

# FULFILLING THE PROMISE:

## VOLUME III

*Mental Health and the  
Criminal Justice System*



## A Message from Rep. James R. MacKay, Ph.D, Chairman

### The Commission to Develop a Comprehensive State Mental Health Plan

This is the third volume of work produced by the Commission to Develop a Comprehensive State Mental Health Plan (HB 691, Chapter 175:15, Laws of 2005). This report is a part of the Commission's duty to provide a comprehensive plan for the delivery of mental health services for all citizens of New Hampshire including those who are least able to advocate for themselves. This report should be read in the context of the 2008 Commission document FULFILLING THE PROMISE: *Transforming New Hampshire's Mental Health System* which is available at the office of the Mental Health Council, an organization being developed to work to implement the recommendations in the commission's report. The phone number is 603-228-2983.

As the impact on communities of deinstitutionalization of the old New Hampshire State Hospital and Laconia State School was in progress during the 1990's, there was an increase in the number of individuals in the New Hampshire criminal justice system, on a local, county and state level, who have severe mental illness, addiction and, in some instances, both. These are known as co-occurring or dual diagnosis illnesses.

Historically, the criminal justice system focused on public safety, security and punishment as their primary responsibilities; treatment and rehabilitation is minimally available at best.

Leaders in the NH criminal justice system know that the present system is inadequate. This report is designed to provide a blueprint to begin the extensive changes needed to divert the mentally ill from incarceration, to provide services in their communities and to provide treatment programs for the mentally ill who do require secure incarceration.

These reports would not be possible without the help of over 100 dedicated volunteers who have worked over the last three years to provide the plans needed to transform mental health services in New Hampshire. We are significantly indebted to the New Hampshire Endowment for Health for their financial support, wisdom and encouragement of our work.

Sincerely,



Rep. James R. MacKay, Ph.D.  
Chairman

October 17, 2008

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# FULFILLING THE PROMISE:

## VOLUME III

### *Mental Health and the Criminal Justice System*

## Executive Summary

The Commission to Develop a Comprehensive State Mental Health Plan began its work in September 2005, establishing five work teams to determine the status of the mental health care delivery system in New Hampshire and to develop recommendations for transforming the system to better serve the State's residents. The findings and recommendations of the five original work teams were published in the first two volumes of the Commission's report, *Fulfilling the Promise: Transforming New Hampshire's Mental Health System*, in January 2008. Volume III should be read in the context of and supplement to the previous volumes.

As the five work teams progressed, the Commission members came to realize that a significant aspect in the delivery of mental health services in New Hampshire was not being addressed by any of the teams: the intersection of individuals with mental illness or co-occurring mental illness and substance use disorders with the criminal justice system. With approximately 40% of the state's incarcerated population living with a mental illness (for female inmates the rates are even higher at 71%) and 75% having a history of substance abuse, it was evident that a sixth work team was needed to address this issue.

The Criminal Justice Mental Health Work Team (CJMH Team) was established in January 2007, comprised of leaders from New Hampshire's corrections institutions, attorneys who represent defendants living with mental illness, members of the New Hampshire General Court, State agency personnel who oversee publicly funded mental health and substance abuse services, as well as mental health clinicians. Upon commencement of their work, the Team members quickly came to consensus on these fundamental principles:

- both mental illness and substance use disorders can lead to behaviors that cause some individuals to come into contact with the criminal justice system; and
- there are a few of such individuals for whom trial and incarceration are the most appropriate treatment response.

To accomplish their work, the CJMH Team developed a set of fifteen recommendations that address three key areas of concern:

### 1. New Hampshire has few programs to intercept and divert individuals with mental illness, addictions or co-occurring disorders from prosecution and/or incarceration into community-based treatment.

**Recommendation:** Broaden training for New Hampshire police officers and mental health professionals to improve their ability to work effectively and collaboratively with persons with mental illness whose behavior results in encounters with the criminal justice system.

**Recommendation:** Ensure that emergency services providers at the state's ten community mental health centers are trained in how the criminal justice system functions.

**Recommendation:** Develop District Court procedures to appoint counsel on the same day of their first court appearance if there is any indication of mental illness.

**Recommendation:** District Courts shall schedule mental health screening for criminal defendants suspected of having a mental illness on the day of their first court appearance and promptly inform their counsel of screening results.

**Recommendation:** Develop procedures to improve the coordination between county jails and local District Courts to maximize opportunities for pre-trial release for persons with mental illness and to expedite competency hearings.

**Recommendation:** Conduct statewide outcome studies of existing Mental Health Courts to determine efficacy as alternatives to traditional criminal courts.

**Recommendation:** Develop County Councils with representatives from the criminal justice and mental health systems to coordinate services and plan for the release of incarcerated individuals with mental illness.

## 2. Treatment for incarcerated individuals with mental illness or co-occurring mental and substance use disorders is inconsistent, varying between corrections institutions across the State.

**Recommendation:** Develop State standards for the provision and evaluation of mental health services in the County Houses of Correction and state prisons.

**Recommendation:** Ensure that treatment continues when a person with a mental illness is held in a County House of Correction.

