

**JUDICIAL PERSPECTIVES ON SUBSTANCE ABUSE & MENTAL HEALTH
DIVERSIONARY PROGRAMS AND TREATMENT**

PRELIMINARY JUDICIAL SURVEY FINDINGS

PRESENTED TO THE JUDICIARY ADVISORY COUNCIL

A COLLABORATIVE PROJECT BY

**THE TASK FORCE ON INDIGENT DEFENSE
THE OFFICE OF COURT ADMINISTRATION
THE TEXAS CRIMINAL JUSTICE COALITION**

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INTRODUCTION & BACKGROUND

In 2007, the Texas Legislature approved millions in new funding for prison diversion. In order to monitor the impact of this new legislative investment in alternatives to incarceration, House Speaker Tom Craddick charged the House Appropriations Committee and the House Corrections Committee during the legislative interim with certain topics for further study. Issues to be analyzed included the following: (a) the availability and efficacy of substance abuse treatment services for individuals on probation, in custody, and on parole, and (b) policy recommendations to address the proliferation of individuals suffering from mental health problems in both the juvenile and criminal justice systems.

The Committees held a joint hearing on May 29, 2008, on both interim study charges. During the hearing, Representative Sylvester Turner, who chairs the House Appropriations Committee-Subcommittee on Criminal Justice, noted his interest in learning the circumstances under which judges would feel comfortable placing criminal defendants with substance abuse or mental health problems in diversionary programs to address their treatment needs.

Following the hearing, the Texas Task Force on Indigent Defense (Task Force), the Office of Court Administration (OCA), and the Texas Criminal Justice Coalition (TCJC) partnered to begin the production of a policy report that would attempt to answer Chairman Turner's question and ensure that the perspective of the judiciary is adequately represented in the policy discussion. The two specific questions to be answered in the report were as follows: (1) *What kind of infrastructure is necessary in order for judges to feel comfortable placing criminal defendants with substance abuse or mental health problems in diversionary programs?* (2) *What do judges – in both the criminal and juvenile systems – perceive to be the problems in handling those experiencing some form of mental illness, and what are their recommendations?*

The Task Force, OCA, and TCJC agreed the report would have two major sections – first, input from judges on their experiences with alternative sentencing options; and second, research on specialty courts and other best practices for addressing those suffering from substance abuse and/or mental illness. This document contains findings from the survey portion of the report only.

METHODOLOGY

With Chairman Turner's input, the Task Force, OCA, and TCJC developed an anonymous online survey to gather the feedback of constitutional, county-at-law, and district judges who hear criminal cases in Texas. The survey remained open from July 30 through August 19, 2008. In all, 244 judges responded to the online survey within the three-week period.

Of the 22 questions developed, 11 had multiple choice answer options. Some of those questions, as well as the remaining 11 questions, gave respondents the choice to leave free response answers. We have noted below which questions were multiple choice and which were "free response."¹

KEY FINDINGS

¹ For all questions below, response percentages were rounded to the nearest tenth of a point, resulting in some answers totaling 99.9% or 100.1% rather than an exact 100%. For other questions – where noted – the percentages do not total 100% because respondents were given the choice of selecting more than one answer option.

1. Please indicate the population of your jurisdiction.²

- 42.1% – Greater than 250,000
- 29.8% – Less than 50,000
- 16.1% – 100,000-250,000
- 12.0% – 50,000-100,000

2. What type(s) of cases do you handle? (Check all that apply)³

- 48.8% – Felony
- 45.5% – Misdemeanor
- 43.8% – Juvenile
- 9.1% – No Criminal or Juvenile Cases

3. If you run a specialized court or docket, please indicate below.⁴

- 27.0% – Drug Court
- 17.6% – Mental Health Docket
- 14.9% – DWI Court
- 10.8% – Re-Entry Court

4. At what point in the legal process do you find out about the substance abuse issues of those who come before you?⁵

- 40.5% – Arraignment/Taking Plea/Adjudication/Trial
- 11.8% – Pre-Sentence Investigation (PSI)/Sentencing/Sanctions
- 9.5% – Magistration/Setting Bond/When Counsel Appointed
- 9.2% – Post-Conviction/Probation Revocation or Review
- 4.7% – Arrest/Booking
- 3.3% – Charges Filed
- 18.0% – Varies/Other
- 3.0% – Juvenile/Family-Specific

Key Finding: Not surprisingly, the largest percentage of respondents indicated that they did not learn of substance abuse issues until arraignment or trial. Interestingly about 5% of judges indicated that they learned of substance abuse issues at arrest/booking, compared to about 9% that indicated they did not learn of this until post conviction.

