

# HOW TO HELP

Funding for this project was generously provided by the New York Community Trust, the Open Society Institute's Criminal Justice Initiative, and NAMI-NYS. This handbook was prepared by Heather Barr, a staff attorney at the Urban Justice Center's Mental Health Project.

Many thanks to everyone at the Urban Justice Center for their help, and special thanks to Craig Acorn, Susan Batkin, Ray Brescia, Teena Brooks, and Ann Vermes. Thanks also to Susan Saler of NAMI-NYC Metro and Laura Held of CASES for advice on content, and to Bob Corliss and Michael Silverberg of NAMI-NYS for lending support to this project.

Any mistakes are, of course, mine alone!

---

A JOINT PROJECT OF



**NAMI - New York State**  
**National Alliance for the Mentally Ill**

*Making Life Better for People With Mental Illness and Their Families*

260 Washington Ave. Albany New York 12210  
Phone: 518.462.2000 Fax: 518.462.3811 Hotline: 800.950.3228  
email: [naminys@naminys.org](mailto:naminys@naminys.org) [www.naminys.org](http://www.naminys.org)

AND



**URBAN JUSTICE CENTER**  
**MENTAL HEALTH PROJECT**

666 Broadway, 10<sup>th</sup> Floor New York, NY 10012  
phone: 646.602.5600 [www.urbanjustice.org](http://www.urbanjustice.org)



# HOW TO HELP

## WHEN A PERSON WITH MENTAL ILLNESS IS ARRESTED

## NAMI-NYS

NAMI-New York State (formerly the Alliance for the Mentally Ill of New York State) is a grassroots, self-help, support and advocacy organization dedicated to improving the lives of all people who are affected by mental illnesses. NAMI strives to enable all individuals with a mental illness and their families to live the best life possible.

There are currently over 50 NAMI-NYS affiliates across the state. NAMI educates family members and the public about mental illness. We provide support groups, promote better treatment and support services and advocate for research into the causes and treatments of mental illnesses.

The NAMI-NYS Criminal Justice Program provides direct assistance to families when a family member with mental illness encounters the criminal justice system. Consultation, supportive assistance and direct intervention services are provided when a family member is arrested, faces court action or is incarcerated in a state or local correctional facility. NAMI-NYS staff also works improve the provision of mental health services to persons with mental illness caught up in the criminal justice system and advocates for mental health treatment of such persons rather than punishment in the criminal justice system.

## THE URBAN JUSTICE CENTER

The Urban Justice Center is a not-for-profit legal organization that advocates for individual rights and system-wide social change on a variety of issues of concern to poor and homeless New Yorkers.

The Urban Justice Center consists of six autonomous projects: the Homelessness Outreach and Prevention Project, the Family Violence Project, the Lesbian Gay Youth Project, the Human Rights Project, the Harm Reduction Project, and the Mental Health Project.

The Mental Health Project at the Urban Justice Center works to ensure access to services for mental health consumers. Our 10 person staff provides assistance to individual consumers in the following areas:

- *Discharge planning advocacy for homeless psychiatric inpatients*
- *Legal representation in housing court*
- *Legal representation in fair hearings regarding Public Assistance, Food Stamps, Medicaid, and Social Security benefits*
- *Assistance with problems related to Medicaid managed care*

We also work to eliminate barriers to services on a system-wide level. Our system-wide efforts have included an active role in the NY/NY II Campaign for supportive housing, litigating the Koskinas lawsuit that resulted in improved discharge planning for psychiatric inpatients, advocating for Presumptive Medicaid Eligibility, and filing the Brad H. lawsuit that requires discharge planning for consumers leaving New York City jails.

# HOW TO HELP

---

## A note regarding this version of "How to Help."

The first version of this handbook was released in January 2001, and was written specifically for New York City. It described criminal justice practices specific to New York City and included phone numbers and addresses for courts, jails, defender organizations, etc., in New York City.

As word spread about the handbook, requests for it came in from all over New York State and from states across the country. What you are reading is an attempt to offer a revised version of the handbook that is applicable across New York State and in many ways across the U.S. While some things about this booklet remain New York-centric, such as the section on the law (p. 18-19) and the website list, the general advice applies anywhere and comparable laws and websites exist in most states.

Of course, in making this handbook applicable in more places, we have also had to make it more general; what was perhaps most useful about the New York City version was that it contained phone numbers that are not easy to locate in a moment of crisis. This version, without the phone numbers you need for your town, can offer only general advice. Our hope is that local organizations concerned about the plight of mental health consumers in the criminal justice system, including NAMI affiliates and county mental health agencies, will research the essential phone numbers for their counties, create an insert with these phone numbers, and distribute this handbook with the insert to people in their area.