**Recommendation:** Provide for the special psychiatric needs of certain convicted individuals with an appropriate continuum of treatment teams serving both county and state prisoners.

## 3. Lack of pre-release planning and coordination with community-based treatment services leads to high recidivism rates for individuals with mental illness or co-occurring disorders after release.

**Recommendation:** Change New Hampshire Medicaid rules so that benefits are suspended, not terminated, for individuals incarcerated for short periods of time.

**Recommendation:** State and County correctional facilities shall each enter into Memoranda of Understanding (MOU) with the New Hampshire Department of Health and Human Services and the federal Social Security Administration to ensure that eligible prisoners have pre-reviewed applications for Medicaid and Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) benefits completed prior to release.

**Recommendation:** Complete individualized care plans for incarcerated person with mental illness and substance use disorders upon entry into the corrections system.

**Recommendation:** Develop Community Teams in each region to address the needs of individuals with mental illness or co-occurring disorders to prepare for their release from incarceration.

**Recommendation:** Identify policies, procedures and resources for probation and parole officers to utilize in promoting and sustaining the successful re-entry of offenders into the community.

The recommendations and action steps described in this report should serve as a blueprint for change to improve outcomes for individuals with mental illness or substance use disorders who become involved with the criminal justice system, while ensuring public safety. The development of policies, procedures and programs that intervene at every level of the system will help reduce incarceration rates for such individuals, as well as improve access to appropriate treatment, and reduce recidivism.





## Mental Health and the Criminal Justice System

The Commission to Develop a Comprehensive State Mental Health Plan began its work in September 2005. Over 100 volunteers participated in the five work teams established by the Commission to determine the current status of the mental health care system in New Hampshire and to develop recommendations for transforming the system to better serve the state's residents. The findings and recommendations of the original five work teams were published in the first two volumes of the Commission's report, *Fulfilling the Promise: Transforming New Hampshire's Mental Health System*, in January 2008.

As the work of the five original teams progressed, it became evident that there was a significant factor regarding the delivery of mental health services in New Hampshire which none of the existing teams was addressing, i.e. the intersection of persons with mental illness and/or co-occurring mental and substance use disorders with the criminal justice system.

In January 2007, a sixth work team was established to examine this critical issue, the Criminal Justice Mental Health Work Team (CJMH Team). The team includes leaders from New Hampshire's corrections institutions, attorneys who represent defendants living with mental illness, members of the New Hampshire General Court, state agency personnel who oversee publicly funded mental health and substance abuse services, and mental health clinicians. During 18 months of research, the team heard testimony from:

- Chief Justice John Broderick, New Hampshire Supreme Court
- Judge James Leary and Susan Mead, M.A., Community Connections Mental Health Court Project, Nashua
- Paul Sheehan, formerly of Hamden County Corrections, Springfield, Massachusetts
- Hillsboro County Attorney Marguerite Wageling, Re-entry Project, under development in Manchester
- Erik Riera, Administrator, Bureau of Behavioral Health, DHHS
- Director Don Vittum and his staff, New Hampshire Police Standards and Training Council

- Jim Cabanel, Coordinator, Assertive Community Treatment Team, Mental Health Center of Greater Manchester
- Director Bill Finneman and Dr. Erik Vance, New Hampshire Division for Juvenile Justice Services, DHHS

The committee also reviewed programs being developed in other states and heard a presentation by Dr. David Fisher from the University of Massachusetts Medical School, Department of Psychiatry, who described recent research on the relative efficacy of criminal justice/mental health programs in use around the nation.

*There is a need to provide better assessment and treatment for individuals with mental illness or co-occurring mental and substance use disorders during incarceration.*

The work groups conducted a number of interviews while developing their recommendations for the report. Among those they met with were:

- City of Concord and Town of Merrimack police department officers
- Merrimack County Academy program staff members
- the Rockingham Superior Court Mental Health Council

Work team members understand that mental illness and substance use disorders can lead to illegal behaviors that cause individuals to come into contact with the criminal justice system. For some individuals who experience mental illness and substance use disorders and engage in criminal activities, trial and incarceration is an appropriate treatment response. However, for a majority of defendants whose mental illness and substance use is a contributing factor to their unlawful actions, there is a need to develop programs that better assess such individuals to divert them into community-based treatment, preventing incarceration whenever possible and

appropriate. There is also a need to provide better assessment and treatment for individuals with mental illness or co-occurring mental and substance use disorders during incarceration, and to provide support prior to and during community re-entry. All of these goals require collaboration across agencies and disciplines.

The criminal justice system of New Hampshire has a number of different components which, although interdependent, often operate independently. Larger towns and cities maintain their own police departments while many smaller towns, especially in New Hampshire's North Country, do not have their own departments. All police officers receive initial training through the New Hampshire Police Standards and Training Council but continuing education and training is supervised by individual departments. Each county has a

*The New Hampshire Department of Corrections estimates that between 30% and 40% of adults currently incarcerated in state prisons have a mental illness.*

sheriff who supervises a department of officers while the Division of State Police is part of the New Hampshire Department of Safety. Similarly, counties supervise their own houses of corrections while the state-run Department of Corrections operates prisons for both men and women. This pattern of independently-run organizations, based on the state's well-established custom of local control of publicly-funded organizations, presents a challenge, as such a practice makes ensuring consistency in the quality of services throughout the criminal justice field difficult to achieve.

