The American system of justice has been an adversarial process for over 200 years. The therapeutic court movement came into existence in 1989, when Miami-Dade County, Florida, created the first drug court. Mental health courts, the next iteration of therapeutic courts, came into existence in 1997 in Broward County, Florida. Other therapeutic courts have developed over the years to address myriad issues. These courts include community court, therapeutic dependency court, therapeutic domestic violence court, gambling court, homelessness court, veterans' court, and wellness court.

These therapeutic courts have been created in response to a specifically identified and defined problem. Each court uses a model to address the identified problem in a systematic way. Each court focuses on specific goals, designed to improve case outcomes, more effectively than traditional adversarial courts.

The Needs Satisfied by Mental Health Court

In 1980, the involuntary inpatient mental health system began shrinking under a policy of deinstitutionalizing the mentally ill. This process was driven by a belief that the civil rights of the mentally ill would be better protected through expanded and improved community-based treatment than through inpatient treatment in a psychiatric hospital. Unfortunately, the outpatient mental health system was not adequately funded. The administrative requirements for entrance into the outpatient system were often cumbersome and therefore created a system that was not accessible to the seriously mentally ill population.

In 1980, the seriously mentally ill population began entering the criminal justice system in increasing numbers. This occurred during a time when the criminal justice system began focusing on determinate sentences, which were punishment-based and involved little, if any, treatment requirements. The lack of meaningful therapeutically based probation, coupled with incarceration, tends to cause a mentally ill person's mental health to decline significantly, rather than improve.
These two trends created a revolving door of re-incarceration for the seriously mentally ill: arrest and booking into jail, a quick plea for credit for time served, release, and re-arrest. The criminal justice system was not designed to address the needs of the mentally ill; it tends instead to exacerbate the mental illness.

These trends become more apparent when one examines the numbers. In 1979, 500,000 people were receiving treatment in inpatient psychiatric hospitals. Today, 40,000 patients are being treated in inpatient psychiatric hospitals. It is estimated that treating the seriously mentally ill population in a psychiatric hospital would require approximately 1 million hospital beds. The Department of Justice estimates that there are currently 1.25 million people who are seriously mentally ill within our prisons and jails.3

Drastically reducing psychiatric hospital capacity has not deinstitutionalized treatment for the mentally ill; it has simply shifted treatment to our prisons and jails. However, our prisons and jails are not designed to treat mental illness. The result is increased incarceration and decreased treatment for mentally ill people who come into contact with the criminal justice system.

Mental health courts are designed to address the criminal justice system's lack of an effective response to mental illness. Mental health courts bridge the gap between the involuntary mental health treatment system and the criminal justice system. Mental health courts focus on both the offender and the treatment system, bringing both together under the supervision of probation officers and the court. The accountability and transparency of the criminal justice system apply equally to all participants in the court.

Mental health courts are effective. For example, mental health courts have resulted in a 30-40 percent reduction in recidivism, as measured by re-arrest rates, and a 50 percent reduction in violence, as measured by assessment of the facts of those new arrests. The long-term effects of mental health court are a reduction in crime and violence and the costs associated with these. Success in mental health court is also linked to continued engagement with treatment services after graduation, which reduces governmental costs across several institutions, including crisis and commitment and emergency room visits, as well as jail and criminal justice system costs.4 Many intangible variables will affect the success rates of the court, such as the quality of treatment, the availability of supported housing where treatment and housing are combined, and the interpersonal interactions between team members and the team's interaction with the client.

Basic Elements of Mental Health Courts
Although mental health courts all share some basic characteristics, there are many variations on the model of a mental health court. A mental health court is, at its core, a court that reflects and responds to the community's needs. Therefore, it must be flexible and may seek to meet a community's needs in a variety of ways. The characteristics discussed below are commonly found in most, though not necessarily all, mental health courts.

Judicial Leadership
The judicial role in a mental health court focuses on working with the other members of the mental health court team to develop and refine strategies to help the defendant succeed. In the context of the mental health court, "succeed" means reducing the severity of and/or frequency with which the defendant re-offends. This is an ongoing process, with the judge providing the leadership necessary to keep the process working.

One way in which the judge provides leadership is by building a relationship with each defendant. That relationship helps the defendant stay engaged in his or her own treatment, which, in turn, increases the likelihood that the defendant will succeed in the court. This is a radical departure from the traditional role of a judge as detached arbiter. For a judge new to a mental health court, it can be an uncomfortable process, but with experience it becomes second nature.

