

Chester County Mental Health Manual



September 2021 Edition



Many individuals who become involved in the criminal justice system are impacted by mental illness. Navigating the Courts and the legal system is a challenge to any individual, their family, and their friends. When an individual also has mental health issues, that challenge can increase dramatically. Mental illness, emotions and family dynamics can dramatically impact the process to address the underlying criminal charges.

Our goal in preparing this manual is to provide basic information about the criminal justice system, the issues most often encountered by individuals with mental health issues, and specialty Courts and supervision that can be helpful.

The information presented is not meant as a substitute for obtaining professional advice and counsel, but to assist the reader in understanding the development of a case and knowingly participating in the process.

TABLE OF CONTENTS

Getting an Attorney	Page 3
Coming into the Criminal Justice System.....	Page 4
Mental Health Status in the Criminal Justice System	Page 6
Diversion Programs and Post-Conviction Supervision	Page 9
Stages of the Criminal Justice System	Page 14
Resources.....	Page 15
Attribution.....	Page 16



GETTING AN ATTORNEY

The first and best advice for anyone involved in the criminal justice system is always to seek the advice of an attorney. The complexities of the Criminal Justice System and /or Mental Health System are such that expert advice is a must. Having an attorney is a critical factor in navigating the intricate system and obtaining the best possible outcome.

If the person has the resources, they can hire (retain) an attorney to represent them. Attorneys for hire can be found through internet searches and through listings with the Chester County Bar Association. Not all attorneys practice in the area of criminal defense. Before hiring an attorney, it is suggested that you ask questions to determine their experience and expertise in criminal defense and particularly criminal defense when there is a mental health factor.

If the person is without resources (indigent), they can apply for representation by contacting the Chester County Public Defender's Office. There is an intake process to determine if the person is indigent. Intake occurs Monday through Friday, both at the Public Defender's Office and Chester County Prison (for people in prison). Once it is determined that the applicant is indigent, attorneys from the Public Defender's Office will provide representation, including the use of any necessary experts and investigations. The Public Defender attorneys are experienced and specialize in criminal defense. They also have expertise and resources to address mental illness within the Court system.

It is best to have representation as early in the process as possible (an overview of the criminal justice process appears later in this manual). If an attorney is being retained, it should ideally occur before an arrest or before the preliminary arraignment, where the individual is made aware of the potential charges and bail is set. Representation by an attorney from a Public Defender's Office generally does not become available until after arrest and/or preliminary arraignment. However, as noted above, contact with the Public Defender's Office can occur quickly to address bail and other issues that may arise.

COMING INTO THE CRIMINAL JUSTICE SYSTEM

For friends and family members of an individual with mental illness, a fundamental fact should be kept in mind: The Criminal Justice System and the Mental Health System exist for two very different purposes. While the primary function of the Mental Health System is to identify and treat mental illness, the primary purpose of the Criminal Justice System is to determine if a criminal law has been violated and, if so, to impose an appropriate sanction or punishment. While advances are occurring to identify and assist individuals in the Criminal Justice System who are mentally ill, it will never be the primary purpose. By way of example, while a foot doctor may have knowledge of brain function, you would not call a foot doctor for a known brain injury.

While we are not suggesting that the police not be called for a clear criminal act, such as any act of violence, for less serious conduct, it is suggested that it may sometimes be more helpful and appropriate to contact a mental health provider. A list of available resources is included in this manual. Keep in mind that involvement in the Criminal Justice System will likely have consequences beyond getting mental health assistance, including potential incarceration and creating a criminal record for the individual. In some instances, a criminal record can disqualify the individual for future assistance or benefits.

Once the decision is made or circumstances occur where the mentally ill individual enters the criminal justice system, it is critical that the details of their mental health status and history be made know as soon as possible. This information should be shared with arresting officers, the Magisterial District Judge who will be presiding over preliminary arraignment, Pretrial Services, and the Public Defender's Office or retained defense counsel. As much detail and documentation as possible should be provided, including written reports and names and contact information for doctors, therapists, and case managers. It is also important to identify and provide contact information for persons who can provide additional information / insight, and who can assist with issues such as posting bail or providing housing.