² Multiple choice

³ Multiple choice

⁴ Multiple choice and free response

⁵ Free response

5. At what point in the legal process do you find out about the mental illness issues of those who come before you?⁶

- 30.7% – Arraignment/Taking Plea/Adjudication/Trial
- 22.4% – Magistration/Setting Bond/When Counsel Appointed
- 12.2% – Arrest/Booking
- 6.6% – Pre-Sentence Investigation (PSI)/Sentencing/Sanctions
- 2.4% – Post-Conviction/Probation Revocation or Review
- 0.6% – Charges Filed
- 22.7% – Varies/Other
- 2.4% – Juvenile/Family-Specific

Key Finding: The largest percentage of respondents indicated that they did not learn of a person's mental illness issues until arraignment or later. This is significant because of the time it takes many jurisdictions to prepare formal charging instruments. Hence, persons unable to bond will be sitting in jail awaiting the opportunity to appear before the court.

6. At what point in the legal process is a screening conducted to determine whether a defendant may have an addiction or mental illness?⁷

- 17.6% – Arraignment/Taking Plea/Adjudication/Trial
- 16.7% – Magistration/Setting Bond/When Counsel Appointed
- 14.1% – Post-Conviction/Probation Revocation or Review
- 13.7% – Arrest/Booking
- 8.2% – Pre-Sentence Investigation (PSI)/Sentencing/Sanctions
- 28.1% – Varies/Other
- 1.6% – Juvenile/Family-Specific

Key Finding: The even distribution of responses from the front-end of the process to the back-end of the process shows a significant disconnect between what is required by standards/law and local practice. Every jail is required per jail standards to conduct a mental health suicide screening at time of intake or booking. Article 16.22, Code of Criminal Procedure also requires that the sheriff notify a magistrate within 72 hours of a detainee's possible mental illness or mental retardation.

7. What option(s) do you as a judge currently have to address the substance abuse issues of those who come before you? (Please list all options)⁸

- 35.7% – Treatment Services
- 19.0% – Community Supervision Programs/Specialty Courts
- 14.6% – SAFPF Services
- 8.5% – Few or No Options; Funding and Other Resources Needed
- 18.5% – Other/Varies
- 3.7% – Juvenile/Family-Specific

⁶ Free response

⁷ Free response

⁸ Free response

Key Finding: Almost 10% of respondents indicated that they had few or no options to address a person's substance abuse issue. Throughout the free responses, judges indicated that there are practically no services available for misdemeanor offenders.

8. What option(s) do you as a judge currently have to address the mental illness issues of those who come before you? (Please list all options)⁹

- 47.8% – Treatment Services/MHMR
- 15.7% – Community Supervision Programs/Specialty Courts
- 13.2% – Few or No Options; Funding and Other Resources Needed
- 2.5% – SAFPF Services
- 19.1% – Other
- 1.7% – Juvenile/Family-Specific

Key Finding: In their free responses, the majority of respondents indicated a referral to a local MHMR center as their option for addressing mentally ill individuals. In all likelihood, the MHMR programs referenced by the judges are the ones funded by TCOOMMI and TDCJ-CJAD as part of the legislature's mental health/criminal justice initiative enacted in 2001. Just over 13% of judges indicated that they had few or no options for addressing a person's mental illness issue.

9. What option(s) do you as a judge currently have to address defendants suffering from both mental health issues and substance abuse problems?¹⁰

- 30.4% – Parallel Treatment
- 23.3% – Integrated Treatment
- 21.1% – Unsure
- 17.6% – Sequential Treatment
- 16.7% – Only Substance Abuse Treatment
- 15.0% – Only Mental Health Treatment
- 9.3% – None

Key Finding: Evidence-based studies show that integrated treatment is the most appropriate and effective response for addressing individuals suffering from both mental illness and substance abuse. These findings show that considerable work is needed in integrating substance abuse and mental health treatment. In addition, more than 20% of respondents indicated that they were unsure of what treatment options were available.

