



Pretrial Mental Health Screening and Services in Maryland: Stakeholders' Focus Group Report

Executive Summary

Over 25 stakeholders from Maryland's criminal justice and behavioral health systems met on December 7, 2018 as a "pretrial mental health focus group" to discuss problems related to citizens with mental disorders in pretrial detention and identify possible solutions. The group was convened by the Maryland Alliance for Justice Reform (MAJR) and the National Alliance for the Mentally Ill (NAMI). It included representatives of the Maryland Judiciary, the Maryland Correctional Administrators Association (MCAA), the Public Defender's Office, law enforcement, state legislators, the Maryland Health Department's Behavioral Health Administration, the Maryland Division of Parole and Probation, local Mental Health Agencies, and the Maryland Association of Counties (MACO), as well as the National Alliance on Mental Illness (NAMI), the Maryland Alliance for Justice Reform (MAJR), and other nonprofit groups.

Findings. Maryland jail wardens and national studies agree that more mentally ill persons are in our jails and prisons than in psychiatric hospitals. Wardens also complain of insufficient resources for both community-based, in-jail, and post-release treatment. Studies show the following:

- State studies have found that at least 39% of Maryland's local jail inmates have mental health disorders. (Comparison with national studies suggests that these estimates may be too low.) For nearly 9 of 10 such inmates—or 35% of the total—drug abuse complicates their conditions. Such people are said to have “co-occurring disorders.” About one-quarter of those confined in local jails are estimated to suffer serious disorders like schizophrenia, bipolar, and major depression.
- 95% of county jail inmates will eventually return to the community and, if mental health and substance abuse issues remain untreated, they are very likely to cycle back into the system through the county jail, again and again.
- Effective November 2017, 7 of 24 Maryland counties' detention centers had no systemic pretrial mental health screening system and, even in counties with programs, there is no *uniform* screening system. Therefore, the State lacks sufficient data to properly target resources.

Recommendations. Considering these inconsistencies among Maryland counties and the lack of treatment resources in most Maryland counties, the Focus Group agreed to recommend that the State should adopt the following plan:

1. Beginning in 2019, to initiate uniform mental health screening of Marylanders held in pretrial detention¹ based on established best practices. The group emphasized that this step will not be costly or time consuming.
2. Beginning in 2020, to compile and analyze annual screening results in order to target resources efficiently to meet Marylanders' needs for further mental assessments and services, as well as funding, staffing and other steps needed in light of counties' unequal resources. The group recognized that in the long run, such preventive services will result in savings in the cost of law enforcement, detention, victims, and community services.

Focus Group Report

Focus group participants

Kate Farinholdt (MAJR-Md. executive director) and Phil Caroom (MAJR executive committee) welcomed over 25 pretrial mental health focus group participants including representatives of the Maryland Judiciary, the Maryland Correctional Administrators Association (MCAA), the Public Defender, law enforcement, state legislators, the Maryland Health Department's Behavioral Health Administration, the Maryland Division of Parole and Probation, local Mental Health Agencies, the Maryland Association of Counties (MACO), the National Alliance on Mental Illness (NAMI), the Maryland Alliance for Justice Reform (MAJR), and other nonprofit groups. (See appendix 1 for list of participants.)

Summary of Maryland pretrial mental health gaps and needs

Studies of Maryland's pretrial system have estimated that at least 39% of local jail inmates suffer from mental health disorders (GOCCP 2016, p. 24 and p. 50; OPD 2017). Compared to other national studies, however, these estimates may be too low.

Maryland jail wardens and national studies agree that more mentally ill persons are in jails and prisons than hospitals (See, for example, TAC and NSA, 2010). But many Maryland wardens also complain of insufficient resources for both community-based, in-jail, and post-release treatment (GOCPP 2016, p. 9). This failure to provide treatment resources assures an even greater long-term burden on Marylanders—in detention costs, law enforcement time, and public safety. The reason is clear:

More than 95% of county jail inmates will eventually return to the community and, if mental health and substance abuse issues remain untreated, they are very likely to cycle back into the system through the county jail, again and again (JRCC, pl.12).

¹ Pretrial" here would mean after defendants' initial commissioner hearing but before bail review. As with competence and presentence reports, screening results would be confidential but available to judges, attorneys and court personnel as needed.