If you are part of a NAMI group, or mental health agency, or just a concerned individual with a little time to help, there is a section in the back of this handbook that can help you get started compiling a phone list for your town. And if you live in New York City, you can still get the New York City version of this handbook by going to [www.urbanjustice.org](http://www.urbanjustice.org) and looking under Mental Health Project publications.

Best of luck,

Heather Barr  
Urban Justice Center

Bob Corliss  
NAMI-NYS

<b>CONTENTS</b>			
<b>INTRODUCTION</b>	1		
<b>WHAT HAPPENS WHEN YOU GET ARRESTED IN NEW YORK ?</b>	2		
Arrest	2		
The police station	2		
Pre-arraignment custody	2		
Getting a defense attorney	3		
The arraignment	3		
Going to jail	3		
<b>HOW TO FIND A PERSON WHO HAS BEEN ARRESTED [AND WHAT TO DO WHEN YOU FIND THE PERSON...]</b>	4		
First thing: Preventing arrest or advocating for an Appearance Ticket	4		
First 24 hours: Going to the arraignment	5		
First 24 hours: Orders of protection	7		
After the first 24 hours: Getting appropriate treatment in jail	8		
<b>WORKING WITH A DEFENSE ATTORNEY</b>	9		
If the defense attorney and I are trying to help the same person, why isn't s/he more cooperative?	10		
“You have a right to an attorney. If you cannot afford one, one will be appointed for you...”	11		
How does a poor person get a defense attorney?	11		
Can you fire a free lawyer?	12		
A free lawyer is better than a cheap one	13		
What is the defendant's best interest?	13		
A defense attorney's job is to get the defendant out of the criminal justice system. Period.	15		
<b>A FEW VERY PRACTICAL TIPS ON DEALING WITH DEFENSE ATTORNEYS</b>	16		
Finding the defense attorney	16		
Getting in touch with the defense attorney	16		
Talking to the defense attorney	16		
		<b>LAWS RELATING TO DEFENDANTS WITH MENTAL ILLNESS:</b>	
		<b>730 EXAMS AND NGRI PLEAS</b>	17
		730 Exams	18
		NGRI [Not Guilty by Reason of Insanity] Pleas	18
		730 and NGRI: No “Get out of jail free” card for defendants with mental illness	19
		<b>ADVOCATING FOR A DEFENDANT TO BE SENTENCED TO TREATMENT</b>	19
		The defendant must want treatment	20
		The defense attorney must think treatment is a good deal	20
		The judge and the prosecutor must agree to a treatment sentence	20
		Someone must find a treatment program that will accept the defendant	20
		The defendant must succeed in treatment	21
		<b>ADVOCATING FOR DISCHARGE PLANNING</b>	21
		<b>ADVOCATING FOR SOMEONE ON PROBATION OR PAROLE</b>	22
		<b>CLEARING UP A WARRANT</b>	23
		Can you ignore a warrant?	23
		What does it mean to “clear up” a warrant?	24
		Steps to take in helping a defendant clear up a warrant	25
		What if the warrant is a result of violating probation or parole?	26
		<b>FIND HELP</b>	27
		<b>CAN WE STOP THE CRIMINALIZATION OF MENTAL ILLNESS?</b>	27
		<b>FOOTNOTE</b>	28
		<b>HELPFUL WEBSITES</b>	28
		<b>GLOSSARY OF CONFUSING TERMS</b>	32
		<b>CUSTOMIZE THIS HANDBOOK FOR YOUR COUNTY</b>	34
		<b>FILL-IN-THE-BLANKS PHONE LIST [FOR YOUR COUNTY]</b>	35

**WARNING!** *The information in this handbook was current as of October 2001. Because much of it is website addresses and other very specific information, it will change. Be persistent and creative!*

## INTRODUCTION

This handbook is designed for anyone concerned about a person with mental illness who is involved in the criminal justice system.<sup>1</sup>

This handbook should not need to exist, because it should be very unusual for a person with mental illness to encounter the criminal justice system. Very often when mental health consumers get in trouble with the law, it is a direct result of psychiatric symptoms. When this happens, the response should be a mental health response (referral to crisis services, outreach, or hospitalization, for example), rather than a criminal justice response (filing charges, arrest, etc.).

Unfortunately, the reality is that in New York, and nationally, enormous numbers of people with mental illness are passing through the criminal justice system, and into jails and prisons every day. A 1999 study by the federal Department of Justice found that about 16% of jail and prison inmates nation-wide, including New York, have mental illnesses. In New York City, 25% of all jail inmates require mental health services while incarcerated and about 15% of inmates in state prisons and local jails in New York have serious mental illnesses.

If you have read this far, you are probably one of the many people concerned about how mental health consumers are treated by the criminal justice system. Your next question may be, “Is there really anything I can do to help?”

The answer is, “Absolutely.”