The CJMH Work Team organized itself into subcommittees to address specific points where the criminal justice system can intercept individuals with mental illness and co-occurring disorders. The three subcommittees looked at:

- diversion from prosecution and incarceration,
- delivery of appropriate, consistent treatment to incarcerated persons,

- reduction of the recidivism rate of individuals released from New Hampshire jails and prisons.

While none of the groups looked extensively at the juvenile justice system, some of their recommendations might be adapted for use with juveniles as well as adults.

### **The Need**

The need to improve how New Hampshire's criminal justice system handles individuals with mental illness or co-occurring mental and substance use disorders is clear. A series of recent surveys have established there are a large number of individuals with mental illness and substance use disorders incarcerated in the state. The New Hampshire Department of Corrections estimates that between 30% and 40% of adults currently incarcerated in state prisons have a mental illness. A 2007 study conducted by the County Superintendents' Association of 22,000 persons who spent time in the 10 county houses of correction that year, 75% had a history of substance abuse, and approximately 46% were individuals living with a mental illness. In the state's women's prison, incidence rates are even higher. An estimated 71% of women incarcerated are living with a mental illness. Perhaps even more alarming are reports from the New Hampshire Division of Juvenile Justice. Newly-appointed Medical Director, Dr. Eric Vance, stated that 68-80% of youth supervised by the juvenile justice system have a mental illness. Dr. Vance also estimates that 60-70% of the boys and 70-90% of the girls have been physically and/or sexually abused, and are dealing with symptoms of Post Traumatic Stress Disorder.

Over the years, the state has developed parallel, separate systems to protect public safety and to provide human services to New Hampshire residents. Broadly speaking, the publicly-funded human services continuum of care has been charged with providing services to those with low incomes or who live with challenges that impact their ability to function fully and independently. From its founding as a colony in 1623, New Hampshire has a long tradition of looking after its most vulnerable citizens. Modern research into the nature and cause of

disabilities has resulted in the development of separate departments and agencies that deliver specialized services. At the same time, it has produced a service delivery system that can be difficult for individuals and families to navigate.

The state's criminal justice system, which defines criminals as outside the law and therefore in need of control and punishment, has developed on a separate path from the human service department. Professionals working in this field see their primary duty as protecting the public from criminals. Their role has been to identify those who break the laws, bring them to trial and impose appropriate sanctions. Historically, there has been systemic skepticism about the possibility of rehabilitating criminals and many have argued that punishment is the primary responsibility of the system. In New Hampshire as well as in many parts of the nation, there has been a fundamental difference between the working cultures of the criminal justice and the mental health and substance abuse systems of care. More recently, these two systems have entered a period of transition, with communication between staff improving, and the realization of better service coordination becoming more probable.

Effective collaboration between those working in mental health, alcohol and drug treatment and the criminal justice systems is a fundamental component of any effort to meet the needs of individuals with mental illness and substance use disorders who come in contact with the criminal justice system. The failure to work together squanders financial resources, exacts a large social cost, jeopardizes public safety and, too often, results in tragic consequences. Money can be saved by diverting individuals with mental illness and substance use disorders who encounter the criminal justice system into more effective community-based treatment programs. Reducing recidivism rates of incarcerated individuals with mental illness and substance use disorders also saves money.

Each of the three subcommittees developed recommendations for this report.

### **Addressing the Need**

The first volume of the Commission to Develop a Comprehensive State Mental Health Plan

described four principles which provided a framework for the report:

1. Good mental health is fundamental to overall health.
2. Mental health services are person and family centered, science based and high quality.
3. All mental health, medical and substance abuse treatment services are integrated and use technology safely and effectively.
4. All persons will receive individualized mental health and alcohol and drug treatment to promote recovery and build resilience to enable them to live, work and participate in their community.

*Historically, there has been systemic skepticism about the possibility of rehabilitating criminals and many have argued that punishment is the primary responsibility of the system.*

These basic principles provide a framework for the recommendations developed by this CJMH Work Team. The members of the team fully recognize that public safety is the highest priority of the criminal justice system. At the same time, they are aware that some aberrant behaviors need not be criminalized and can be resolved when the affected individual receives appropriate mental health and alcohol and drug treatment services.

Several themes emerged as the subcommittees of the CJMH Work Team proceeded with their research:

- there is a need for better collaboration among all community service providers;
- there is a need for more effective cross-training of the professionals who work for the criminal justice system and those who work for mental health and substance abuse service agencies;
- there is a need for improved consistency in the quality of services provided by state, county and local agencies.

