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A PROSECUTOR'S COMMENT ON MENTAL HEALTH COURT—REALIZING THE GOAL OF LONG-TERM PUBLIC SAFETY

Karen A. Kugler[†]

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I. INTRODUCTION

"John Doe," an inveterate thief and shoplifter, was arrested and charged with terroristic threats after threatening the life of a grocery store employee who confronted him about stealing soda

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and chips at a local store.[1] The police were called after Doe lunged at the store employee, screaming that he had a knife and was going to kill him. The employee was terrified, shaking, and weeping uncontrollably as he explained to police his fear that Doe was going to take his life. A search incident to Doe's arrest yielded only the soda and chips—no knife was found.

Based on his lengthy criminal history, Doe faced up to thirty-nine months in prison if convicted of terroristic threats. However, in addition to a long-term pattern of criminal behavior, Doe also suffered from years of an unmanaged mental illness: bipolar disorder. Given this information, does justice demand a thirty-nine-month prison sentence? Would the public best be protected and served by sending Doe to prison? Or would the public be better served if Doe were allowed to participate in mental health court, a specialty court designed to provide services and supervision to individuals with qualifying mental illnesses?

Prosecutors routinely address similar questions faced by the prosecution team in the Doe case. They grapple with their primary mission of securing justice, while balancing the need for an appropriate consequence that protects public safety against the needs of a defendant suffering mental illness and the stabilization that can be provided through participation in mental health court. Using mental health court experiences from Ramsey County, Minnesota, this article will address the prosecutor's role in seeking justice, provide considerations for admitting offenders into the specialty court, and discuss the challenges prosecutors face when dealing with non-compliant offenders.

II. THE PROSECUTOR'S DUTY TO SEEK JUSTICE

> The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.[2]

1. The "Doe" facts are a fictionalized account and not based upon any particular person.
2. Berger v. United States, 295 U.S. 78, 88 (1935).

A prosecutor's primary responsibility in any single case is to seek justice, not merely a conviction.[3] Since the time of Plato, the issue of justice has been debated by legal and political theorists alike, who ask whether justice is truly a part of law or instead a moral judgment about law.[4] Defining justice can be equally complex and is often a matter of perspective, dependent on moral and political constructs.[5] Without getting into a philosophical discussion, for the purpose of this article, justice is simply defined as "[t]he fair and proper administration of laws."[6] Thus, seeking justice is the process of seeking a fair or right result, not merely the most severe.[7]

Prosecutors must exercise sound discretion in each case as they seek just solutions.[8] Few legal constraints exist on the exercise of prosecutorial discretion. Thus, to properly exercise discretion, prosecutors must ensure they are doing their best to balance the rights of victims and the protection of the public with the unique situation of a defendant.[9] Prosecutors must also consider the type of crime committed, the level of violence used, the defendant's history of violence, and the need for specialized services.[10] A referral to a specialty court for those offenders in need of specialized services often leads to the ultimate goal of justice.

A. *The Revolving Courthouse Door for the Mentally Ill*

Unfortunately, justice for the mentally ill has been historically elusive. Studies examining patterns of incarceration reveal that the court system has been a revolving door for those suffering from mental illness.[11] Lack of treatment, lack of support services, and a

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3. AM. BAR ASS'N, CRIMINAL JUSTICE STANDARD FOR THE PROSECUTION FUNCTION standard 3–1.2(b) (4th ed. 2014), http://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.html.

4. Anthony D'Amato, *On the Connection Between Law and Justice*, 26 U.C. DAVIS L. REV. 527, 528 (1993).

5. *See* Bennett L. Gershman, *A Moral Standard for the Prosecutor's Exercise of the Charging Discretion*, 20 FORDHAM URB. L.J. 513, 522 (1993); Deborah L. Rode, *In Pursuit of Justice*, 51 STAN. L. REV. 867, 871 (1999).

6. *Justice,* BLACK'S LAW DICTIONARY (10th ed. 2014).

7. Bruce A. Green, *Why Should Prosecutors "Seek Justice"?*, 26 FORDHAM URB. L.J. 607, 608 (1999).

8. AM. BAR ASS'N, *supra* note 3, at standard 3–1.2(a).

9. *Id.* at standard 3–1.2(b).