Maryland’s Justice Reinvestment Coordinating Council also reported that statewide, “only 42 percent of individuals in Maryland with a mental illness received treatment between 2009 and 2013” (JRCC 2015).

Participants recognized that there are important policy benefits to pre-arrest interventions. Maryland’s Behavioral Health System seeks to maintain crisis response centers for mental health in every county or region that can offer 24-hour assistance to law enforcement officers. In Baltimore, the LEAD (Law Enforcement Assisted Diversion) program was launched in 2017. But as these critical resources are being developed and improved, Focus Group participants agreed to focus on the Detention Centers’ need to offer assistance to those with mental disorders for whom officers found arrest to be necessary.

The need for “best practices,” uniform pretrial mental health screening. Based on all the foregoing information, the Focus Group agreed that earlier and more effective focus of mental health resources on inmates in pretrial detention could substantially reduce costs and problems presented by mental health disorders.

However, effective November 2017, a survey by the MCAA and MAJR found that 10 of 24 Maryland counties had no systemic pretrial mental health screening system (MCAA & MAJR 2017). (In the intervening year, some counties may have begun to develop such systems in connection to adopting pretrial release programs.) Even among counties currently using systematic pretrial mental health screening, members of the focus group commented, no single uniform screening tool has been adopted. Even when screening results in a detected mental health disorder, nine counties responding to the same survey reported no system to consistently provide notice of the problem to the inmate’s defense attorney or the court, and at least seven counties indicated insufficient resources to obtain any treatment.

Focus group participants pointed out that uniform mental health screening tools are readily available and have been recommended by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) (NCSL 2018, p. 7). Such screening could be administered reliably by lay persons given brief, appropriate training with very little cost to taxpayers. For example, the time required to administer the Brief Jail Mental Health Screen is estimated at less than 3 minutes. In Virginia, online webinars approximately 90 minutes in length were used to provide standardized training to local staff in every county. The same resource could be adopted at no cost by the State of Maryland.

Focus Group participants agreed that three components are essential in pretrial mental health services:

1. Mental health *screening* should be conducted by trained staff and would consist of brief standardized questions to rate the need for further mental health assessment and for suicide prevention measures.
2. Mental health *assessment* should be conducted by a licensed mental health professional and should result in a diagnosis and treatment plan.
3. Mental health services and medication should be offered, if appropriate, based on the diagnoses.

Focus Group participants agreed to focus recommendations on the first component— mental health screening—in 2019, with a goal of addressing the other two components of pretrial mental health in 2020 and later years.

Recommendations

Considering the inconsistencies among Maryland counties and the lack of treatment resources in most Maryland counties, the Focus Group agreed to recommend that the State adopt a plan to do the following:

1. Adopt a best-practices, uniform screening of Marylanders held in pretrial detention, to be initiated in 2019; and
2. Compile and analyze annual screening results to determine Marylanders' needs for further mental assessments and services in future years, as well as funding, staffing and other steps needed in light of counties' unequal resources.

Addressing concerns in implementation

How would uniform pretrial mental health screening fit in with existing pretrial services? Such brief, but effective, screening would help to detect the need for further mental disorder diagnosis and treatment, as well as addressing jails' traditional concern for suicide risks (TSC & NSA 2010).

Focus group participants agreed with MCAA President Terry Kokolis that such screening could easily be made part of Maryland detention centers' standard pretrial screening and would not be either costly or time consuming. Delegate Barron has proposed a [grant program](#) to help enhance pretrial services. Screening would encompass the following:

- A racially neutral risk assessment for the likelihood of committing new offenses and the likely failure to appear for later court hearings if granted pretrial release;
- The need for substance abuse treatment;
- Eligibility for Veterans Administration assistance;
- Homelessness; and
- Domestic violence or "red flag" firearm concerns.

Focus Group participants agreed that, to optimize resources and reduce local detention centers' pretrial populations, such pretrial mental health screening should be offered *after* defendants' initial commissioner hearing, but *before* bail review. Focus Group participants also agreed that other important measures to prevent arrest and detention of individuals with mental health disorders would involve wider use of crisis intervention training (CIT) by Maryland law enforcement agencies and community crisis centers to stabilize individuals undergoing substance abuse or mental health episodes. Virginia Behavioral Health Authority (BHA) coordinator Jana Braswell commented this may be the "biggest bang for the buck."