The first contact with the individual will be a police officer or officers, who, as noted above, should be given as much information as possible about the individual and their mental illness. Every effort should be made to make the contact calm and peaceful.

While an overview of the Criminal Justice System is provided later in this manual, a few concepts that have a particular impact on individuals who are mentally ill should be emphasized.

Diversion is the process of giving the individual an opportunity to be removed from the criminal justice system and avoid the consequence of a criminal record. The best-known diversion program is the Accelerated Rehabilitative Disposition program, or ARD, where non-violent first-time offenders are removed from the prosecution process and after a

period of supervision and meeting certain goals, have their charges dismissed and the entire record of their arrest expunged. In appropriate circumstances, individuals who are mentally ill may be approved for a Diversion Treatment Court and after successful completion of supervision and conditions, avoid a criminal record and have the record of their arrest expunged.

Bail Modification is the adjustment of the bail set by the Magisterial District Judge by adjusting the dollar amount to be posted and /or the conditions of release, such as evaluations and treatment. When an individual is identified as mentally ill, the District Attorney and Defense Attorney, may agree to a modification of bail with specific conditions of treatment to allow for the release of the individual while protecting public safety. Release on bail modification may occur as a first step to determine if diversion to a treatment court, discussed later in this manual, is appropriate. While helpful, Bail modification does not require agreement between the District Attorney and Defense Attorney. A Defense Attorney may file a motion before a Judge requesting modification and, if approved, bail modification will be Ordered by the Judge.

Waiver of the Preliminary Hearing is an agreement to forego the process of a hearing, presided over by a Magisterial District Judge, to determine if the charges brought against the individual meet the standard of a *prima facie*.

The *prima facie* standard is much lower than that of “beyond a reasonable doubt” required to find an individual guilty of a charge. *Prima facie* only requires a showing that a crime might have occurred and the individual charged might have committed it. Once that occurs, the charges are sent (bound over) to the Court of Common Pleas where innocence or guilt are determined. As a practical matter, because the *prima facie* standard is so low at a Preliminary Hearing, in most cases charges are sent on to the Court of Common Pleas for disposition.

The importance of this process for an individual who is mentally ill is that, at the present time, the Chester County District Attorney’s Office requires an individual to waive their preliminary hearing to be eligible for consideration to participate in a Treatment Court that will divert them from the Criminal Justice System.

Because having a Preliminary Hearing is the right of every individual charged with criminal offenses, the decision to waive that right is an important one. The decision should be made with a consideration of all known facts and circumstances and with the advice and input of an attorney.

MENTAL HEALTH STATUS IN THE CRIMINAL JUSTICE SYSTEM

While the Mental Health System seeks to identify and treat mental illness, the focus of the Criminal Justice System is how mental illness effects an individual's ability to participate in their defense, or how mental illness effects their responsibility for their actions.

The first area, ability to participate in their defense, is addressed as a consideration of competency. In Pennsylvania, one is presumed to be competent to be prosecuted and therefore incompetency must be proven. The issue of competency is determined through Court proceedings.

Competency includes the ability of the individual to understand the charges against them, to understand and participate in Court proceedings, and to communicate with their attorney. Competency is a very low legal standard requiring only minimal understanding, participation, and communication. An individual can suffer from many forms of mental illness and still be found competent to be prosecuted in the criminal justice system.

If an individual is found to be incompetent, the case against them cannot proceed unless or until they become competent. While competency is being determined, the prosecution is halted (stayed). The Court can take steps, by ordering evaluation and treatment, to determine if the individual can become competent. If they are found not likely to become competent in the future, after a period of time defined by statute, there may be a dismissal of the charges

Determinations of competency should not be confused with the mental health commitment process where, under certain circumstances, an individual may be ordered to undergo psychological treatment. While actions giving rise to criminal charges can result in a mental health commitment, it is not necessary, and commitment is not a criminal justice process.

The issue of an individual's competency is addressed in the Pennsylvania Mental Health Procedures Act. (Title 50 of Pennsylvania Statutes). The Act sets out the procedures to raise the issue of competency, to obtain evaluations and treatment, and actions that the Court may take.

