

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Juvenile Behavioral Diversion Program Description

Introduction

It is estimated that between 65 to 70% of juveniles involved in the delinquency system are diagnosed with a mental health disorder.¹ In addition, many juveniles re-offend, even while they are involved with the juvenile justice system. A diversion program would help connect juveniles with a mental disorder to appropriate mental health services and supports and increase public safety. It is agreed that “it is crucial that we deal not only with the specific behavior or circumstances that bring [juveniles] to our attention, but also with their underlying, often long-term mental health and substance abuse problems.”² Moreover, a diversion program is consistent with the policy underlying juvenile court, which is the care and rehabilitation of children who violate the law, while protecting the community.

In May 2010, Chief Judge Lee F. Satterfield established an implementation group to develop the criteria and procedures for a juvenile behavioral diversion program. Representatives from the Family Court, the Department of Mental Health (DMH), the Office of the Attorney General (OAG), the Public Defender Service (PDS), Court Social Services (CSS), and the D.C. Courts’ Research and Development Division (R&D) met several times to develop criteria and procedures for the program. Based on its

¹ Teplin, Abram, McClelland, Dulcan and Mericle, 2002; Wasserman, McReynolds, Lucas, Fisher and Santos, 2002; Wasserman, Ko, and McReynolds, 2004.

² Shay Bilchik, Office of Juvenile Justice and Delinquency Protection, U.S. Department of Justice, *Mental Health Disorders and Substance Abuse Problems Among Juveniles* (July 1998), available at www.childrensprogram.org/media/pdf/mentalhealthdisorders.pdf.

discussions and information of other jurisdictions' programs, the implementation group developed the following criteria and process.

The Juvenile Behavioral Diversion Program (JBDP) is established as a problem-solving court. The R & D Division will evaluate the program at the end of its first year of operation to determine its effectiveness. The Program is an intensive non-sanction based program designed to link juveniles and status offenders to, and engage them in, appropriate mental health services and supports in the community in order to reduce behavioral symptoms that result in contact with the court and to improve the juvenile's functioning in the home, school, and community. Priority for admission to JBDP will be provided to juveniles. The Program is voluntary.

Program Goals

The program's goals are as follows:

- To connect the juvenile and status offender with appropriate mental health services in the community;
- To provide support for and involve the respondent's parents, guardian, or custodian in mental health treatment for their child;
- To provide a period of engagement with mental health services that is monitored by the court in order to increase treatment engagement by respondents and their families;
- To increase the number of respondents able to remain in the community with the appropriate mental health services and supports and to reduce the number of respondents who otherwise without such services and support might be detained;

- To reduce the individual's contact with the criminal justice system as a juvenile and later as an adult; and
- To reduce crime in the community and protect public safety by reducing the number of times that juveniles with mental disorders reoffend.

Eligibility Criteria

The initial hearing judge, respondent's counsel, CSS officer, or the Assistant Attorney General (AAG) may identify a respondent who may be eligible for certification from the juvenile calendar judge to the JBDP. The juvenile calendar judge may also identify a respondent who may be eligible. The attorney appointed to represent the respondent at the initial hearing shall remain the attorney for the respondent in the Program. In order for the respondent to participate in the Program, he or she must be available to participate in community-based services. It is not a disqualification if the respondent is in respite care or is placed in shelter care.

Age

The respondent may be any age under 18 years old.

Clinical Criteria

In order to participate in the program, the juvenile or status offender must have an Axis I mental health disorder or be at significant risk of receiving an Axis I diagnosis. The respondent may also have an Axis II developmental disability, if he or she is able to participate in the program, but he cannot solely have an Axis II diagnosis.

The Court has available for its consideration prior evaluations of the respondent. The program will rely on prior diagnoses and recognizes that various assessment instruments may have been used to make a diagnosis. CSS administers a risk assessment for all respondents who have contact with the court system. If CSS identifies a respondent who is at risk of mental illness and there is no available prior assessment, DMH shall conduct a further assessment of the respondent. This assessment will be completed by DMH at its Howard Road child psychiatry group. Based on its consideration of prior or current assessments for a mental disorder, DMH shall determine whether the respondent has or is at risk of having a qualifying diagnosis. No information learned from the respondent during the course of the CSS screen and the DMH assessment shall be discoverable.