How would courts and defendants benefit from pretrial mental health programs? A judge might benefit from mental health screening information in making pretrial release decisions. If inmates have existing treatment plans, the Courts easily could make renewed and verified compliance a court-ordered condition of pretrial release. If no existing diagnosis or treatment exists, the mental health screening would recommend further mental disorder assessment that, in turn, could result in a recommended treatment plan and provider. Further assessment and treatment could be made a condition of pretrial release.

One Focus Group participant expressed the concern that some defendants might be unwilling to cooperate with court-ordered conditions. A Maryland mental health court judge responded that even initially unwilling drug court defendants have a good record of compliance with court-ordered conditions. While the compliance records of mental health court defendants are not as good, the courts' minor rewards and sanctions may still offer their best opportunity to avoid incarceration. Pretrial risk assessment can also produce race-neutral results, increasing fairness (Pretrial Justice Institute 2017).

At the time of trial, a defendant's compliance with pretrial mental health conditions could result in favorable treatment

short of incarceration, such as acceptance in a Mental Health Court or docket, probation, or dismissal of charges. Focus Group participants agreed that defense concerns about confidentiality for defendants' statements during pretrial mental health screening and assessments could be addressed easily by statute as currently provided for defendants' statements in competency evaluations and pretrial sentencing reports. Such reports would not be available as evidence of guilt or innocence and automatically would be sealed from public inspections, but they would be accessible for attorneys and appropriate court personnel. (Note that the following sections of the Maryland Code contain similar provisions for confidentiality: Criminal Procedure, § 3-105; Correctional Services, § 6-112; and Health – General, § 4-307.)

Who would select and arrange the brief training needed for Maryland to implement a uniform pretrial mental health screening? Focus Group participants agreed that the optimum method to select a best-practices, uniform pretrial mental health screening tool would be for this to be done by Maryland's Behavioral Health Administration (BHA) in consultation with the Maryland Correctional Administrators' Association (MCAA). BHA and MCAA would also address timing and logistics for the brief training required for counties' existing detention center staff. One possibility is to provide the training online.

How would pretrial mental health screening data-collection be managed and compiled from county detention centers? Focus Group participants agreed that the Governor's Office for Crime Control and Prevention (GOCCP) has extensive experience in such data collection by monthly spreadsheets or other means.

Ultimately, Focus Group participants also agree that GOCCP's year-end evaluation of Maryland counties' mental health screening report also should consider ongoing, future means to collect and monitor Marylanders' mental health data collectively, as well as how to securely share defendants' reports individually among Detention Centers, Mental Health Agencies, and the Maryland Judiciary. Focus Group participants noted that neither Maryland's Medicaid-connected Data Link, Smart court system, nor Maryland's Offender Case Management System (OCMS) currently are readily accessible in all counties or to all stakeholders. Perhaps the best option, soon to be available in every county, might be to store individual data in Maryland Courts' electronic filing system (MDEC).

How can Maryland address resource disparities between smaller and less-wealthy counties? After completion of the recommended pretrial mental health screening survey, Focus Group participants recognize there still may be disparities between resources available for Marylanders in smaller, poorer counties as compared to larger, more wealthy counties. They recommend that GOCCP should bring this issue for consideration to Maryland’s Local Government Justice Reinvestment Commission, which can consider optimum arrangements for grants or budget measures to address this disparity. Ultimately, it is expected that adequate treatment resources to meet the needs identified by the planned survey should would require coordination among Maryland’s Department of Health, Medicaid, Maryland’s Department of Public Safety and Correctional Services (DPSCS), and local governments. The question of whether social workers in training may provide “field work” assistance with appropriate professional supervision also might be addressed at this planning stage in consultation with the University of Maryland and other programs. One Focus Group participant commented that such an arrangement would require at least 6 months (one semester) lead time.

Conclusion

Judge George Lipman, who has served for many years as a Mental Health Court Judge and has lead Maryland Courts Problem-Solving Committee in efforts to obtain resources to address Marylanders’ mental health needs, concisely stated the overall conclusion of Focus Group participants: ***“While there are many important details as to levels of service and allocation of responsibility, there is no question that there needs to be some kind of pretrial release mental health program everywhere in the State.”***

References

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