10. *Id.*

11. Joseph Galanek, *The 'Revolving Door' for the Justice-Involved Mentally Ill,*

general lack of understanding about mental illness have propagated an untenable situation for the mentally ill offender.[12] This reality must be recognized by prosecutors when balancing the considerations of justice and determining what is right and fair for cases emanating from mental illness.[13]

Beginning in the early 1800s, prisons and jails were routinely used in the United States to house people suffering from mental illness.[14] By the mid-1800s, state psychiatric hospitals came into existence in response to a public outcry over the inhumane and uncivilized process of incarcerating the mentally ill.[15] Many mentally ill inmates were then transferred to state institutions, where it was believed they would be treated more humanely.[16] This new approach grew into a fallacy as state mental hospitals became overcrowded and conditions were allowed to deteriorate. In the 1960s, reform ensued and the practice of deinstitutionalization became a reality.[17] Deinstitutionalization—the emptying of state mental hospitals—was viewed as a cost-saving response to the problem of institutional overcrowding and deterioration, as well as a means to appease civil rights advocates who argued that mental health patients must be liberated.[18]

This new philosophy caused patients to be released from hospitals at a rapid rate, frequently without follow-up psychiatric care.[19] As a result, many former patients went untreated and began committing crimes, usually associated with their mental illness.[20] Throughout the 1970s and early 1980s, study after study revealed a

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JUST. CTR. (Apr. 21, 2015), http://csgjusticecenter.org/mental-health/media-clips/the-revolving-door-for-the-justice-involved-mentally-ill/.

12. *Id.*

13. AM. BAR ASS'N, *supra* note 3, at standard 3–1.2(e).

14. E. FULLER TORREY ET AL., TREATMENT ADVOC. CTR., THE TREATMENT OF PERSONS WITH MENTAL ILLNESS IN PRISONS AND JAILS: A STATE SURVEY 9 (Apr. 8, 2014), http://www.tacreports.org/storage/documents/treatment-behind-bars/treatment-behind-bars.pdf.

15. *Id.* at 9–11.

16. *Id.* at 9–10.

17. *Id.* at 11.

18. E. FULLER TORREY ET AL., TREATMENT ADVOC. CTR., MORE MENTALLY ILL PERSONS ARE IN JAILS AND PRISONS THAN HOSPITALS: A SURVEY OF THE STATES 2 (May 2010), http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf.

19. TORREY ET AL., *supra* note 14, at 12.

20. TORREY ET AL., *supra* note 18, at 9 (discussing the recidivism rate of crimes associated with mental illness).

sharp increase of mentally ill persons in jails and prisons.[21] Unfortunately, this problematic situation continues to grow.

In 2006, the U.S. Department of Justice, Bureau of Justice Statistics reported that "[a]t midyear 2005 more than half of all prison and jail inmates had a mental health problem," with jail inmates having the highest rate of symptoms of a mental health disorder.[22] In 2009, the National Alliance on Mental Illness of Minnesota reported twenty-five percent of those in Minnesota prisons as being mentally ill.[23] That percentage rose to a staggering sixty percent when considering those in Minnesota jails.[24] Across the country, the numbers continue to rise in response to the ongoing closing of state-run mental hospitals and treatment facilities.[25] "On any given day, between 300,000 and 400,000 people with mental illnesses are incarcerated in jails and prisons across the United States."[26]

The public has largely ignored struggles with the mentally ill population for years. More recently, high-profile crimes, such as the shootings in Aurora, Colorado; Newton, Connecticut; and Tucson, Arizona have put a spotlight on the mental health crisis.[27] Efforts to respond to this crisis have been initiated on many fronts. "[L]aw enforcement authorities, mental health advocates, and state legislators [are coming] to the same table to address the increasing number of individuals with mental illness who are involved in the

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21. *Id.* at 2–3.

22. DORIS J. JAMES & LAUREN E. GLAZE, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1 (2006), http://www.bjs.gov/content/pub/pdf/mhppji.pdf.

23. NAT'L ALL. ON MENTAL ILLNESS OF MINN., ADVOCATING FOR PEOPLE WITH MENTAL ILLNESSES IN THE MINNESOTA CRIMINAL JUSTICE SYSTEM 2 (2009), http://www.namihelps.org/advocatingbooklet2.pdf.

24. *Id.*

25. TREATMENT ADVOC. CTR. & NAT'L SHERIFFS' ASS'N, A JOINT REPORT: THE TREATMENT OF PERSONS WITH MENTAL ILLNESS IN PRISONS AND JAILS: A STATE SURVEY 6 (2014), http://www.tacreports.org/storage/documents/treatment-behind-bars /treatment-behind-bars.pdf.