Competency proceedings are usually pursued by the individual's attorney, either through the Public Defender's Office or retained counsel.

The second area, criminal responsibility, involves the Criminal Justice System's application of mental illness.

Clinically, mental illness can present in many forms and degrees and the impact and effect of mental illness is always a consideration for individuals in the criminal justice system.

However, in terms of programs and alternatives specifically for mentally ill individuals or the application of mental illness as a defense to criminal charges, consideration is primarily focused on those individuals who present with “Serious Mental Illness.”

The accepted definition of Serious Mental Illness is:

Persons aged 18 and older who have a diagnosable mental, behavioral, or emotional disorder that meets diagnostic criteria within the DSM (Diagnostic and Statistical Manual of Mental Disorders) and that has resulted in a functional impairment and which substantially interferes with or limits one or more major life activities. This includes the following diagnoses: Bipolar Disorder, Major Depressive Disorder, Schizophrenia, Schizoaffective Disorder, Other Specified Schizophrenia Spectrum and Other Psychotic Disorders, and Borderline Personality Disorder. Treatment History, Functioning Level, and Co-Occurring Disorder or Conditions are additional required criteria.

While this is a complex definition, it highlights the importance of diagnostic and treatment records and a thorough evaluation. As noted earlier, when an individual with suspected Serious Mental Illness enters the Criminal Justice System, the best assistance to the individual is to provide as much treatment and diagnostic information and history as possible. That information, paired with any necessary mental health evaluations, provides the best foundation to determine if the individual meets the criteria for Serious Mental Illness. Family and friends of the individual can play an integral part by identifying and / or providing diagnostic and treatment records and personal history. They are also helpful in facilitating and encouraging the individual to participate in any evaluations.

In some circumstances, an individual’s Serious Mental Illness may be a defense to the criminal charges. Under appropriate facts and circumstances, Serious Mental Illness can negate criminal responsibility. This is commonly referred to as Not Guilty by Reason of Insanity. To present this defense, the individual charged has the burden of raising that they are Not Guilty by Reason of Insanity as defined below. Once that occurs, the Commonwealth must prove sanity beyond a reasonable doubt.

In Pennsylvania, for a Judge or Jury to find an individual Not Guilty by Reason of Insanity, they must find that it was proved to a preponderance that:

“...at the time of the commission of the offense, the actor was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if the actor did know the quality of the act, that he did not know that what he was doing was wrong.” 18 Pa. C.S. § 315.

The standard in Pennsylvania is very strict and it is extremely rare for an individual to be found Not Guilty by Reason of Insanity. Nationally, including states with a less strict

standard, only approximately 0.26 % of criminal cases result in verdicts of Not Guilty by Reason of Insanity.

It should be noted that a finding of Not Guilty by Reason of Insanity, while an acquittal of the criminal charges, will bring the individual into the Mental Health System, including the potential for long term hospitalization.

Moreover, in Pennsylvania, in every case where a potential verdict of Not Guilty by Reason of Insanity is under consideration, the Judge or Jury must consider the verdict of Guilty but Mentally Ill. An individual "... may be found 'guilty but mentally ill' at trial if the trier of facts finds, beyond a reasonable doubt, that the person is guilty of an offense, was mentally ill at the time of the commission of the offense and was not legally insane at the time of the commission of the offense." 18 Pa. C.S. § 314 (a)

An individual may also, under appropriate circumstances, enter a plea of Guilty but Mentally Ill to charges. 18 Pa. C.S. § 314 (b). For the purposes of the statute, being Mentally Ill is defined as:

One who as a result of mental disease or defect, lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. 18 Pa. C.S. § 314 (c) (1)

An individual who enters a plea of Guilty but Mentally Ill, or is found after a trial to be Guilty but Mentally Ill, will have a criminal conviction and will be sentenced. The Court will consider the mental illness in structuring the sentence.

With a broader mental illness standard and a finding of guilt, many more cases are resolved as Guilty but Mentally Ill than Not Guilty by Reason of Insanity.

The decision to pursue an insanity or mental illness defense in any form should be made only with the assistance of legal counsel after a thorough review of the facts and circumstances of the particular case and the mental health of the individual charged.