Traditional criminal courts are primarily judge focused and punishment driven. Mental health courts are defendant focused and therapeutically driven. In traditional courts, the judge listens to the parties' presentations and renders a judgment. The defendant's presentation is limited and most often scripted. In mental health courts, the judge actively engages with the attorneys, the probation officers, treatment providers, and the defendant. A defendant is encouraged to address the judge directly, describing successes or problems and the reasons for these developments. The judge engages with the defendant, asking questions, listening to the answers, and following up with additional questions. The mental health court judge rules on an issue by directly addressing the defendant in plain language, using therapeutically driven reasons for the ruling. The defendant's acceptance of the judge's decision is critical to the model. This level of judicial engagement is essential to the success of a mental health court.5

Mental health court judges are able to engage defendants by seeing them more often. For that reason, cases have review hearings more frequently than in traditional courts, where cases tend to be set only if there is an alleged probation violation. The frequency of the hearings varies,

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Judge Anne Harper currently presides over King County District Court in Seattle, Washington. From 2010–11, she served as the first Regional Mental Health Court judge for King County.

Judge Michael J. Finkle currently presides over King County District Court and King County's Regional Mental Health Court in Seattle, Washington.
depending upon the defendant's needs for support and monitoring and the community's need for public safety. A defendant who is new to the court or going through a difficult period may appear weekly. As the defendant continues to work successfully with the court, the frequency of the hearings will decrease over time, ultimately to every two or three months.

Although the judge is part of the mental health court team, and focuses primarily on the defendant, a mental health court judge remains conscious of the need to remain objective and to maintain the appearance of being objective.

**Team Participation and Commitment**

The success of a mental health court stems from a team approach. The effectiveness of the mental health court is reduced by half if a team member is not fully engaged in the team process. Each team member must be committed to the collaborative process, looking for solutions that benefit public safety and the defendant's needs, rather than taking a more traditional approach that does not focus on agreed solutions.

When factual issues arise in the mental health court, the judge will still make appropriate findings. If the judge finds the defendant has violated any of the court's conditions, all team members must focus on the least punitive, most effective response to those violations. This requires that a prosecutor focus on therapeutic sanctions, rather than incarceration, and defense attorneys focus on the best response for the client, which, in a mental health court, is almost always seeking and obtaining a therapeutic response. The judge must also focus on creative solutions, rather than relying upon incarceration or work crew as the only response to violations. Probation officers must be more social services–oriented and less punishment-oriented.

Treatment providers must recognize that the defendant's treatment plan is part of a court order and that the defendant has signed a release of information authorizing them to report noncompliance to the court. The mental health court clients must actively participate in the treatment program, communicating with their treatment providers, defense attorneys, and defense social workers, as well as probation officers. The clients must be encouraged and required to actively look for solutions to the problems that they face. Each team member is required to focus on the common good and to focus on the long-term good. This requires each team member to shift his or her focus significantly and to examine his or her own traditional goals in a more creative manner.6

**Court Intake Process**

A case may be referred to a mental health court by any source, but the usual source is the defense attorney. After referral, the mental health court team screens the client's case. The prosecutor reviews the case for public safety issues to determine if the less punitive response of a mental health court is justified. A court intake screener, who is a psychiatric social worker or mental health professional, looks for amenability to treatment and available treatment resources. The intake screener will contact the treatment agencies and supportive service agencies to establish a treatment plan. The defense attorney and defense social worker will work with the defendant to ensure that alcohol and drug use are not complicating the treatment plan. The defense attorney and defense social worker will work with the defendant to ensure that alcohol and drug use are not complicating the treatment plan.

In determining eligibility for the court, the following factors are often considered: the length and type of the defendant's criminal history; prior success or failure on probation or in treatment and the reasons for this; whether the defendant's mental illness is of recent onset or a chronic condition; complicating factors such as head injuries or cognitive deficits; the availability of treatment resources to meet all of a defendant's needs; and the victim's wishes.

The evaluation process may take several weeks. During this time, the defendant is ordered to comply with conditions of release that require regular court hearings and participation in the creation of a treatment plan. Compliance during this phase is a significant indicator of amenability to treatment and responsiveness to the court process.

If all team members agree that a client is eligible for the mental health court process, an "opt in" hearing is scheduled. At these hearings, the defendant either waives all rights to a trial and is informed of the conditions of the mental health court or elects to proceed to trial in traditional court.

