

  
**HB 1138 Testimony**  
**House Human Services Committee**  
**Representative Weisz, Chairman**  
**January 9, 2023**

Chairman Weisz and Members of the Committee, I am Carlotta McCleary, the Executive Director of the ND Federation of Families for Children's Mental Health (NDFFCMH), which is a parent run organization that focuses on the needs of children and youth with emotional, behavioral, or mental health needs and their families. I am also the Executive Director for Mental Health America of ND (MHAND) which is a consumer-run organization whose mission is to promote mental health through education, advocacy, understanding, and access to quality care for all individuals.

In so far as mental health courts are used to reduce the number of persons with mental illnesses in prisons and jails and the criminal justice system, we support the creation and evolution of mental health courts. Although we do not ascribe such intentions to the authors of the bill, we want to be clear that mental health courts cannot and should not be used as a substitute for a comprehensive community-based mental health system of care. With that understanding, we have a series of principles that we believe should be the foundation for a North Dakota mental health court.

- Comprehensive mental health outreach: access to community-based mental health services for all people needs to be improved and should not depend on the existence of mental health courts. Equally effective services should be assured for the treatment needs of persons not accused of crimes.
- Meaningful diversion: Meaningful diversion would require that when appropriate, no charges would be filed, and the individual is diverted directly to treatment without entering the criminal justice system. In the alternative, when charges have been filed, criminal proceedings should be deferred for a set period, usually not exceeding a year. Dismissal of criminal charges would then be guaranteed after a set period of successful treatment participation.

- No requirement for a guilty plea: A guilty plea should not be required to enter a mental health court program. This requirement precludes diversion from the criminal justice system at the earliest possible point in time and further criminalizes a person because of his or her mental illnesses.
- Voluntary/non-coercive: While the threat of criminal charges influences any decision, participation in any mental health diversion program should involve the same level of voluntary choice required of a criminal plea. Adequate notice and informed consent is critical when participants are choosing between incarceration in a traditional court system and diversion. No one should have to decide whether or not to accept diversion unless the terms and the nature of the proposed treatment plan have been fully discussed and documented.
- Community coalitions: The development of community coalitions, including partnerships between criminal justice, mental health and substance abuse treatment agencies, is essential to successful diversion programs. Such coalitions also should be involved in the creation and oversight of mental health courts. People using mental health services and family members affected by mental illness need to be included in all such coalitions to assure that they address the real barriers to effective mental health treatment in the community.
- Handling relapses in the court setting: Relapses are inevitable during the recovery process. As such, an individual's time under jurisdiction of the mental health court should not be extended as a result of these relapses.
- Right to refuse treatment: the qualified right of a person with mental illness accused of a crime to refuse a particular treatment, including a particular medication, should be protected in a manner at least as protective of the person in treatment as the civil commitment process. A process should be established to review treatment refusals of persons diverted from the criminal justice system so that any decision to reinstate charges is made in an informed manner after all reasonable alternatives have been exhausted.

- Maximum diversion: pre-booking diversion should be assured for all persons accused of crimes for whom a voluntary mental health treatment plan is a reasonable alternative to the use of criminal sanctions. Timely and accurate mental health screening and evaluation is the single most critical element in a successful diversion program. Mental health courts may be helpful in assuring such diversion, but should never be the only way, or even the primary way, that it can occur.
- Least restrictive alternative: All persons participating in diversion programs should be treated in the least restrictive alternative manner available, and all unnecessary institutionalization should be avoided. Jails are generally an inappropriate place for persons waiting for diversion as jail experiences tend to exacerbate underlying symptoms of mental illnesses. Long jail stays should be avoided in all diversion cases.
- Advocate/Counselor: In addition to competent legal counsel in any criminal case, an experienced counselor, who may be a peer or other non-lawyer counselor, independent of any treatment facility, should be available to help the accused person to reach an informed decision. This person should also serve as an advocate to ensure that necessary services that have been mandated as part of a treatment plan are provided in a timely and appropriate manner. Consumer advocacy groups may take on this important role.
- Confidentiality: Networking to find an appropriate treatment setting, without safeguards, could compromise client confidentiality. Systems must be put in place to ensure confidentiality from the time that a person enters a mental health program.
- Cultural and linguistic competence: Cultural and linguistic competence is essential to treatment success. We believe that services must be tailored to the specific needs of communities and individuals in order to effectively address public health problems.
- Comprehensive outreach and training: Community coalitions need to reach out to all criminal justice system personnel and ensure that training is

provided at all levels to deal with issues of mental illness, wherever and whenever they occur.

- Co-Occurring disorders: In addition, people with co-occurring disorders, and especially substance abuse, must be treated in an integrated way, so that substance abuse is not an impediment to diversion.
- Convening Role: The focus of mental health courts should be on convening prosecution, probation, treatment and social services agencies to promote interagency collaboration in the interest of the individual. The focus should not be on the use of criminal sanctions to compel treatment.
- Consolidation and coordination of cases: Cases should be consolidated to assure that the individual is the focus rather than the case. Centralized, coordinated case management and a single treatment plan are needed to avoid fragmentation, with or without a mental health court.
- Evaluation: Timely monitoring of court processes, waiting lists, and consumer outcomes are essential to ensure that mental health courts are responding appropriately to persons with mental illness, that waiting lists are kept to a minimum, and that treatment providers are held accountable for consumer outcomes.

In conclusion, MHAND and NDFFCMH support the use of mental health courts, but it is important to consider how such courts are designed and how they interact with the greater mental health system of care. We would not want to, for instance, create a mental health court system that is used to criminalize persons with mental illness for “lifestyle offenses,” including homelessness. If that is a temptation among some, we urge North Dakota to rebuild its community-based mental health services instead. In addition to mental health courts, there are many other successful and innovative ways to divert persons with mental illnesses from the criminal justice system, including the creation of law enforcement-mental health liaison programs, increased training of law enforcement personnel and a general improvement in the funding and effectiveness of community mental health services.

Thank you for time. I would be happy to answer any questions that you may have.

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