APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

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Senator Tom Coburn, M.D.
United States Senate
Washington, D.C.

Re: Follow-up questions to testimony at hearing, "Human Rights at Home: Mental Illness in U.S. Prisons and Jails" (9/15/09)

Dear Senator Coburn:

Thank you again for the privilege of testifying at the above-mentioned hearing of the Senate Subcommittee on Human Rights last September. I am writing at this time to answer your questions which were forwarded to me by staff member, Lauren Myerscough-Mueller.

1. *Judge, you have presided over an Illinois mental health court called the Therapeutic Intervention Program (TIP). Can you tell us what you observed as the pros and cons of such a court system?*
a. *Do you believe these courts effectively divert low-level non-violent mentally ill offenders from jail? If so, why are these courts so effective?*

As the Presiding Judge of the Criminal Division of the 17th Circuit Court, and then as Chief Judge of the 24 judge circuit in northwest Illinois, I not only convened a large community task force in 2003 to address the problems of persons with mental illness involved with our criminal justice system, but also had the privilege of presiding for two and a half years over the mental health court created by the task force members, prior to my assignment to the Appellate Court in 2007. In my view, the advantages of such a problem-solving court (or specialized docket) are that it effectively addressed a number of the issues facing both the court system and persons with mental illnesses.

We had identified in our community a jail overcrowding situation. Persons with mental illnesses tended to cycle in and out of our county jail constantly – the "revolving door syndrome". Also, persons in the community with mental illnesses who acted out as a result of their illnesses were

often arrested and taken to jail - the "criminalization of the mentally ill". Establishing a mental health court for persons with serious mental illnesses allowed intense supervision and treatment to be made available to assist persons with mental illnesses to take charge of their own recovery and break the cycle of returning to jail and involvement with the criminal justice system. The benefit is that public safety is increased, together with the quality of life for persons with mental illnesses. Statistics have demonstrated that persons who have participated in TIP return to jail less often, and are hospitalized less frequently. Thus, there is a resulting cost savings for the county and the state.

The only "con" that I can identify at this point is that a problem solving court, such as a mental health court places a strain on judicial resources. There is already a shortage of judges for the significant numbers of cases in the court system; presiding over a court that takes additional time and handles fewer defendants places an additional burden on judges. In my opinion, though, the positive outcomes merit the additional time and effort.

The structure and eligibility criteria of mental health courts varies throughout the country. In Rockford, Illinois, the criteria were developed by the task force and included misdemeanor and non-violent felony offenses. If a defendant with a serious mental illness and with a pending felony was referred and accepted, a plea of guilt was required and the program participation was part of the agreed upon sentence. But prosecution for many of the misdemeanors was deferred, and the charges dismissed upon graduation and successful completion of TIP.

Identification of those persons with mental illnesses in our jail is the first step in the process. After arrest and at booking, a questionnaire is administered to identify persons with mental illnesses. Then those persons in jail are assessed by a mental health professional and if appropriate, referred to the program. If accepted by the TIP team, and the defendant signs a consent to participate in open court, the defendant may be released from jail to participate in the structured program. The effectiveness of the program really revolves around the 11 person interdisciplinary team of mental health professionals and probation officers that works with the defendants, and the requirement that the defendants appear weekly in front of the judge for a status regarding their progress.

2. *What types of offenders qualified to appear before the mental health court?*
   a. *You state in your testimony that participation in the TIP was purely voluntary. How many offenders would you estimate elected to participate?*
   b. *Are inmates counseled regarding the pros/cons of choosing the TIP before deciding to participate?*

Those persons arrested who have been diagnosed with a serious mental illness (DSM-IV, Axis I: e.g. Bi-polar disorder, schizophrenia, major depression), who are charged with a misdemeanor are eligible to participate. In addition, all class 2, 3 and 4 felonies that do not involve bodily harm or threat of bodily harm or mandatory penitentiary time are eligible for TIP. Domestic violence offenses may be accepted at the discretion of the team, and with the judge's approval. All

misdemeanor and felony domestic violence offenses must have the consent of the victim. Other felony offenses may be considered where the mental illness is a causative factor in the offense: threatening a public official; intimidation; eavesdropping. All felony offenses involving a weapon are excluded. All sex offenses are excluded, with the exception of prostitution. Certain other offenses are excluded automatically, such as driving under the influence, residential burglary, arson, and robbery.

Each defendant (whether in or out of custody) who is referred, assessed and found eligible for TIP is then screened by the team and the judge at a staffing. If accepted for the program, at the first court appearance, the judge reviews with the defendant the requirements of the program and confirms that they wish to participate. The defendants then sign a voluntary consent form and releases in open court. Prior to coming to court, their attorney, whether a private attorney or public defender, does review with them what is expected in terms of meetings with the team, court appearances, medication - if recommended by a physician, etc. It is our experience with the TIP program, that over 97 percent of those who are eligible for the program and accepted by the team, decide to participate.