While competency, Not Guilty by Reason of Insanity and Guilty but Mentally Ill verdicts impact a small number of individuals who enter the criminal justice system, it is recognized that a substantial number of individuals who qualify as Seriously Mentally Ill are charged criminally. In Chester County, we have developed a number of alternatives and options that address both the criminal justice objectives and the treatment needs of the individuals. These alternatives will be discussed on the next several pages.

DIVERSION PROGRAMS AND POST-CONVICTION SUPERVISION

Drug Court

The Chester County Drug Court Program supports individuals with substance use problems in breaking the cycle of addiction and the crimes that accompany it, by combining prompt and effective treatment with intensive judicial supervision. The Drug Court Program is a pretrial disposition program that provides eligible offenders the opportunity to receive treatment, and upon successful completion of the Program, dismissal of their charges. The Drug Court Program has four phases. Participants will attend Court regularly for reviews with the Judge. To move to each new phase, participants must be in compliance with the requirements of Drug Court and must remain clean for a period of 90 days. The Program is a minimum of twelve months and the total length of the Program will depend upon a participant's individual. The Drug Court Judge awards incentives for compliant behavior and imposes sanctions for negative behavior.

To qualify for Drug Court, one must currently be charged with a drug offense, a nonviolent, substance use related offense, or a first offense DUI. A person charged with first offense DUI will also need to apply for Accelerated Rehabilitative Disposition (ARD), a non-violent first offender diversion program. A substance use problem must exist, and the applicant may not have a prior record for a crime of violence. They cannot currently be under probation or parole supervision and they must agree to waive the preliminary hearing & right to a speedy trial. Lastly the applicant must follow the instructions of the Pretrial Officer which includes scheduling a drug & alcohol evaluation and following all treatment recommendations.

Application to participate in Drug Court should be made at, or as soon possible after, the date of the Preliminary Hearing, as the goal of Drug Court is to quickly engage the participant in treatment. Applicants should consult with an attorney as to their suitability for Drug Court and obtain assistance in completing the application process. Acceptance to participate in Drug Court is in the discretion of the Chester County District Attorney's Office.

As Drug Court is a diversionary program, upon successful completion the charges are withdrawn and the participant's record for the offenses and arrest expunged.

Recovery Court

Unlike Drug Court, Recovery Court is not a diversionary Treatment Court. Upon conviction or a plea to criminal charges, a sentence is imposed by the Court that includes restrictive conditions and drug/alcohol treatment. To qualify for Recovery Court, the individual must

meet the criteria for Sentencing Guideline Level 3 and 4 offenders and have a substance use disorder.

This intensive, drug and alcohol treatment-based program is available for offenders who are in need of long term, highly structured drug and alcohol treatment and supervision. The sentence imposed includes a brief flat period of incarceration, followed by a probation sentence with restrictive conditions which may include residential treatment and residential halfway house treatment, electronic home monitoring, SCRAM (electronic alcohol intake monitoring), intensive outpatient treatment, and intensive probation.

Ineligibility: A person with a current conviction or with a prior conviction within the past ten years of any of the following offenses is ineligible for a restrictive probation sentence: Murder, Voluntary Manslaughter, Aggravated Assault, Assault by Prisoner, Assault by Life Prisoner, Kidnapping, Statutory Sexual Assault, Arson and Related Offenses, Burglary (F1), Robbery, Theft by Extortion, Incest, Escape, Drug Trafficking, Trafficking Drugs To Minors, NOTE: A person who has ever been convicted of, or adjudicated delinquent of, any offense requiring registration as a sexual offender is ineligible for a restrictive probation sentence.

Judicial supervision is frequent and is similar to the Drug Court Model.

Defendants should consult with an attorney as to their potential for participation in Recovery Court and should submit an application no more than 30 days after formal arraignment.