10. Does your jurisdiction have effective non-incarceration programs for nonviolent or other suitable offenders? If so, please briefly describe the top two programs in the text box below.¹¹

- 44.1% – Yes
- 38.3% – No
- 17.6% – Unknown

⁹ Free response

¹⁰ Multiple choice and free response

¹¹ Multiple choice and free response

Top two programs:

- * 40.9% – Community Supervision Programs/Specialty Courts
- * 35.8% – Treatment Services
- * 5.7% – Few or No Options; Funding and Other Resources Needed
- * 9.4% – Other
- * 8.2% – Juvenile/Family-Specific

Key Finding: The respondents split relatively evenly (44%/Yes and 38%/No) on whether or not they have effective non-incarceration programs for nonviolent or other suitable offenders. However, when you control for population, close to 60% of judges from jurisdictions with a population over 250,000 indicated that they had a successful program, compared to less than 30% of judges from jurisdictions with a population of less than 50,000 saying they had an effective program. From the free responses, one of the top two programs listed was a specialty court. This shows a positive correlation between effective non-incarceration programs and specialty courts.

11. What options would assist you in more effectively addressing individuals charged with a crime that is directly related to their substance addiction?¹²

- 48.1% – Treatment Services/Funding
- 10.5% – Community Supervision Programs/Specialty Courts
- 8.4% – Funding and Other Resources Needed (General)
- 4.2% – SAFPF Services
- 2.9% – Legislative Changes
- 24.3% – Other
- 1.7% – Juvenile/Family-Specific

Key Finding: The majority of respondents indicated a need for more funding, additional resources, more beds, and just better accessibility. One judge indicated “less drug dealers and drugs available on the street.” Another indicated that sending persons off to other places for “short fixes” does not work. “Drug treatment is long-term, as are most mental health issues, and we have to be able to monitor them locally for compliance, taking meds, staying clean, and being ready to intervene.”

12. What options would assist you in more effectively addressing individuals charged with a crime that is related to symptoms of their mental illness?¹³

- 51.1% – Treatment Services/Funding
- 9.4% – Funding and Other Resources Needed (General)
- 8.2% – Community Supervision Programs/Specialty Courts
- 0.9% – Legislative Changes
- 28.6% – Other
- 1.7% – Juvenile/Family-Specific

Key Finding: Like in Question #11, most respondents indicated a need for additional funding and programs. One judge responded that “[a]s a State, we should be ashamed of the lack of services for these individuals. It does not protect the community and does nothing to address the crimes committed.”

¹² Free response

¹³ Free response

13. What type of offense(s) would be eligible for referral to substance abuse or mental illness programs? (Please list all offenses)¹⁴

- 21.6% – Nonviolent Crimes (General)
- 20.1% – Drug or Alcohol Crimes
- 8.8% – Property Crimes
- 5.5% – All Crimes
- 5.5% – Assaultive Crimes
- 4.0% – Juvenile/Family-Specific Crimes
- 1.1% – Violent Crimes (General)
- 33.3% – Other

Key Finding: Throughout their multiple choice and free response answers, more than 10% of respondents explicitly said that they would allow assaultive offenses to be eligible. This is significant because, nationally, the norm is that only nonviolent offenses are eligible for referral.

14. Are you familiar with Article 17.032 of the Code of Criminal Procedure, which requires the release of a mentally ill person into treatment, provided the individual has not been charged with or previously convicted of a violent offense and provided that such treatment services are available?¹⁵

- 83.9% – Yes
- 16.1% – No

Comments:

- * 32.9% – Yes, but Treatment Service Availability Poses Problems
- * 15.7% – Yes (General)
- * 8.6% – Yes, but It is Not Comprehensive/Effective
- * 7.1% – Yes, but Identification/Assessment Issues Pose Problems
- * 4.3% – Yes, but Financing Poses Problems
- * 20.0% – Other Comments
- * 11.4% – No or Not Applicable

Key Finding: Most respondents were aware of this legislation; however, many indicated a lack of resources to effectively carry out the requirements of the law.