3. *What methods did your mental health court employ to ensure those who actually qualified to participate in the TIP actually did so?*

When a defendant appeared in the TIP court for the first time, he or she was introduced to two team members who were assigned to work with them on a daily basis to assist with housing and securing various entitlements, as well as getting them to medical and other appointments. Each defendant was required by the court to return each week for a status report to the court on their progress. Incentives as well as sanctions were used by the judge and the team to assist in the process.

4. *Did you and/or other judges see a change in the number of cases involving mentally ill offenders in the regular court system after implementation of the TIP?*

Yes, those referred to TIP and entering the program had their cases transferred from the regular criminal dockets handled elsewhere in the courthouse. While TIP was an open court, sessions were held once a week in a courtroom separate from the other criminal dockets. A dedicated and assigned public defender and assistant state's attorney were part of the team, along with two probation officers, a nurse, family support specialist, trauma specialist, dual diagnosis specialist and two mental health professionals, as well as a jail assessor and clinical supervisor.

After TIP had been operational for just six months, we noticed that over 50 percent of the participants also had a substance abuse problem. As we did also have a drug court in our circuit, we worked to make sure that defendants were referred to the appropriate court, depending on the primary causative factor in their criminal charge– either their mental illness or their substance abuse. In addition, in my capacity as the presiding judge of the TIP Court, I convened a local summit to address the problem of the inadequacy of services for persons with mental illnesses

with substance abuse problems. Two key agencies, Janet Wattles Center (our local community mental health center) and Rosecrance (a well known substance abuse treatment facility), collaborated with amazing dedication and sacrifice to provide an integrated, simultaneous substance abuse outpatient program for the TIP participants. This was only one example of the type of innovative collaboration exemplified by key stakeholders in our community.

5. *How much did you and your task force collaborate with other states or examine what works for mentally ill offenders in other states before establishing the TIP?*

The Winnebago County Community Mental Health Task Force did extensive research around the country in 2003, looking at models of mental health courts and diversion programs in a number of states, including Florida, Washington and California in order to assist us in planning our court. We used letters, emails and phone conferences to gather the information. A separate committee was dedicated to this process and to taking the information learned from other jurisdictions and applying it to the workings of our court system. The committee's recommendations were reviewed and accepted by the full task force, before the court became operational in February, 2005. There was also a week's training and education seminar for the team before the court opened, and a continuing education component built into TIP. In addition, at each task force meeting, I arranged for an in-service presentation to acquaint the members with issues and information in the mental health and justice fields that was pertinent to our work.

Currently, the process is made easier for jurisdictions contemplating how to address these problems, by the existence of the national Judges' Leadership Initiative for Mental Health and Criminal Justice Issues. Established in 2004, it promotes networking, information sharing and problem solving in this area. I am pleased and honored to serve as the national co-chair of JLI.

6. *How is the TIP funded? What is the share of private, state and federal resources that are contributed to TIP?*

In Illinois, there is legislation providing that counties may adopt resolutions to assess a $10. fee on criminal defendants who plead guilty or are on supervision. These monies are placed in the county's general fund to help defray the costs of mental health courts and drug courts (55 ILCS 5/5-1101 (d-5). Winnebago County has adopted such a resolution.

Winnebago County also adopted a county wide sales tax that has helped defray some of the expenses of the program. Of course, with the economic downturn, these funds have greatly diminished.

Our local community mental health center, Janet Wattles Center, contributes staff and resources to the program. It is dependent on Medicaid reimbursements.

As to federal funding, TIP submitted a number of applications to the BJA to expand the court's resources by adding essential team members. Finally on the fourth attempt, a two year expansion

grant was awarded in 2007, enabling the program to serve additional defendants and to better meet their needs. In my view, it is vital that federal funding streams and monies continue to be available and even expanded. Many communities do not have any resources to develop programs or courts such as TIP. Yet, in the end, these programs do provide cost savings and an improvement in public safety and the quality of life for persons with serious mental illnesses.

In conclusion, I am encouraged that the Senate hearing has raised awareness with respect to mental illness and our criminal justice system. I am also hopeful that the record established can help bring additional resources to our states and communities which are in great need. I would respectfully renew my request that Congress address some of the other recommendations that I and the other panel members included in our written statements to the Subcommittee.

I am most willing to continue to assist you, Senator Durbin and your staffs as well as the Subcommittee staff on these issues. Please know that I would welcome the opportunity to dialogue and meet with you at any time. Additional details on the TIP program and its structure and operation can be made available to you if you wish to have them.

Very truly yours,

Kathryn E. Zenoff
Presiding Justice