The following chapters present the recommendations from CJMH Work Team’s research into the interface between the state’s criminal justice and mental health systems. In April 2007, the State Task Force on Alcohol and Drug Abuse examined the need for enhanced services for those with substance abuse issues. The recommendations contained within their report, *Overcoming the Impact of Alcohol and Other Drugs: A Plan for New Hampshire*, should be read to complement those contained in this report. Implementation of these recommendations through the accompanying action steps will begin the process of improving both New Hampshire’s quality of services and the lives of the individuals receiving those services. All of this is designed to be achieved while preserving and improving public safety.

*Individual police officers exercise significant discretion in determining whether people experiencing the symptoms of mental illness will be arrested and charged, referred to community-based treatment services, or hospitalized involuntarily.*

### **Subcommittee on the Diversion from Prosecution and Incarceration**

#### **Pre-booking Diversion**

The manner in which police officers respond to persons with mental illness can have a tremendous impact on how incidents involving minor criminal violations are resolved. Police behavior during such encounters plays a critical role. Their conduct can resolve the situation peacefully and productively, or can escalate and intensify the behaviors of the person with a mental illness. Individual police officers exercise significant discretion in determining whether people experiencing the symptoms of mental illness will be arrested and charged, referred to community-based treatment services, or hospitalized involuntarily.

To enable police officers to exercise that discretion appropriately and deal with persons with mental illness effectively, they must

understand the role of mental illness in particular situations, be familiar with treatment resources in the community and how best to access them, and have the skills necessary to safely and effectively handle interactions with both the individuals experiencing a mental illness as well as with their families and loved ones.

To assure the effectiveness of pre-booking diversion the community mental health centers should designate specific staff to develop a complementary understanding of the criminal justice system. They need to have a working knowledge of the roles and responsibilities of police officers and police prosecutors as well as of the county attorney, and the district and superior courts. Staff should be trained to understand the need to ensure public safety and to hold each individual accountable for their behavior.

### **RECOMMENDATION 1 : Broaden the training of New Hampshire police officers and mental health professionals to improve their ability to work effectively with persons with mental illness whose behavior results in encounters with the criminal justice system.**

**Action Step:** *Selected community mental health center staff and other mental health providers will receive training on the workings of the criminal justice system. The training will include instruction in the role of law enforcement and corrections agencies, the court system, and a review of the typical steps in the prosecution of a criminal case.*

**Action Step:** *The curriculum of the New Hampshire Police Standards and Training Council for training new recruits shall include 12-15 hours of mental health training. It shall include training on the following topics:*

- the types and characteristics of mental illnesses and co-occurring disorders;
- effective techniques of interaction with individuals experiencing the symptoms of mental illness, as well as with their family and friends;
- relevant legal issues, including the basis and procedures for involuntary admissions for treatment;

- the system of community-based services available to individuals with a mental illness.

**Action Step:** *All police officers shall be required to receive 20 hours of ongoing training on mental health issues over each three-year cycle.*

In recognition of the fact that police recruits need to learn and master a great amount of information during their initial training at the academy, it is important to reinforce their first introduction to mental illness and the community-based system of mental health care with ongoing training. Learning theory indicates that the retention of new information is improved when real life applications are used. A majority of police officers in the field will experience interactions with individuals with a mental illness in the course of their work. The ongoing training will provide them with an opportunity to learn new strategies to manage individuals in crisis in real-life situations as they encounter them.

**Action Step:** *The federal Department of Justice criminal justice funds administered by the Attorney General's office shall be used to support mental health training for police in communities in need of financial assistance.*

The skills which police officers learn to better manage encounters with individuals experiencing the symptoms of mental illness are relevant to encounters with anyone under severe stress. Such encounters could include veterans returning from war zones and individuals involved in domestic violence crises. Enhanced intervention skills improve the overall public safety of our communities. The use of federal funds enables small communities with more limited funding to initiate trainings which will provide long-term benefits to the public safety of their residents.

**Action Step:** *Police departments with more than 30 full-time officers shall develop a cohort of specially-trained officers to respond to incidents involving persons with mental illness. Departments with fewer than 30 full-time officers are encouraged to develop such specially-trained officers.*

National studies of police departments which

have developed specialized crisis intervention teams have demonstrated the efficacy of such teams. SAMSHA now recognizes that these teams are effective in reducing the unnecessary criminalization of symptomatic behaviors by individuals with mental illness. These specialized trainings include the training of dispatchers so they are able to recognize calls which may involve mental health services. Maintaining crisis teams trained to respond to individuals experiencing symptoms of mental illness will enable these officers to more effectively deal with tense situations and will result in more appropriate dispositions of these cases.

## **RECOMMENDATION 2: Ensure that the community mental health center staff who provide emergency services are adequately trained in how the criminal justice system works.**

Communication among professionals is improved when the parties understand the parameter's of each person's job. It can

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eliminate unnecessary misunderstandings. In a crisis it will prove helpful for the mental health professional to understand what a police officer's role can be and what rules they must observe in performing their duties.