26. NAT'L LEADERSHIP FORUM ON BEHAVIORAL HEALTH/CRIMINAL JUSTICE SERVS., ENDING AN AMERICAN TRAGEDY: ADDRESSING THE NEEDS OF JUSTICE-INVOLVED PEOPLE WITH MENTAL ILLNESSES AND CO-OCCURRING DISORDERS 2 (2009), http://www.pacenterofexcellence.pitt.edu/documents/americantragedy.pdf.

27. Gary Fields & Jennifer Corbett Dooren, *For the Mentally Ill, Finding Treatment Grows Harder: New Health-care Law May Add to Crunch for Enough Treatment*, WALL ST. J. (Jan. 16, 2014, 4:15 PM), http://www.wsj.com/articles /SB10001424052702304281004579218204163263142.

criminal justice system."[28] Legislators are now focusing on funding—rather than defunding—the mental health system.[29]

The judicial system began focusing on the special needs of the mentally ill and its entanglement with the justice system during the late 1990s.[30] By that time, specialty drug courts had rapidly spread across the nation.[31] Offender participant studies from drug courts began revealing that participants whose primary problems were based in mental illness had different needs than those whose primary problems were based on addiction.[32] Accordingly, mental health courts were created.[33]

The central mission of mental health courts is to reduce recidivism and improve the lives of mentally ill offenders by combining judicial supervision with community mental health treatment and other support services.[34] Eligibility requirements, program duration, supervision, treatment, and available services, along with adjudication alternatives, can vary across mental health courts.[35] "There are as many mental health court models as there are mental health courts."[36] Mental health court team members, however, work from a common precept: focus on the underlying

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28. Galanek, *supra* note 11.

29. *See id.*

30. NICOLE L. WATERS ET AL., NAT'L CTR. FOR ST. COURTS, MENTAL HEALTH COURT CULTURE: LEAVING YOUR HAT AT THE DOOR 2–3 (2009), http://cdm16501.contentdm.oclc.org/cdm/ref/collection/spcts/id/209.

31. Amy Watson et al., *Mental Health Courts and the Complex Issue of Mentally Ill Offenders*, 52 PSYCHIATRIC SERVS. 477, 478–80 (2001).

32. *Id.* at 478–79.

33. John H. Guthmann, *Ramsey County Mental Health Court: Working with Community Partners to Improve the Lives of Mentally Ill Defendants, Reduce Recidivism, and Enhance Public Safety*, 41 WM. MITCHELL L. REV. 948, 959–60 (2015) (citations omitted).

34. *See generally* COUNCIL OF STATE GOV'TS, A GUIDE TO MENTAL HEALTH COURT DESIGN AND IMPLEMENTATION (2005), https://www.bja.gov/Programs/Guide-MHC-Design.pdf.

35. A 2005 study compared eight "first generation" mental health courts, which began in the mid to late 1990s with seven "second generation" mental health courts noting that the primary differences between the courts was the offense level and type of charges accepted, the type of adjudication model, whether jail was used as a sanction, and what supervision model was used (i.e., supervision by mental health court professionals or the court). *See* Allison D. Redlich et al., *The Second Generation of Mental Health Courts*, 11 PSYCHOL. PUB. POL'Y & L. 527 (2005).

36. WATERS ET AL., *supra* note 30, at 3.

illness that leads to criminal behavior, rather than simply on the current crime and its consequences.[37]

B. *Who Should Be Allowed to Participate in Mental Health Court?*

Offender motivation for joining mental health court spans a full range. Some offenders truly want to take control of their mental health and learn strategies for living with mental illness and avoiding old patterns of criminal behavior. Others simply think that the mental health court is a great way to dodge prison. Fortunately, due to a team approach used by the professionals involved in the process, it is not for the prosecutor to tease out an offender's true objective. Rather, it is for the prosecutor to determine whether the offender fits the legal criteria for involvement in the program.

Upon referral to mental health court, the offender is screened to see if he or she meets the program's eligibility requirements. Eligibility is divided into two parts: (1) the offender's current charge and criminal history must fall within the parameters of eligible offenses for mental health court; and (2) the offender must have a qualifying mental illness.[38] Both eligible offenses and qualifying mental illnesses vary from specialty court to specialty court.[39] Though prosecutors are very involved in the eligible offense decision, deference must be given to mental health care team members to determine whether the offender has a qualifying mental illness.