15. What do you believe would most benefit substance abuse or mentally ill offenders? (Check all that apply)¹⁶

- Substance Abuse
 - 98.7% – Group Peer Support Services
 - 98.0% – Aftercare Programs

¹⁴ Free response

¹⁵ Multiple choice and free response

¹⁶ Multiple choice and free response

- 94.3% – In-Patient Programs
- 92.2% – Counseling
- 88.8% – Out-Patient Programs
- 88.2% – Cognitive Thinking Programming

➤ Mental Illness

- 89.6% – In-Patient Programs
- 87.7% – Out-Patient Programs
- 87.2% – Aftercare Programs
- 84.4% – Counseling
- 71.2% – Cognitive Thinking Programming
- 61.9% – Group Peer Support Services

Other (please specify):

- * 20.9% – All Options are Case/Offender Dependent
- * 16.3% – Needed Financial Resources and Treatment Programming (General)
- * 11.6% – All Options Are Beneficial
- * 9.3% – Safe Housing and Transportation
- * 7.0% – Specialty Courts
- * 4.7% – In-Prison Treatment
- * 4.7% – Monitoring Devices
- * 9.3% – Miscellaneous Options
- * 7.0% – Other Comments
- * 9.3% – Not Applicable or Unknown

Key Finding: A full range of programs and options is preferable when addressing individuals suffering from substance abuse and/or mental illness. Research has substantiated that intensive out-patient wrap-around services for offenders with mental illness are not only effective in reducing recidivism, but are less costly than institutionalization or in-patient care. And, using out-patient services allows local and state providers the ability to bill Medicaid for outside assistance. A number of the free responses indicated the importance of getting the family involved.

16. Does your jurisdiction have access to a professional Licensed Chemical Dependency Counselor (LCDC)? If yes, at what point in the legal process does the LCDC become involved to help in the assessment of addiction?¹⁷

- 56.3% – Yes
- 21.0% – No
- 22.7% – Unknown

At what point does the LCDC provide the assessment?:

- * 43.2% – Post-Conviction/Probation Revocation or Review
- * 18.5% – Arraignment/Taking Plea/Adjudication/Trial

¹⁷ Multiple choice and free response

- * 8.2% – Pre-Sentence Investigation (PSI)/Sentencing/Sanctions
- * 27.4% – Varies/Other
- * 2.7% – Juvenile/Family-Specific

Key Finding: When controlling for population, respondents from jurisdictions over 50,000 indicated that over 60% have access to an LCDC, compared to only 40% from jurisdictions less than 50,000.

17. Would it be beneficial for you to have an assessment conducted prior to your court disposition or final judgment?¹⁸

➤ Chemical Dependency Assessment

- 92.9% – Yes
- 7.1% – No

➤ Mental Health Assessment

- 93.2% – Yes
- 6.8% – No

Additional comment or explanation:

- * 29.9% – An Assessment is Already Used, As Needed/Necessary, at Some Point
- * 10.4% – Yes, An Assessment Would Be Beneficial
- * 10.4% – Yes, In Some Instances
- * 10.4% – Use of This Assessment Could Cause Delays in the Process or Longer Incarceration Periods
- * 7.5% – Use of This Assessment Could Result in Large Costs
- * 3.0% – This Assessment Should Be Used Sooner – at Arrest
- * 3.0% – Though Helpful, This Assessment Should Not be Mandated
- * 19.4% – Other Comments
- * 6.0% – Not Applicable or Unknown

Key Finding: A vast majority of respondents indicated that both types of assessments would be beneficial (over 90% for both). In the free response section, however, a number of judges expressed concerns that assessments may cause increased costs and delays in the prompt administration of justice. Section 614.017, Health and Safety Code allows courts to obtain public mental health diagnostic and treatment information.