The community mental health centers (CMHCs) are working to enhance their ability to respond to community requests for crisis consultations. Efforts include the development of a video-conferencing capacity to conduct expedited mental health screenings. The work the CMHCs are doing to enhance their system's capacity to respond to situations involving individuals with mental illness and the criminal justice system must be recognized, as well as the fact that currently many of these endeavors are

unfunded. One necessary change is to expand the list of covered services for both public and private insurers to include payment for video-conferencing mental health evaluations. This will enable CMHCs to respond to the needs of the criminal justice system in a more timely manner. Whenever possible, the staff of the CMHCs should prioritize their crisis screening requests to respond first to requests from their local police departments.

### **Post-Booking Diversion**

When persons living with a mental illness are arrested and charged with a crime, there are numerous opportunities to intervene to

*Recent surveys have revealed that 46% of the persons incarcerated in the houses of correction have a diagnosed mental illness; an estimated 74% have a substance use disorder.*

minimize pre-trial incarceration, to maintain and strengthen connections with community treatment resources, and to develop dispositions of charges to enhance public safety as well as the mental health of those charged.

### **RECOMMENDATION 3: The district courts shall develop procedures to appoint counsel and notify them by phone on the same day of a person's first court appearance, when there is indication of mental illness.**

When an accused individual is identified as living with a mental illness, telephone notification shall be made to that individual's attorney that day. The New Hampshire Public Defender will adopt procedures to expedite assigning attorneys to cases involving mental health issues so that the individual is offered appropriate, timely services.

### **RECOMMENDATION 4: The district courts shall schedule a screening by a mental health professional for criminal defendants suspected of having a mental illness on the day of their first court appearance, and their counsel will be informed promptly of the results of that screening.**

### **RECOMMENDATION 5: Procedures should be developed to improve coordination between the county jails and the local district courts to maximize opportunities for pre-trial release for persons with mental illness and to expedite competency hearings.**

Recent surveys have revealed that 46% of the persons incarcerated in the houses of correction have a diagnosed mental illness; an estimated 74% have a substance use disorder. When individuals exhibit symptoms of mental illness, their condition needs to be evaluated by a mental health professional within 24 hours of their arrival at the facility. If they are found to be in need of treatment available through a community mental health center or similar facility, and if the alleged crime or behavior does not make release inappropriate, the district court should adopt a procedure to allow bail review to be initiated by the county department of corrections

Delayed competency proceedings lead to unnecessary and inappropriate incarceration of persons with mental illness. When the house of corrections identifies a significant mental health issue, the district court needs to have a procedure for initiating a competency evaluation. When an individual being held in the house of corrections is awaiting a competency hearing, the district court should hold a bail hearing on a monthly basis to determine whether the individual needs to continue to be held in jail. If a competency evaluation is not conducted within 30 days of a request made by a participating attorney, the court should grant an evaluation to be conducted by a private mental health professional.

The State of New Hampshire does not employ enough qualified psychiatrists to perform competency evaluations. This shortage

contributes to individuals being held for unacceptable lengths of time while waiting for competency evaluations. There are a number of procedural changes which should be made to prevent unnecessarily prolonged incarcerations. While public safety continues to be the primary goal of the courts, research indicates that individuals with mental illness are no more likely to be violent than those who do not have a mental illness. Unless their illness reaches the standards of severity established by the Involuntary Hospitalization Laws, symptoms of mental illness do not justify keeping individuals incarcerated.

**RECOMMENDTION 6 :  
Conduct outcome studies of mental health courts statewide to determine whether these courts are offering an effective alternative to traditional criminal courts.**

Mental health courts are growing in popularity as an alternative method of dealing with individuals who engage in criminal behavior as a result of symptoms of mental illness. There are active courts operating in Nashua, Rochester and Keene. Two more are being planned for Portsmouth and Concord. A staff member at the Keene court reports that the first two years of operation have resulted in over 100 individuals participating actively in their treatment with no recurrence of criminal behaviors. However, the currently active courts have not collected consistent data by which to compare outcomes and evaluate project efficacy.

Standards need to be developed in collaboration with the mental health courts now operating in the state. The data collection based on these standards can be used to evaluate the effectiveness of this model. With a balanced approach to studying the use of mental health and drug courts, the concerns of some mental health advocates will be addressed and either future mental health courts will be established based on demonstrated efficacy or evaluation results will lead to the development of more effective interventions.

**RECOMMENDATION 7 :  
Develop county councils with representatives from each component of the criminal justice and the mental health systems to coordinate services and to plan for the release of incarcerated persons living with a mental illness.**

Improved communication will increase the ability of both systems to enhance public safety. When those working in each sector are better able to appreciate the challenges and goals of the other, both sides will be better able to respond to the undesirable, and possibly illegal, behaviors of persons with mental illness. This improved

*Mental health courts are growing in popularity as an alternative method of dealing with individuals who engage in criminal behavior as a result of symptoms of mental illness.*

understanding will enable more appropriate skills training for staff, resulting in better coordination of the services necessary for more effective release plans for individuals with mental illness.