**Supervision Process**

A probation officer who is specifically trained in mental health–related social work is assigned to each mental health court client. These probation officers generally have a master's or doctoral-level degree in a mental health–related area and are experienced in working with the mentally ill. Probation contact with the client can vary, according to need. The probation officer may see the client daily, specifically to monitor that medications are being taken, or as infrequently as once a month, if the client has been doing well for quite some time.

The probation officer establishes a good working relationship with the defendant's case worker and therapists. The probation officer may also establish a relationship with the defendant's family and other supportive members of the community. These relationships ensure that violations of the treatment plan are detected early and addressed by the court with a least-intrusive therapeutic response. Urinalysis monitoring is used to ensure that alcohol and drug use are not complicating the treatment plan.

Probation officers are in constant contact with other team members, defense and prosecution, to update them on developments in the client's case and treatment plan. If a difficult situation arises, the probation officer can request a quick set hearing and bring the client into court to work through the best court response.

**Team Problem Solving**

Prior to each court calendar, the team gathers privately to discuss the case, weighing the successes and challenges that the client is currently experiencing.
against the backdrop of past behavior and their knowledge of the client's capability. The team may make recommendations for modifications in the treatment plan, even if there are no violations of conditions before the court. If there are violations, the team discusses the case with a shared goal of making a recommendation for court action to correct the violations and redirect the client, with the least amount of force. Incarceration is a sanction of last resort because of the damage it can cause to a person who is seriously mentally ill.

In many mental health courts, the judge participates in a pre-court team meeting, listening to observations and asking questions about the cases. The judge should not make any decisions about sanctions during this meeting. Rather, the issue of sanctions is reserved for the court hearing, where a defendant has the opportunity to address the court. In some mental health courts, however, the judge does not participate in the pre-court meeting due to concerns about due process and open courts. In several cases, the U.S. Supreme Court has reiterated that a defendant has a right to a public trial. This right also extends to members of the public and the press. These rights derive from the First and Sixth Amendments to the U.S. Constitution. State constitutions may have similar provisions.7

Sanctions for Violations
Mental health courts focus affirmatively on positive reinforcement through encouragement and praise. They generally use a wide variety of negative sanctions to address violations within the specific circumstances of an individual client. Changes in the treatment plan are common, as are increasing meetings with therapists or requiring use of a journal; these changes must be made in coordination with the treatment provider. They may include such things as increased urinalysis testing, more frequent meetings with probation, writing of a short essay addressing the issues that led to the violation, or court watch. In court watch, clients are required to appear for court and watch each case on the calendar. The client is not required to appear for a review hearing, just to observe and write down observations.

After court, the client speaks with the court about the lessons learned.

More traditional sanctions may be appropriately used in mental health court. Community service and work crew (if available) are two examples. If the court has access to a day reporting center, this may be used as an effective sanction along with an increase in monitoring. When incarceration is used, it tends to be a short period, such as 24 hours.

Misdemeanor Only, Felony Reduction, or Felony Only
The mental health court may be designed to address only misdemeanor cases, misdemeanor cases and felonies reduced to misdemeanors, or only felony cases. If the court is addressing a felony case reduced or a misdemeanor case that would carry a significant sentence outside the mental health court context, the court must be satisfied that the defendant is knowingly agreeing to enter the mental health court. The allure of a reduction may cause clients to choose the mental health court without fully realizing the increased effort that is required, and without the court and attorneys evaluating whether the defendant is truly amenable to treatment.

Pre-plea or Post-plea Courts
Mental health courts vary in the advantages that are offered to the client. Some courts engage in pre-plea adjudication. The defendant will waive all rights to a trial and enter a plea of guilty to the charge at the beginning of the court process. If the defendant completes the mental health court program, the case is dismissed with prejudice as part of the graduation ceremony.

In post-plea courts, the client pleads guilty and is sentenced to comply with the

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mental health court conditions of sentence. The case is not dismissed upon successful graduation.

The distinction between pre-plea and post-plea courts rests primarily with the prosecutor and should be addressed during the process of establishing the mental health court.

Competency Cases
A significant advantage of a mental health court is that competency to stand trial can be addressed in a single court with a potentially accelerated process. If a client presents competency issues, the referring court sends the case to the mental health court. There, the intake screener may perform a brief assessment of competency. If the intake screener and an experienced defense counsel believe that competency is an issue, the court can order a full competency evaluation. This prescreening process ensures that only cases with legitimate competency concerns are being referred for a full competency evaluation. Nationwide, 60,000 competency evaluations are ordered each year. Of these, only 12,000 defendants are ultimately found incompetent by the court, a 20 percent ratio.8

With a mental health court prescreening, however, as many as 65 percent of the referrals are found incompetent. The 45 percent reduction in unnecessary referrals saves significant resources and avoids competency evaluations for many individuals who are in fact competent.