Applicants are identified as candidates for Recovery Court by the Adult Probation and Parole Office (APO). This is determined by completing the Guideline Sentence Form and reviewing information from the defendant and/or defense counsel regarding drug/alcohol use. Referrals for assessment are usually made to APO by the defense attorney. The offender will have a clinical assessment (to determine if they have a substance use disorder) conducted by the County Department of Drug and Alcohol or their contracted provider. The Probation Officer will submit the assessment and recommendation for Recovery Court participation to the District Attorney's office. If approved, the District Attorney's Office will recommend a disposition and sentence consistent with the treatment recommendation in the clinical evaluation and based on the revised Recovery Court guidelines. However, since Recovery Court is a sentencing option, in appropriate circumstances, a Judge may impose a Recovery Court sentence over the objection of the District Attorney.

Recovery Court can reduce the punitive aspects of a sentence, such as incarceration, while providing the participant with the opportunity for treatment. However, it is not a diversionary court and the participant will have a criminal record.

Mental Health Court

Chester County Mental Health Court provides treatment, support and stability to justice involved individuals who struggle with Serious and Persistent Mental Illness (SPMI). The Mental Health Court utilizes a collaborative and problem-solving approach by connecting individuals to community treatment providers and resources. By identifying and targeting participants' needs, Mental Health Court promotes self-sufficiency and enhances public safety.

The applicant must be a resident of Chester County and be diagnosed with a serious and persistent mental illness as defined by the DSM V (i.e., schizophrenia, bi-polar, major depression, borderline personality disorder). The applicant must be charged with either a misdemeanor or felony offense in Chester County and must voluntarily agree to comply with program requirements, if admitted to participate. To be considered for Mental Health Court as a diversionary treatment court, the applicant must also waive their preliminary hearing and speedy trial rights.

The client, their attorney, or a person acting on behalf of the client, must make application to the program. An assessment will be scheduled and completed with the client by the Mental Health Court assessor. The assessor determines clinical eligibility. If clinically eligible, the District Attorney's Office will then determine if the client meets legal eligibility.

Mental Health Court has two tracks, Diversion and Post-Conviction.

Diversion Track (ARD): The District Attorney has full autonomy to accept or deny individuals. Anyone denied for the diversion can be considered for post-conviction participation.

Post-Conviction Track: The District Attorney has the right to not make it a part of a plea offer; however, any judge can override the DA's objection and place the person in the post-conviction court.

Veterans Court

Chester County Veterans Court was established to provide treatment, compassion and hope to veterans struggling in the Criminal Justice system through a problem-solving approach that includes collaborative treatment strategies for veterans who suffer from Traumatic Brain Injury (TBI), Post Traumatic Stress Disorder (PTSD), Military Sexual Trauma (MST), psychological problems, and/or substance use problems as result of having served in the military. Its goal is to restore veterans to their military values, reduce criminal recidivism, facilitate participant recovery, increase compliance with treatment and other court ordered conditions, improve access to VA benefits and services, improve family relationships and social support connections, and improve life stability.

Application requirements include: • Service in the U.S. Armed Forces (provide copy of DD214) • Charged with a misdemeanor and/or felony offense in Chester County • Diagnosis of Traumatic Brain Injury (TBI), Post Traumatic Stress Disorder (PTSD), Military Sexual Trauma (MST), psychological problems, and/or substance use problems • Honorable, or Other Than Honorable discharge from the military • Victim consent to case proceeding. To be considered for Veterans Court as a diversionary treatment court, the applicant must also waive their preliminary hearing and speedy trial rights.

Individuals should consult with an attorney as to their suitability for Veterans Court and for assistance in the application process.

Veterans Court has two tracks, Diversion and Post-Conviction.

Diversion Track (ARD): The District Attorney has full autonomy to accept or deny individuals. Anyone denied for the diversion can be considered for post-conviction participation.

Post-Conviction Track: The District Attorney has the right to not make it a part of a plea offer; however, any judge can override the DA's objection and place the person in the post-conviction court.

Application Process: After an arrest and prior to a preliminary hearing, any party to the matter can complete an application for Veterans Court. The application is then processed by a member of the Pretrial Service Unit. Pretrial Services will coordinate with the local Veterans Affairs Medical Center to determine benefit eligibility. If eligible, the Pretrial Services Unit will have the applicant setup an assessment with a representative from Veterans Affairs. Upon completion of the assessment, the applicant is then scheduled for consultations with any services that are needed. Once the full assessment is received it is sent to the District Attorneys Officer for further review.