**Subcommittee on the Delivery of Appropriate, Consistent Treatment to Incarcerated Persons**

This subcommittee of the CJMH Work Team made significant attempts to collect data on the status of mental health treatment currently provided in the houses of correction, the Department of Corrections and the Department of Juvenile Justice. A survey instrument was designed and distributed to pertinent state and county institutions. Results showed there is no uniformity, even in defining such services, so that efforts to analyze the information proved difficult. The survey clearly demonstrated the need for a uniform methodology in data collection, storage and sharing. Management of these facilities would be improved by uniform, consistent collection and retrieval of data. Efficient transfer and/or subsequent incarceration of prisoners from one facility to another requires improved access to health care data.

**RECOMMENDATION 8:  
Develop state standards for mental health services to be provided in the houses of correction and the state prisons. These standards will be used to evaluate the quality of services provided in those facilities.**

New Hampshire has not yet developed standards describing what mental health and substance use disorder treatment services will be provided in the state prison system or in the county houses of corrections. There is no consistency in the type or quality of services provided. Nationally, there are several sets of standards for providing such services. In some cases, the standards are actually a statement of principles without specific guidelines. New Hampshire must determine the standards and describe the services it will provide incarcerated persons. The state must also collect uniform data to determine compliance with

*Developing state standards for mental health care in prisons and jails would provide a consistent framework for the delivery of such care, and could result in lower recidivism rates.*

those standards. It may be appropriate to seek legislation to initiate implementation of the standards once they are written.

As the number of adults incarcerated in the country has grown to 1% of the adult population, so has interest in addressing this issue. The cost of housing prisoners has risen sharply and will continue to do so as the prison population ages and medical needs escalate. Developing state standards for mental health care in prisons and jails would provide a consistent framework for the delivery of such care, and could result in lower recidivism rates.

**Action Step:** *Differences in size, resources, and population in the correctional facilities throughout the state make a single set of standards for all facilities problematic. Nevertheless, there is a need for defined criteria and a mechanism for accountability regarding compliance to such*

*standards. As a step toward addressing this issue, the state should provide support ranging from financial assistance for staff training to assisting the Department of Corrections in obtaining accreditation through a nationally recognized association such as the National Commission on Correctional Healthcare.*

**Action Step:** *Expert consultation services should be provided to guide the search for appropriate standards for those county correctional facilities unable to afford the process of accreditation by a national association. Any alternative system of standards must have a mechanism for ensuring compliance.*

**Action Step:** *A collaborative committee of corrections personnel and state officials representing medical and forensic services should be established to develop a uniform format for gathering and reporting health information on a regular basis to the Commissioner of Corrections, the relevant county superintendents and the legislature. This reporting could supplement reporting now required by RSA 30-B:4 and 12. Reports should include the total number and percentage of the population diagnosed as mentally ill and/or having substance use disorder or HCV+, as well as breakdowns of the population by age and gender.*

**Action Step:** *The legislature shall create a statutory oversight committee to receive and monitor data on the quality and consistency of prison health services in an effort to facilitate policy development and appropriations in support of cost-effective services.*

**Action Step:** *Determine the array of mental health services needed, the training required, and the qualifications necessary to provide those services. Determine how state and county providers might share training resources, possibly through the establishment of a shared training institute.*

Staff capacity at the correctional facilities is essential to providing efficient and effective mental health treatment. This includes determining the types of services needed and the related staff qualifications necessary to provide those services. Key personnel in the state and county houses of correction should meet



regularly to identify and share problems and solutions, as well as to provide periodic in-service trainings. This will complement the meetings now occurring among the nursing staff of the county houses of corrections.

**RECOMMENDATION 9:**  
**Ensure that, unless there are extraordinary security concerns, a community practitioner will continue to provide treatment when an individual with a mental illness is held in a county house of correction.**

Some individuals who live with a mental illness will, on occasion, engage in criminal behaviors. When such behavior results in incarceration in a county house of correction, it is important to maintain continuity of treatment. This treatment may include therapy as well as psychotropic medications. As with many medications, psychotropic medications should not be changed or stopped abruptly. For most persons, stopping these medications will result in an exacerbation of symptoms and may result in an acute episode of the illness.

**Action Step:** *Enact legislation which would require houses of correction to make reasonable attempts to consult with the prescribing practitioner and to conduct a medication evaluation before discontinuing the individual's prescribed medications.*

Talk therapies have been shown to be of significant value to maintaining relative emotional stability for an individual living with a mental illness. When an individual is able to maintain this therapeutic relationship, such support will result in a more successful community re-entry process. Absent sufficient security concerns to restrict or suspend access to particular prisoners, procedures utilized by the county houses of correction should support this work.

**Action Step:** *The county houses of corrections will adopt procedures to enable local community mental health center staff, a substance abuse provider or a private practitioner to continue providing therapy to individuals incarcerated in their facility.*

**RECOMMENDATION 10:**  
**Provide for the special psychiatric needs of county and state prisoners with an appropriate continuum of treatment units.**

Several study committees have found that the state is not adequately addressing the treatment needs of several populations admitted to the Secure Psychiatric Unit. The needs of these populations merit further study.