Criminal Criteria

The OAG will review the following information regarding the respondent: any prior contacts with the court; the nature and circumstances of the prior contacts; the nature and circumstances of the present contact; and any relevant social factors. If a respondent's charges involve certain offenses, he or she is ineligible to participate in the Program. Attachment A lists the excluded offenses. A respondent may have been adjudicated delinquent in prior cases. However, in the prior cases, if the respondent was found to be involved in the listed excluded offenses, he or she is ineligible to participate in JBPD. The OAG reserves the right, based upon the individual factors in a respondent's case, to override any criminal eligibility factor either to permit or decline to allow a respondent to enter any program track.

There are three tracks (Track I, Track II, and Track III). Track I is available for the charges listed on Attachment B. The respondent does not enter a plea on this Track. A respondent may enter a consent decree and be eligible to enter on Track I. In addition, generally, the individuals who would be eligible for this Track must have no prior convictions or have entered any consent decrees in prior cases. The OAG, however, will always review prior convictions and consent decrees to determine whether the nature and circumstances underlying the conviction or consent decree, including whether appropriate mental health services and supports were provided to the respondent, support a determination that the individual remains eligible for Track I.

Attachment C lists the charges for which a respondent would be eligible for certification to the JBDP in Track II. This Track involves a respondent who enters a plea and is certified to the program pre-disposition by the juvenile calendar judge.

Attachment D lists the charges for which a respondent would be eligible for certification to the JBDP in Track III. This Track involves a respondent who is certified to the program by the juvenile calendar judge at disposition or after a motion to revoke probation has been filed.

Certification to the Juvenile Behavioral Diversion Program

Prior to certification to the JBDP, the OAG and DMH shall have determined that the respondent meets their respective eligibility criteria. CSS will screen in the Juvenile New Referrals courtroom. Based on that screening, CSS will recommend to the judge in New Referrals whether the respondent should be further assessed by DMH. If a further assessment is recommended, the respondent will be ordered to attend a further

assessment and a date shall be set in the New Referrals courtroom for the assessment at Howard Road. The Court may also order a parent, guardian, or caretaker to attend the assessment. CSS will also notify the OAG of the identification of the respondent based on its screen. The OAG will then review the case to determine whether the respondent meets criminal eligibility criteria. The DMH assessment and OAG's review will be completed prior to the first status before the juvenile calendar judge. If both the OAG and DMH report to the juvenile calendar judge that the juvenile meets eligibility criteria, the juvenile judge will then certify the case to the JBDP judge and schedule the matter for a status before the JBDP judge within seven (7) days.

If a juvenile is identified as a candidate for the JBDP when the case is pending before the juvenile calendar judge, and after adjudication or a plea or post disposition if the juvenile is on probation, the OAG will review the case to determine whether the respondent meets criminal eligibility criteria and the DMH will review the case to determine if an assessment is required. DMH shall schedule a mental health assessment at Howard Road, if one is needed. The OAG and DMH review and DMH assessment will be completed within ten (10) days. If the OAG and DMH report to the juvenile calendar judge that the juvenile meets eligibility criteria, the juvenile judge will then certify the case to the JBDP judge and schedule the matter for a status before the JBDP judge within seven (7) days.

When a respondent is deemed eligible for the JBDP, the Suitability Committee will review the case to determine if the juvenile is suitable to participate, including, but not limited to, amenability to treatment and community support. The Suitability Committee shall have all available information regarding the respondent's history

(criminal, medical, educational and social). The Committee will be composed of the following: a CSS officer, a psychiatrist or psychologist, a DMH representative and an APRA representative, as appropriate. Neither the JBDP judge nor counsel shall be present for or participate in the Suitability Committee's review. The Committee shall meet two (2) times a week, or as needed, to review eligible candidates for the JBDP. The Committee shall meet prior to the first status before the JBDP judge. The Committee shall provide the judge and counsel with its determination of whether the juvenile is suitable or unsuitable for the Program. If the Committee determines the respondent is not suitable, it shall suggest appropriate treatment or service alternatives. The JBDP judge will then certify the respondent back to the juvenile calendar judge with the specific recommendations from the Committee.