Mental Health Protocol (MHP) Supervision

Defendants who are suffering from a Serious Mental Illness and do not qualify for Mental Health Court may have mental health treatment required as a component of any sentence imposed by a Judge. Mental Health Protocol is a track of supervision that focuses on the mental health needs of the defendant. This supervision is a collaborative effort between the Adult Probation Office, the Mental Health & Intellectual Disability Department, and community outpatient providers. Outpatient facilities provide mental health screenings, assessments, case consultations, treatment and medication monitoring for clients that have been court ordered to participate in Mental Health Protocol. Compliance with a forensic mental health treatment plan is enforced as a condition of supervision. Non-compliance is addressed as a violation of probation or parole.

Mental Health Protocol is a sentencing option available to the Court and any client that has been or is currently diagnosed with a Serious Mental Illness, as defined by the DSM V (schizophrenia, bi-polar, major depression, or borderline personality disorder), can be designated to receive this level of supervision. Defendants who have experienced a serious psychiatric break, regardless of diagnosis, will be screened for supervision appropriateness. If after a thorough assessment it is determined that the client is not appropriate, they will be reassigned to the appropriate unit within the Adult Probation Department.

STAGES OF THE CRIMINAL JUSTICE SYSTEM

For an individual who finds themselves in the Criminal Justice System, there are many processes and procedures that occur. The following can be used as an overview but should not be considered the rule in every case.

- Alleged criminal act occurs
- Investigation and a decision to charge the individual who is alleged to have committed the criminal act
- Commonwealth's Attorney (District Attorney) is consulted
- Criminal Complaint and Affidavit is approved
- Summons to appear in court is issued or arrest is made
- Magisterial District Court (Local Court)
 - **Preliminary Arraignment** - Bail is set before a Magisterial District Judge
 - **Preliminary Hearing** is scheduled/heard. A preliminary hearing is not a final finding of innocence or guilt but, rather, a determination that a criminal act may have been committed and the individual may have committed the offense(s). Usually less serious offenses can be resolved at this level. Otherwise, most cases are transferred to the Common Pleas Court for further action/ prosecution. Also, at this stage, diversionary treatment courts may be considered and applications submitted.
- Common Pleas Court (West Chester)
 - **Formal Arraignment**- The defendant is given a Criminal Information, a document that lists the criminal charges that were transferred to Common Pleas Court from the Magisterial District Court. A Judge is assigned, and the case is entered into the scheduling system.
 - **Pretrial Motions** - The defense attorneys and the Commonwealth can file motions with the Court to address issues related to the case that should be decided before trial or other disposition. For example, Constitutional issues of search and seizure of evidence.
 - **Disposition:**
 - Non-trial:
 - Guilty Plea:
 - Can be negotiated as to charges and sentence together as a package
 - Can be to charges without an agreed sentence in which case the Judge will decide the sentence.
 - Diversion to Treatment Court
 - Trial:
 - Jury
 - Bench- By a Judge without a Jury

RESOURCES

Chester County Adult Probation, Parole & Pretrial Services	610-344-6291
Chester County Bar Association	610-692-1889
Chester County Department of Drug and Alcohol Services	610-344-6620
Chester County Department of Human Services	610-344-6640
Chester County Department of Mental Health/Intellectual Disabilities:	610-344-6265
Chester County District Attorney's Office	610-344-6801
Chester County Juvenile Probation	610-344-6295
Chester County Public Defender's Office	610-344-6940
Legal Aid of Southeastern Pennsylvania	610-436-4510
Valley Creek Crisis Center	610-280-3270

ATTRIBUTION

This mental health manual has been made possible by a grant from South East Regional Mental Health Services Coordination Office and The Philadelphia Mental Health Care Corporation (PMHCC) Inc.

Primary contributors:

Susanne Fink Mental Health Diversion Specialist, Chester County Office of Mental Health / Individuals with Developmental Disabilities

Christopher Pawlowski, Deputy Chief, Chester County Office of Adult Probation and Parole

Nathan M. Schenker, Public Defender, Chester County Public Defender's Office

Erik T. Walschburger. Deputy District Attorney, Chester County District Attorney's Office