**Action Step:** *Determine how to delineate the populations in need of special services.*

The recommendation has been made that the Secure Psychiatric Unit now located at the state prison should be moved to a different location, initially identified as the grounds of New Hampshire Hospital. This has yet to happen, and the needs which gave rise to this

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recommendation remain unaddressed. The county houses of correction have relied on the availability of bed days at the Secure Psychiatric Unit to deal with individuals who cannot be managed appropriately at the county level. This problem will likely worsen as the capacity of the community mental health centers is reduced due to recent budget cuts. Accurate data collection at the county level is needed to document the extent of this problem. Plans for the development of a new Secure Psychiatric Unit should be expedited, with an appropriate allocation of resources.

### Subcommittee on Reducing Recidivism

During the 18-month period from January 2007 through June 2008, the recidivism rate of offenders released from New Hampshire prisons was 52%. While these individuals had completed their sentences or were deemed ready to return to their communities, they were nevertheless unable to successfully negotiate living within the terms of their release. There are a number of factors contributing to this failure, and the result is that the state's prison system has a rapidly-growing population which requires significant increases in funding. To produce a significant decrease in the rising recidivism rate, substantive changes are needed in the methods currently used to prepare individuals to return to their communities.

#### RECOMMENDATION 11: **Change the New Hampshire Medicaid rules so that benefits are suspended rather than terminated, for individuals incarcerated for short periods of time.**

Current New Hampshire rules require the termination of Medicaid benefits for individuals who are incarcerated, but federal standards allow for suspension of benefits when an individual is

*To produce a significant decrease in the rising recidivism rate, substantive changes are needed in the methods currently used to prepare individuals to return to their communities.*

jailed for a relatively short period of time. A rule change would enable such individuals to retain their coverage so they could receive their psychotropic medications readily upon release. For persons recovering from mental illness, such medications are essential to symptom management. Once a person's Medicaid benefits are terminated, the reapplication process can take as long as a year. This coverage gap contributes to the possibility that individuals will re-offend and return to jail, due to untreated symptoms of their illness.

**Action Step:** *The New Hampshire Department of Health and Human Services shall amend its current rules to require suspension rather than termination of Medicaid benefits in cases permitted by federal law.*

#### RECOMMENDATION 12: **State and county correctional facilities shall enter into a Memorandum of Understanding (MOU) with both the New Hampshire Department of Health and Human Services and the federal Social Security Administration to ensure that eligible prisoners have a completed, pre-reviewed application for Medicaid and federal Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) benefits prior to release.**

Currently, individuals who live with a major mental illness and are eligible for Medicaid coverage are released from correctional facilities with only a very limited supply of psychotropic medications. The re-application process can take up to a year. When released prisoners are unable to obtain medications, they frequently become symptomatic and may engage in behaviors which result in re-arrest. This recurring cycle needs to be stopped.

The Department of Corrections and the Department of Health and Human Services are executing a Memorandum of Understanding (MOU) to enable a prisoner to submit an application for Medicaid as part of the pre-release planning process. DHHS will review and process the application promptly; when possible, prior to the inmate's release. A prison staff member will work with the inmate to gather necessary documentation to complete and submit the application, thereby enhancing the inmate's ability to obtain necessary medication upon release.

**Action Step:** *Each county house of correction shall enter into a Memorandum of Understanding (MOU) with the Department of Health and Human Services to submit and pre-review a Medicaid application prior to the release of a disabled prisoner.*

Similarly, the federal Social Security Act allows Social Security Administration offices to enter

into MOUs with state, county or local correctional facilities to enable a prisoner to submit an application for federal Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) benefits as part of the pre-release planning process. The Social Security Administration will provide technical assistance to correctional facility staff so that they may work with the inmate to gather documentation to complete and submit an application prior to the inmate's release. This would substantially improve the inmate's prospects for available income upon release from incarceration.

The New Hampshire Department of Corrections recently entered into such a Memorandum of Understanding (MOU) with the Social Security Administration.

**Action Step:** *Each county correctional facility shall enter into a Memorandum of Understanding (MOU) with the Social Security Administration for the advance filing and processing of an application for federal Supplemental Security Income (SSI) or federal Social Security Disability Insurance (SSDI) benefits prior to the release date of a disabled prisoner.*

**Action Step:** *The Department of Corrections shall, where appropriate, enter into Memoranda of Understanding (MOUs) with other state agencies to promote the successful integration of prisoners discharged into the community. The county facilities shall also enter into such Memoranda of Understanding (MOUs) with the above state agencies, to the extent permitted by law.*

Another possible option for enabling individuals with mental illness to maintain treatment in county jails is for houses of correction to develop a contractual relationship with the local Federally Qualified Health Center to provide medical care at the jail. This option, currently used in the pilot program, "Project Recovering Lives" in Manchester and Nashua, would allow qualified individuals to receive medications through the federal 340B program which provides medications at significant discount. In addition to medication, prisoners released through this program receive a variety of social services, including substance abuse treatment, and assistance in locating stable housing and

learning how to manage their mental illness. It is anticipated this program will not only reduce the recidivism rate of those involved but also result in a cost-effective method of addressing their treatment needs.

