance with conditions.²⁵ The Norfolk General

District Court mental health docket comes to order every first and third Wednesday of each month at 2:00 p.m.²⁶

As a result of the docket's operation, inmates from the Norfolk General District Court saw a drastic reduction in the wait for an initial competency evaluation. The wait decreased from a period of ninety days, on average, down to only fourteen days.²⁷ Further, once an inmate has been evaluated as mentally incompetent to stand trial, the docket serves to monitor the specialized treatment and placement of each individual. Whether his or her specialized plan is through the Norfolk Community Services Board and/or one of the Commonwealth's Joint Commission accredited inpatient treatment facilities,²⁸ the individual's progression will be tracked to ensure timely and effective services are provided.

Once an individual is restored to competency, he or she then is found to be guilty or not guilty of his alleged charge and sentenced by the judge. Many defendants will present with family members and others within their communities who offer support. Often the judge will provide an incentive for individuals to continue with their treatment and medications by dismissing or imposing a less serious charge.²⁹ Some individuals who are conditionally released remain on the docket for review until their case is dismissed. Similar to Norfolk Circuit Court, the General District Court mental health docket participants who violate the conditions of their release stand to have their bond revoked and be convicted of their original charges.

How Statistics are Collected

A listing of graduates from the Norfolk Circuit Court mental health docket since 2012 — a total of forty-four individuals — was provided by the office of the Norfolk Commonwealth's Attorney. For purposes of this article, only those individuals who successfully graduated from the Norfolk Circuit Court mental health docket from 2012 to June 2018 are included in the statistical results. Criminal history subsequent to graduation was then obtained through public records databases.

Data from the Norfolk General District Court mental health docket was evaluated

beginning with the commencement of the docket in 2011 through May 2018. The statistics reported herein reflect recidivism rates amongst the participants who entered the program with an initial “incompetent to stand trial” mental evaluation and received community resources in the restoration process.³⁰

Statistical Results

According to a report by Justice Policy Institute (JPI), maintaining a criminal justice system that relies heavily on the most restrictive methods of punishment is extremely expensive . . . and is ineffective at addressing the root causes of crime and the likelihood of reoffending.³¹ Further, the JPI stated that incarcerating an individual for a lengthy sentence (often disproportionate with the offense), removes individuals from their families and communities for long periods of time.³² Additionally, the National Alliance on Mental Illness reported that through a pilot jail diversion program for nine localities in Virginia from 2006 to 2007, the financial savings of jail and hospital beds was estimated at \$1.2–2.5 million.³³

Out of the forty-four graduates from the Norfolk Circuit Court mental health docket from 2012 to June, 2018, 70.5 percent had not reoffended since graduating the program. Additionally, 67.7 percent of the forty-four represents those graduates from years 2012 through 2016 without repeat offenses, signifying long-term results. The following recidivism rates were calculated: 4.5 percent at three months passed graduation, 15.9 percent at six and twelve months, 22.7 percent at eighteen months, 27.3 percent at 24 months, and 29.5 percent beyond two years of completing the program. Thus, thirty-one of forty-four graduates have successfully completed the

program without re-offending as of the examination of this data.

In the seven-year span since the commencement of the Norfolk General District Court mental health docket, in excess of 220 individuals entered the docket on “incompetent” status. Of those, 43 percent were restored to competency. Of the restored individuals, 54.7 percent did not have repeat criminal cases in the Norfolk General District Court. Only three percent of the entire mental health docket were reported to require civil commitment.

These results demonstrate the effectiveness of the City of Norfolk’s mental health dockets. By collaborating the efforts of Norfolk’s criminal justice system with community resources, these results show that defendants who suffer from mental illness are being given the proper attention, and it is paying off. Monitoring and addressing the mental illness not only benefit the defendants, but the jails are undoubtedly profiting as well. Rather than suffering drawn-out delays for competency evaluations, and often going unnoticed, defendants now move along in the process much sooner. Thus, financial resources are able to be allocated to other projects. Further, by reintegrating non-violent offenders into the community, the results conclude that those who are graduating from the Norfolk Circuit Court mental health docket are endeavoring to make long-lasting changes to their behavior. 56

Endnotes:

- 1 *Three Virginia Jurisdictions Establish Specialized Mental Health Dockets*, 31 DEV. MENTAL HEALTH L., Feb. 2012, at 6-7.

Mental Illness continued on page 28



Joseph A. Migliozi Jr. was appointed to the Norfolk Circuit Court bench in 2014 after serving as a judge of the Norfolk General District Court since 2009. Beginning in 2002, he served as the southeastern district’s capital defender, representing people charged in death-penalty-eligible cases.



Tracie Jefcik is a second-year law student at University of Nevada Las Vegas, William S. Boyd School of Law. She was a judicial intern for The Honorable Joseph A. Migliozi Jr. in the Norfolk Circuit Court during the summer of 2018.