In Ramsey County, Minnesota, the prosecutor maintains responsibility for checking the current charges and criminal history against the eligibility list.[40] The list of crimes acceptable in mental health court at the felony level is somewhat fixed, with crimes of violence excluded as being too high of a risk to public safety.[41]

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37. *See id.* at 38.

38. Guthmann, *supra* note 33, at 968 (discussing eligibility requirements for mental health court in Minnesota's Ramsey County).

39. For example, some mental health courts will not accept felony DWIs, cases involving domestic assault, and other cases where charges are premised on violent crimes. Some courts also consider not only whether the current crime is one of violence, but also whether the offender has a history of violent crimes. On the other hand, at least one mental health court has accepted two women accused of killing their children. *See* Redlich et al., *supra* note 35, at 534.

40. RAMSEY CTY. MENTAL HEALTH COURT, POLICY & PROCEDURE MANUAL 34 (2014) [hereinafter POLICY & PROCEDURE MANUAL].

41. *Id.* at 11.

Some crimes of violence—such as terroristic threats and domestic violence—may be considered on a case-by-case basis.[42] Cases involving victims always require a victim consultation prior to acceptance of the offender into mental health court.[43] Universally, the easiest offenders to accept are those with no record of past or current violent offenses.[44] The risk to public safety within this group is considered low.[45]

C. *Concern Over Reoffending Behavior*

The risk of reoffending is certainly a great concern for prosecutors, especially in cases of violent offenses. Dr. Richard A. Friedman, a professor of Clinical Psychiatry at Weill Cornell Medical College, addressed the link between violence and mental illness in a report for the New England Journal of Medicine in 2006.[46] Citing a landmark study conducted by the National Institute of Mental Health in the 1980s, Dr. Friedman noted:

> [P]atients with serious mental illness—those with schizophrenia, major depression, or bipolar disorder—were two to three times as likely as people without such an illness to be assaultive. In absolute terms, the lifetime prevalence of violence among people with serious mental illness was 16%, as compared with 7% among people without mental illness.[47]

Dr. Friedman went on to note that most people with schizophrenia, major depression, or bipolar disorder do not commit crimes of violence, though there is undoubtedly an increased risk for those with these diagnoses.[48] Other psychiatric illnesses, such as anxiety disorders, do not carry an increased risk of violence.[49] However, combining substance abuse with any form of

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42. *Id.* at 10.

43. ROBERT HOOD, COUNCIL OF STATE GOV'TS, MENTAL HEALTH COURTS: A PROSECUTION PERSPECTIVE (2013).

44. *See, e.g.*, POLICY & PROCEDURE MANUAL, *supra* note 40, at 18.

45. *See, e.g.*, Redlich et al., *supra* note 35, at 534.

46. Richard A. Friedman, *Violence and Mental Illness—How Strong Is the Link?*, 355 NEW ENG. J. MED. 2064, 2065 (2006).

47. *Id.*

48. *Id.*

49. Richard A. Friedman, *In Gun Debate, a Misguided Focus on Mental Illness*, N.Y. TIMES, Dec. 18, 2012, at D5.

mental illness escalates the risk of violent behavior.[50] Co-occurring substance-abuse disorders are frequently found within the mentally ill population.[51]

Treatment is recognized as highly effective in reducing the risk of violent behavior.[52] Once symptoms of a psychiatric illness are managed, those that are mentally ill "may be no more likely to be violent than people without a mental disorder."[53] This conclusion is supported by studies measuring recidivism in mental health courts, where mentally ill offenders are provided with access to necessary treatment and stabilization.[54] Though recidivism studies for mental health court are limited, existing reports indicate that successful, stabilized participants are less likely to reoffend than they were before entering the court.[55]

Given these known outcomes, approving mentally ill offenders for mental health court seems like an obvious course of action for prosecutors seeking justice. The duty to protect the public, however, outweighs giving a green light in every case.