### RECOMMENDATION 13: **Complete comprehensive individualized care plans for incarcerated persons with mental illness and substance use disorders upon entry into the system.**

National research is being conducted to better understand the causes behind the high rates of recidivism that have resulted in 1% of the adult population of the United States being incarcerated. Dr. Bill Fisher from the University of Massachusetts Medical School reports that the neighborhood in which a person lives after release is a significant

*Those with no job skills, no health care, no financial acumen, minimal family connections and unstable housing have little chance of re-entering their community successfully.*

contributing factor. It should come as no surprise that when an individual reenters a high-crime neighborhood, he is more likely to re-offend and return to prison.

Another important factor for individuals recovering from mental illness is their mastery of daily living skills. Those with no job skills, no health care, no financial acumen, minimal family connections and unstable housing have little chance of re-entering their community successfully.

The New Hampshire Department of Corrections has developed a protocol, called HOPE, for planning re-entry. The plan develops individualized care plans upon initial entry into the correctional system, and includes staff training, community transition plans, and developing community-based teams to ensure consistency in service delivery. The intent is to provide opportunities for individuals to develop

skills necessary to live successfully and productively upon release. The committee encourages the county houses of corrections to adopt the same protocol for use in the release planning process.

**RECOMMENDATION 14:  
Develop regional teams of community partners to review and address the needs of individuals with mental illness or co-occurring disorders as they prepare for release from incarceration.**

Regional teams will work with staff from the houses of corrections and the state prisons to address the needs of individuals preparing to return to the community. It is important to acknowledge that individuals who return to the community without a job, housing or a supportive family are much more likely to return

*The choice facing New Hampshire and many other states is whether to expand facilities and operate more prison beds, or to invest in supportive services and evidence-based practices to enable individuals to resume living in their communities.*

to jail or prison within a short period of time. However, it has been shown that given supports and appropriate supervision, such individuals can learn to live productive lives. The choice facing New Hampshire and many other states is whether to expand facilities and operate more prison beds, or to invest in supportive services and evidence-based practices to enable individuals to resume living in their communities.

**RECOMMENDATION 15:  
Identify policies, procedures and resources as a guideline to help probation and parole officers promote and sustain offenders' successful re-entry into the community.**

As described in the initial section of this report, historically, the criminal justice system has placed

primary emphasis on maintaining public safety and punishing misconduct and criminal behaviors. The fact that one percent of the adult population in the United States is now incarcerated demonstrates that this emphasis is failing to serve the public interest. There is need for a cultural shift—a recognition of the efficacy of working with offenders while in prison and on probation or parole. In order for offenders to learn new social skills, small infractions should be expected and should be used as learning opportunities rather than evidence of complete failure. The proposed mission revision emphasizes an effort to prevent behavior leading to technical violations or new offenses as opposed to simply enforcing violations. This process requires a different approach to supervision that includes retraining and ongoing modeling by department leadership. Ultimately, this change will serve both public safety and public interest.

**Action Step:** *Identify and promote community providers such as community health and mental health centers to work with probation and parole district offices to improve communication and integration. The Department of Corrections is developing a process to disseminate information about existing programs that would benefit newly-released offenders to probation and parole district offices throughout the state.*

**Action Step:** *The Department of Corrections must develop and maintain a social services system to support case management working with the probationer's and parolee's community integration efforts. This system will provide support to the probation and parole officers by serving as a link between offender and supervisory staff. Such linkage is an important factor in both urban and rural regions of the state.*

**Action Step:** *The Department of Corrections will place increased emphasis on the continuing education of probation and parole personnel, especially in the areas of motivational interviewing and the basic elements of cognitive behavioral therapy (CBT). Such training will include information on substance use and co-occurring disorders in an effort to anticipate relapse as a step towards recovery rather than a deliberate infraction of parole.*

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**Action Step:** *The Department of Correction's pre-parole plan will be more specific. The Department has reorganized its case management system to facilitate gathering information about an offender's incarceration so that appropriate recommendations can be made to the parole board. Probation and parole officers will work in collaboration with Lakes Region Re-Entry Facility's case managers to finalize parole plan recommendations.*

### **Implementing Change**

This report is intended to serve as a blueprint for change to reduce the number of persons with a mental illness incarcerated in the New Hampshire criminal justice system. Such changes will require cultural shifts in the attitudes of professional staff currently working with persons with mental illness and a change in emphasis for several training programs. The recommendations in this Commission to Develop a Comprehensive Mental Health Plan report are intended to complement those

published in earlier volumes describing the need for early identification of persons experiencing a mental illness, integrated treatment services, adoption of science-based clinical services, ongoing evaluation of quality of services, and public education.

While this report has been under development, the New Hampshire Mental Health Council has been formed to continue work on implementing the recommendations of the full report. The Council includes individuals who have served on the earlier commission as well as new members with a strong interest in pursuing the recommendations in this report. The Council will provide leadership in the effort to improve New Hampshire systems of care. Collaboration between the mental health and criminal justice systems will play a critical role in implementing the recommendations in this report and thereby reversing the alarming trends in incarceration rates for person with mental illness.

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The Commission to Develop a Comprehensive State Mental Health Plan

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