Another advantage of mental health court competency screenings is that the intake screener can offer voluntary social services to the client who may be incompetent. If a client will agree to a treatment plan, which includes housing, the court may be able to order an out-of-custody competency evaluation. Some mental health courts have been able to increase the out-of-custody competency evaluations to 65 percent of the caseload. This is a significant increase and it avoids incarceration during the evaluation process. If a client follows the treatment plan, there is a possibility that the client will regain competency while awaiting the evaluation by state doctors.9

Mental Health Courts Contrasted with Drug Courts
Both mental health and drug courts are therapeutically focused on problem solving. Each seeks to stabilize and improve the quality of a defendant’s life and thereby to improve public safety within the community.

Drug courts vary in their goals and operations. The following comments may not necessarily apply to a specific drug court. Drug courts generally define eligibility according to the crime charged by the prosecutor. Mental health courts generally define eligibility by diagnosis. Some crime types are excluded from mental health court due to inherent dangerousness or based on risk assessment. Many of the participants in drug court do not suffer from a mental illness, or suffer from a less severe illness than a typical mental health court defendant does. Drug court treatment plans tend to be standardized and based on a behavior modification model, using regular drug testing as an essential element of the court. Many drug courts have a predetermined sanctions grid. The sanction quickly follows the violation. This model has proven to be effective with the population that is served through the drug courts.

Mental health courts, while also criminal therapeutic courts, serve a significantly different clientele from those in drug court. Mental health courts generally address treatment issues of people who have been diagnosed with major mental illness as defined by the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM IV™). Each court specifies the eligible diagnoses. However, the usual diagnoses for a mental health court are schizophrenia, schizoaffective disorder, bipolar I disorder, psychosis not otherwise specified, and major depressive disorder with psychotic features. Post-traumatic stress disorder may be admitted on a case-by-case basis. Most mental health courts do not address depression, the most common mental illness.

The needs of a mental health court participant are generally more extensive than those of a drug court participant. Each mental health court participant has an individualized treatment plan. Many mental health court participants have become chronically mentally ill. Many may also be homeless, especially those in urban downtown areas. The focus of the mental health court is to engage the participant in mental health treatment and to provide necessary social service that will allow the person to succeed in the mental health court. This includes housing, mental health case management, counseling, medication, drug testing, life skills training, job training, medical treatment, and co-occurring drug and alcohol abuse treatment.

Many drug courts have objective goals that can enable a participant to be graduated from one phase of the program to another. In mental health court, the ultimate goal is to graduate the program, but generally speaking there are no standardized intermediate benchmarks. Progress must be measured against the individualized treatment plan and the participant’s capacity. It is important to require the participants to strive to go beyond their comfort zone. However, setting goals that they cannot reasonably meet will cause failure.

Harm reduction is often a stated goal in mental health courts. In a drug court, a participant is often terminated if a new crime is committed. In a mental health court, the team assesses whether the new crime can be effectively addressed in mental health court or whether it raises an issue of the participant’s amenability to treatment and should therefore lead to terminating the defendant’s participation in the mental health court.

Planning to Establish a Mental Health Court
Mental health courts are collaborative bodies. A successful mental health court will have good communication among all parties: judge, probation, treatment, defense, prosecution, and the jail. All of the parties must be involved in the planning process, and all of the parties must accept the underlying philosophy behind the mental health court. The legislative and executive branches of government within the jurisdiction should also be involved in the planning process; they
have an interest in the success of the mental health court and will be involved in funding the court. However, at the end of the day, it is the judge who must retain the independence to provide the leadership necessary to create the mental health court and to ensure that the court succeeds in endeavors.10

Endnotes
1. This article is based in part upon the authors' experience as practitioners and in part upon their direct experience as mental health court judges. Judge Harper presided over King County (Wash.) Regional Mental Health Court (RMHC) from 2010–2011. Prior to taking the bench she served for eight years as a municipal prosecutor in Seattle, including 11 years as the supervising prosecutor for Seattle Municipal Court’s Mental Health Court.

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The meeting kicks off on Thursday, August 2, with the Welcome Reception. Then on Friday, August 3, be sure to join the Division at the Annual Dinner in honor of the Judiciary for the presentation of the John Marshall Award. Tickets for both events will be available at www.ambar.org/annual.

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