III. ACCOMPLISHING JUSTICE IN MENTAL HEALTH COURT

Mental health court participants waive many legal rights at the outset, often including the right to trial. Thus, it is central to a prosecutor's duty to ensure the participant is competent and capable of effectively waiving his or her rights.[56]

A. *Knowing Waiver of Rights*

In Ramsey County, Minnesota, participation in mental health court requires an individual to be "eighteen years or older, a Ramsey County resident, charged with a crime, diagnosed with a significant mental illness, legally competent, a person with no history of violent offenses, and willing to voluntarily participate and

50. *See generally* Marie E. Rueve & Randon S. Welton, *Violence and Mental Illness*, 5 PSYCHIATRY 34 (2008) (examining the relationship between violence and mental illness).
51. Friedman, *supra* note 46, at 2066.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. HOOD, *supra* note 43.

commit to the rigors of the court conditions and treatment plan."[57] Participants must also waive their right of doctor-patient confidentiality and agree to sign releases for all necessary medical and treatment records.[58] Additionally, participants are required at the outset to waive their right to probation violation hearings.[59] Further, participants must knowingly and voluntarily enter into a treatment plan and agree to abide by special mental health court conditions of release.[60] Conditions may include random testing; abiding by all directives of the case manager, probation agent, and court; medication compliance; and following treatment recommendations.[61] A team including a judge, mental health case manager, probation agent, defense attorney, prosecutor, team coordinator, and others guides the participant through the process.[62] The team takes extra care in explaining the court process and its requirements to ensure the participants give waivers knowingly and voluntarily.

Mental health court hearings are typically more informal than those in the standard legal track, often becoming a dialog between each member of the team and the participant.[63] This can be extremely validating for the participant who suffers the negative stigma of being labeled "mentally ill." Those with mental illness often feel ignored and unheard. Thus, having participants feel respected, believe the team is listening, and believe they are being treated fairly is central to the effectiveness of the program. The open approach of the hearings also aids in the important objectives of having participants feel engaged in their treatment plan and learn to maintain the plan when not under supervision.

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57. RAMSEY CTY. MENTAL HEALTH COURT, RAMSEY COUNTY MENTAL HEALTH COURT BROCHURE 6 (2015), http://www.mncourts.gov/Documents/2/Public/Criminal_Court/2015_RCMHC_Brochure_Final.pdf.

58. RAMSEY CTY. MENTAL HEALTH COURT, PARTICIPANT HANDBOOK 23 (2015) [hereinafter PARTICIPANT HANDBOOK], http://www.mncourts.gov/Documents/2/Public/Criminal_Court/Participant_Handbook_2015.pdf.

59. Guthmann, *supra* note 33, at 972.

60. *Id.* at 971.

61. *Id.* at 975.

62. PARTICIPANT HANDBOOK, *supra* note 58, at 4.

63. Guthmann, *supra* note 33, at 980; *see also* Comment, *Mental Health Courts and the Trend Toward a Rehabilitative Justice System*, 121 HARV. L. REV. 1168, 1179 n.13 (2008) (describing the atmosphere of an Ohio mental health court as "less adversarial and more relaxed").

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This relaxed hearing style may be a bit unsettling to a prosecutor at first. All attorneys have been taught to not communicate about the subject of the representation with a represented party.[64] However, if the prosecutor has the consent of opposing counsel, or is otherwise authorized by law, he or she may directly communicate with a represented party.[65] The informal mental health court setting allows direct communication between the prosecutor and participants when on the record with all parties—the participant, the attorneys, and the judge. Direct communication helps develop trust in the process and a sense of accomplishment within the participants. In turn, this helps to stabilize participants as they proceed through the program. Direct communication also helps participants understand fixed expectations and potential consequences for failing to abide by conditions.

Given this unique situation, however, prosecutors must hone their communication skills to effectively communicate with those suffering from mental illness. An aggressive or legalistic approach—often used by prosecutors in arguing before a court—must be tempered when dealing directly with mentally ill participants. Recognizing the appropriate limits to this relaxed approach is also important. For example, a prosecutor should never have direct conversations with a participant off the record without the express permission of the participant's attorney.[66]

B. *Consequences of Non-Compliance*

As with any supervisory setting, issues of non-compliance by participants arise routinely in mental health court. Non-compliance may be based upon a myriad of factors. Accordingly, the team approach is greatly beneficial when determining the appropriate response.