Diversion Supervision

The program involves a multi-disciplinary approach. Collaboration between involved agencies is critical. The Program team will determine an appropriate individual plan for the respondent. The plan will be made part of a Participation Agreement entered into by the respondent, respondent's counsel, respondent's parent, guardian, or custodian, the Assistant Attorney General, and the JBDP judge. The plan will include participation in mental health treatment and reporting to CSS. It may also include substance abuse treatment and drug testing, if appropriate. The judge may order the parents and other caretakers of respondents into parenting classes, family counseling, medical and psychiatric treatment, or other appropriate programs. In addition, if appropriate, the

judge will appoint an Education Attorney to assist in addressing the educational needs of the respondent.

The JBDP judge will hold status hearings every two weeks to determine the respondent's compliance with treatment. The constant reviews make sure that services are in place and service adjustments can be made quickly, as appropriate. The frequency of hearings may change based on the juvenile's compliance. The judge will make every effort not to schedule a court hearing more than once a month that would require the respondent to be absent from school. At the hearing, the following will be present: respondent; parent, guardian, or custodian; AAG; CSS officer; respondent's counsel; and a DMH integration coordinator (a cross-trained clinician). No statements made by a respondent in the JBDP shall be discoverable or used against the respondent in any prosecution. The respondent's participation or lack of participation in the program will be used to determine the respondent's compliance in the program and may be used at any detention or disposition hearing.

Prior to the hearing, CSS will provide a written report on the respondent's compliance with the Participation Agreement. The JBDP judge shall determine whether the respondent has successfully completed the program for Track I and II, based on the judge's judgment that the respondent has substantially complied with the Participation Agreement and any court orders. The respondent's participation in the program shall generally be for a four (4) to six (6)-month period from the date the formal agreement is entered, but no longer than twelve (12) months. The judge may shorten or lengthen the period, depending on the compliance and engagement of the respondent with services and supports.

For respondents who were certified to the Program's Track I, at the time the JBDP judge determines that the respondent has completed the Program, the case will be dismissed with prejudice and the proceedings shall thereupon terminate. For respondents who were certified to the Program's Track II, upon successful completion of the program, the Assistant Attorney General will dismiss the case pursuant to Superior Court Juvenile Rule 48(a). For respondents who were on probation when they were certified to the Program's Track III, CSS may recommend that the judge terminate the order of probation at any time it determines that the purpose of the order has been achieved.

Termination Criteria

A juvenile who is rearrested on probable cause for any delinquent offense may be terminated from the diversion program. A charge does not necessarily require termination. The OAG will review the nature and circumstances of the offense and exercise discretion as to whether the juvenile should be terminated.

A juvenile may also be terminated from the program if he or she has failed to comply with the diversion program requirements for at least 30 days, or if he or she has lost contact with his service provider or CSS for at least 30 days, or a petition to revoke probation has been filed.

If the respondent is terminated from the program or decides to terminate her or himself from the Program, the case(s) will be certified back to the juvenile calendar judge. A respondent terminated from Track I will be certified to a juvenile calendar judge for a status hearing. A respondent who is terminated from Track II will be certified to the juvenile calendar judge for disposition. A respondent who is terminated from

Track III will be certified to the juvenile calendar or judge from which the referral was made for whatever action deemed appropriate by the judge assigned to that calendar. This certification may be made instead of, prior to, or after a probation revocation hearing and disposition is held.

Evaluation of Juvenile Behavioral Diversion Program

The R&D Division shall establish performance measures to evaluate the Program. The R&D Division shall conduct a one-year evaluation of the Program that will consider various measures to assess the identified goals, including re-arrests during the period of supervision and after the period of supervision ended, compliance with mental health treatment during the period of supervision and after the period of supervision ended, attendance at court hearings, completion of program, and school attendance. The Program will be reviewed to determine whether protocols and/or processes should be modified in an effort to better serve the best interests of each child, their families, and the community.