18. What type of information would be beneficial for you to receive regarding a person who has been in the state mental health system? (Check all that apply)¹⁹

- 87.5% – Most recent date the person was in the mental health system
- 87.5% – Most recent mental health diagnosis
- 85.7% – Yes/No indicator that a person has been in the mental health system
- 74.6% – Most recent mental health drug regimen

¹⁸ Multiple choice and free response

¹⁹ Multiple choice and free response

- 3.1% – None
- 8.0% – Other (please specify):
 - * 27.3% – Mental Health Information, and Information about the Person’s History (Including Whether the Person is Violent)
 - * 22.7% – Information about Whether the Person is Receiving and Taking Medication
 - * 9.1% – Family Involvement/ Assistance Information
 - * 31.8% – Other Comments
 - * 9.1% – Not Applicable or Unknown

Key Finding: The vast majority of respondents indicated that all of the items would be beneficial to have at the front-end of the process.

19. What is your biggest complaint about current practices in processing offenders with a history of substance abuse through the criminal justice system?²⁰

- 30.8% – Issues with Treatment Services
- 24.4% – Systemic Issues
- 10.0% – Few or No Options; Funding and Other Resources Needed
- 3.2% – Issues with Community Supervision Programs
- 3.2% – Issues with SAFPF Services
- 28.5% – Other

Key Finding: The most prevalent complaint provided by respondents related to the “lack of” treatment available. Almost 25% listed systemic issues relating to processing offenders through the system. One judge noted that “it is cheaper to prosecute than treat, so they get prosecuted instead of treated.”

20. What is your biggest complaint about current practices in processing offenders with a history of mental illness through the criminal justice system?²¹

- 43.8% – Issues with Treatment Services
- 17.6% – Systemic Issues
- 10.7% – Few or No Options; Funding and Other Resources Needed
- 2.1% – Issues with Community Supervision Programs
- 25.8% – Other

Key Finding: Like with substance abuse offenders, the most prevalent complaint provided by respondents related to the “lack of” treatment available. Over 10% of judges indicated few or no options are available.

21. What obstacle(s) do you as a judge encounter when considering alternative sentencing? Please, check all that apply and explain your choice(s) in "Other" text box.²²

- 84.7% – Lack of funding
- 74.1% – Lack of treatment programs in your area

²⁰ Free response

²¹ Free response

²² Multiple choice and free response

- 50.9% – Transportation
- 47.7% – Housing
- 42.6% – Job Placement
- 38.0% – Lack of coordination between the court and services
- 31.5% – Lack of confidence in current treatment programs

- 18.1% – Other:
 - * 23.1% – Needed Financial Resources or Treatment Programs (General)
 - * 9.6% – Safe Housing or Transportation Issues
 - * 7.7% – Employment or Education/Job Readiness Issues
 - * 7.7% – Lack of Confidence or Interest in Alternative Sentencing Options
 - * 5.8% – All of the Above
 - * 5.8% – Medication Issues (Provision, Costs, Monitoring)
 - * 3.8% – Low-Income or Indigence Issues
 - * 9.6% – Miscellaneous Obstacles
 - * 3.8% – Other Comments
 - * 17.3% – Not Applicable or Unknown

 - * 5.8% – Juvenile or Family Involvement/Assistance Issues

*Key Finding: When controlling for population, lack of funding was the top obstacle listed by all groups. Lack of treatment was more problematic in less-populated jurisdictions: Over 87% claimed this to be an obstacle in a jurisdiction less than 50,000, compared to only 73% in jurisdiction of 50,000-250,000; likewise, only 64% claimed this to be an issue in jurisdictions over 250,000. Also, 42% of respondents from jurisdictions less than 50,000 identified **lack of confidence in current programs** as an obstacle, compared to only 26% in jurisdictions larger than 50,000.*

22. Thank you for completing this survey. Please use the space below to share any additional comments.²³

- 18.6% – Need Additional Funding from State
- 15.3% – Recommendations of Best Practices
- 6.8% – Need Additional Resources/Services to Ensure Individual Success
- 3.4% – Current System Creates a Revolving Door to Incarceration
- 3.4% – Need Additional Information and Collaboration
- 22.0% – General Appreciation for the Survey and Interest in Offering Assistance
- 22.0% – Other Comments
- 8.5% – Not Applicable

²³ Free response