Mental health court is typically a highly collaborative process among team members. Pre-court meetings are scheduled to discuss each participant's progress and challenges. All team members—including the judge, mental health case manager, probation agent, defense attorney, prosecutor, team coordinator, and others involved in the process—have a right to ask questions and state

64. MINN. R. OF PROF'L CONDUCT 4.2 (2005).
65. *Id.*
66. *Id.*

opinions as to a participant's progress, or lack thereof, in the program. The mental health court team strives to individualize an appropriate response for the non-compliant participant as much as possible. Typically, the team agrees on a given approach in dealing with a non-compliant participant. In cases in which an agreement cannot be reached, the parties fall into their adversarial roles and the ultimate decision rests with the court.[67]

Responses to non-compliance are normally of a graduated nature, with less coercive methods such as verbal warnings, additional urinalysis or breath testing, and increased support services—including sobriety meetings, group therapy, case management and probation meetings—tried first.[68] When offenders continue a pattern of non-compliance, consequences increase to out-of-custody work service, jail time, and finally, termination from the specialty court.[69]

Jail time and involuntary termination are the two consequences where conflict among team members is most likely to arise. Defense attorneys often argue that a jail consequence is not a motivator for the mentally ill. They push the court to use a social service approach, suggesting treatment-related consequences rather than a penal approach. However, the team does not normally consider jail time until treatment-related approaches have been exhausted. The prosecutor, with the aid of a probation agent, is responsible to ensure probationary conditions and recommendations are followed. To maintain the integrity of the program, a continued pattern of non-compliance and ignored graduated steps of consequences must result in a jail sanction.[70] While not all mental health court participants respond to jail time, this consequence has proved a powerful motivator for many.

Termination from mental health court in a particular case can come about following a significant pattern of non-compliance with program requirements and court directives, or when a participant is charged with a violent offense while participating in the

67. *See generally* POLICY & PROCEDURE MANUAL, *supra* note 40, at 33.

68. *See* RAMSEY CTY. MENTAL HEALTH COURT, SECOND JUDICIAL DIST. OF MINN., 2010 TO 2012 REPORT 6 (2013), http://www.mncourts.gov/Documents/2/Public/Criminal/RCMHC_2010-2012_Report.pdf.

69. *Id.*

70. *Cf. id.* (listing sanctions in graduated order, with jail sanctions as the most severe).

program.[71] This is an extreme measure that is exercised cautiously and is typically taken upon a motion of the prosecutor. No one wants to see a participant fail the program, and every effort should be made before termination occurs. Participants also maintain the right to opt out of mental health court.[72] Voluntary or involuntary termination results in a probation violation, for which the court decides the appropriate result.

The penalty for termination and resulting probation violation may be somewhat controlled at the outset of participation in mental health court. In Ramsey County, participants must plead guilty to a crime prior to participation.[73] The prosecutor can use the plea agreement as a tool to manage expectations and aid the participant in understanding termination consequences. For example, the plea agreement may specifically state that the defendant is pleading guilty, receiving a stay of execution or imposition, and in lieu of jail time, agrees to a specific amount of community work service hours, abide by all terms and conditions of mental health court and may receive a reduced probationary period upon successful completion of mental health court.[74] In my experience, the agreement can go on to provide that in the event the defendant is terminated from mental health court for any reason—voluntarily or involuntarily—post-plea, but prior to final acceptance at sentencing, the plea shall remain intact, standard probation shall apply, and the defendant agrees to a guideline sentence or cap on jail time. This method ensures that a defendant knows the consequences for termination prior to final acceptance into mental health court. This method also prevents a defendant terminating post-plea but prior to final acceptance and getting the benefit of no jail or prison time and a reduced probationary period. Once final acceptance has been made, the consequence for termination is handled in the standard probation violation manner.[75]

Setting clear expectations is necessary for the mentally ill participant to achieve success in the program. All team members must be on the same page regarding expectations and communicating the proper message to participants to avoid

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71. *See id.*
72. *See id.*; POLICY & PROCEDURE MANUAL, *supra* note 40, at 33.
73. POLICY & PROCEDURE MANUAL, *supra* note 40, at 19–20.
74. *Id.* at 17–20.
75. *Id.* at 30–31.

confusion, frustration, and resulting non-compliance, which could lead to termination. Participant graduation is the ultimate goal for the sake of the individual, as well as society.

IV. CONCLUSION

Justice requires that prosecutors exercise sound discretion in assessing all cases. From the initial charging decision through plea negotiations and sentencing, prosecutors must step back from zealous advocacy to ensure they are proceeding in a manner that is fair and right under the circumstances. When cases involve mentally ill offenders, mental health court is an excellent option to consider. Mental health court provides necessary supervision and support services to stabilize an offender and help develop them into positive contributors to society.[76] In the long-term, this result not only leads to the protection of the public and judicial economy, but also best serves the interests of justice.

76. *See* Guthmann, *supra* note 33, at 990–91.