While the criminal justice system may seem confusing and even Kafkaesque, and lawyers and judges may seem intimidating, the truth is that ANYONE who takes the trouble to get involved in the system as an advocate for an individual can make a huge difference. If you are a defendant’s family member, or a friend, peer advocate or community mental health worker who has known the person for some time, then you know more about this person than anyone in the criminal justice system does. Key decision-makers – police, the judge, prosecutor, and defense attorney, and jail mental health staff – will be making incredibly important decisions about the defendant, even life and death decisions, without much information. You need to make yourself heard! Your efforts may mean that the person you are fighting for can get better treatment while in jail (which can prevent suicide), can spend less time in jail (or even avoid jail entirely), can have charges dismissed or lowered, can avoid violating probation or parole, or can be sentenced to treatment rather than incarceration.

This handbook is designed to help you to make the criminal justice system do its job and treat the person you care about like a human being.

## WHAT HAPPENS WHEN YOU GET ARRESTED IN NEW YORK ?

If you want to advocate for a consumer in the criminal justice system, you need to understand what happens when someone gets arrested. By understanding the process, you can figure out where a person in custody is likely to be located and what the most important advocacy goal is at that moment. This section describes the steps that an individual goes through following arrest in New York.

### Arrest

Most arrests happen spontaneously, because a police officer has observed a crime or been told that a crime just occurred. The police officer has the power to arrest the person believed to have committed the crime and take that person into custody. Once the police officer arrests the person, the officer has the right to search the arrestee. If this search turns up anything illegal (e.g., drugs or weapons), those charges will be added to the original ones.

### The police station

Once in police custody, a person is usually taken to the local police station for the county, town, or precinct in which the arrest occurred. Once at the police station, a person in police custody may be given an Appearance Ticket and released, or s/he may remain in custody. If given an Appearance Ticket, the person must go to court on the day that it specifies, or s/he will have a warrant for his/her arrest.

If the person remains in police custody, s/he is likely to spend several hours at the police station, either in a cell or handcuffed to a chair, while the police complete paperwork and take fingerprints. During this time the person will probably have the opportunity to make a phone call, and may be given something to eat. The police may also take away much of the person’s property, including medications, and voucher it to be picked up later.

### Pre arraignment custody

A person in police custody may be taken from the police station directly to see a judge or may be transported to another location to be held in custody until arraignment. Pre-arraignment custody may take place at the local lockup or in holding cells at the court. Conditions during pre-arraignment custody are likely to be very basic, with people in custody often held in bare and perhaps crowded cells. People in pre-arraignment custody are likely to get terrible



food and have little or no access to medical care during this time. While in custody, an arrestee will probably be interviewed by probation or another agency; the purpose of this interview is to assess community ties, verify these ties, and make a recommendation to the court regarding whether the person should be released without bail or not. During this time the prosecutor will be obtaining the person's criminal record or "rap sheet" and deciding what offenses to charge her/him with. Most of the time in pre-arraignment custody is spent just sitting and waiting. *The entire process, from the moment of arrest to the moment the person sees the judge, should not take more than 24 hours.*

### **Getting a defense attorney**

If someone is able to hire a defense attorney for an arrestee quickly, the lawyer may come find the person before arraignment; Otherwise, a public defender may come to meet the arrestee before arraignment. If the person does not have a defense attorney at arraignment and the case does not end then, s/he will need to find a lawyer. If the person can afford a lawyer, s/he will have to hire one; if s/he cannot afford a lawyer, someone at the court should explain how to get a public defender. A person charged with a crime has a right to a defense attorney even if s/he can not afford to pay one.

### **The arraignment**

The first time a person sees a judge after being arrested is called the arraignment. The arraignment has two purposes: one is to tell the arrestee what s/he charged with (the lawyer may have already done this before the arraignment), and the other is to decide whether to release the person from custody or not.

Very often, cases end at arraignment, particularly when the charges are minor. The case may be dismissed, the defendant may be given an adjournment in contemplation of dismissal (an ACD – meaning stay out of trouble for six months and the case will be dismissed), or the defendant may plead guilty and be sentenced immediately to pay a fine, do community service, or go to jail. However, if the case does not end at arraignment, the judge will have to decide whether to release the defendant without bail on recognizance, whether to set bail (and if so, how much), or whether to deny bail. If a person is released on recognizance, s/he will be able to walk right out of the court and go home. If the judge sets bail, the lawyer or a court officer or clerk can explain to the the defendant or his/her family how to pay it. If no one can pay it right away, or if the defendant is denied bail, s/he will be taken to jail.

### **Going to jail**

Jails are generally operated by county government. A defendant will be taken to the jail for the county in which the crime was committed.

Jails are for people who can't make bail and people sentenced to less than one year of incarceration. If a person is being held on bail and his/her family raises the bail, the family can come to the jail, pay the bail and get the person out. If a defendant has court dates while in jail, s/he will be transported to court. Jails vary a lot in how safe or dangerous they are and how inmates are treated, but in general jails are miserable, dangerous places with few services and limited mental health care.

### **HOW TO FIND A PERSON WHO HAS BEEN ARRESTED [AND WHAT TO DO WHEN YOU FIND THE PERSON...]**

When someone you care about has been arrested, the first thing that you need to do is figure out where they are. After all, you can't advocate for someone until you find them! Finding someone who is in police custody or jail can be difficult, particularly prior to arraignment, unless the individual calls you to tell you where they are. For this reason, it is a good idea for case managers and peer advocates to make sure that clients carry their phone number at all times.

You need to find out where the person is right away so that: 1) you can advocate for the person to be released and/or to receive a desk appearance ticket; 2) you can go to court for the arraignment and influence the bail decision; 3) you can be at the arraignment to make sure that an inappropriate order of protection is not issued; and/or 4) you can let mental health staff at the jail know what medications the person needs. *People who commit suicide in jail usually do so in the first couple of days, so notifying jail staff that an individual may be suicidal could save the person's life.*

### **First thing: Preventing arrest or advocating for an appearance ticket**

Don't assume just because the police have arrived or the person has been taken into custody that it's too late to do something. Police have broad discretion in deciding who to arrest, who to hospitalize, and who to ignore. If someone you care about is in a situation where they could get arrested, and you are fortunate enough to be there, ask the police not arrest the person. Be assertive without making the police feel that you do not respect their authority. Say something like, "I know he shouldn't have done that, but he just needs to get his medication. I'll come with him – can you drive us to the hospital?"

Even after an arrest has occurred, you may be able to get the person in effect "un-arrested." Find out where the person is being held and go there, or call if you can't go. Talk to the police and ask if they can drop the charges or, if not, at least let the person out to come back to court later. Offer to take as much responsibility for the person as you feel comfortable doing. If you can promise to bring the person to court, the police may be willing to release someone who would otherwise have "gone through the system." Issuing an "Appearance Ticket"

versus keeping the person in custody is generally within police discretion; the decision is usually based on whether the police believe that the person will show up for court. If the police release the person with an Appearance Ticket, do everything you can to make sure that the person goes to court on the date specified by the ticket. If the person does not appear on that date, a bench warrant will be issued and the police will arrest the person again.

If the police do not agree to release the person, be sure to ask the police for the arrest number, because you may need it to find out when the person will be arraigned.

If you are present when a person is being arrested, or if you have the opportunity to speak with someone who is in police custody, the most helpful thing you can do is tell the person *not to talk to the cops*. Any information the person discloses to police will be used against him/her in court. The fact that the police have not read the “Miranda” warning (“You have the right to remain silent. Anything you say can and will be used against you...”) does not make it okay to talk. Police only have to give this warning if they want to ask you questions while you’re under arrest; they do not have to warn people who have not been arrested yet or who just start talking spontaneously. It is important to realize that the police are likely to say things like, “Just tell us what happened and you can go home,” or claim that a co-defendant has already confessed. Talking about a crime to police while in police custody is pretty much always a bad idea.

#### **First 24 hours: Going to the arraignment.**

During the first 24 hours after the person was arrested, you will probably not be able to do anything about getting the person medications. But by going to the arraignment you may be able to help someone avoid going to jail or even help get the charges lowered or dismissed. By being there, you demonstrate to the judge that this defendant has ties to the community and people who will help him/her remember to return to court. It is also a chance to give the defense attorney specific information about the person’s mental health situation; this information may help the defense attorney get the defendant released or even have charges dismissed.

If you want to go to the arraignment, you will need to find out quickly when and where the arraignment will be — it should be within 24 hours of the arrest. First, you need to know where the person was arrested. With this information, you can get the arrest number by calling the police station where the person was arrested. Find the police station by going to one of the websites listed on page 28, the pocket part in the back of this guide, or in your local telephone book. Be sure to also ask the police for the address and

phone number of the court where the person will be arraigned. Once you have the arrest number, you may need to speak to the clerk at the appropriate courthouse to get a sense of when the person will be arraigned.

Trying to find someone who was just arrested can be very frustrating; you may find that no one answers some of the phones at the police station or court, or that the people who answer are not helpful. Be very persistent, and if all else fails, go to the courthouse and go to the clerk’s office in person. You can find the location of the courthouse by going to one of the websites listed on page 28, the pocket part, or the local telephone book.

Arraignments may be held in a specialized courtroom in the courthouse if it is a large court. There may be a list somewhere, usually on the wall outside the arraignment courtroom, listing the names of people scheduled for arraignment; look to make sure the person you are there for is on the list. If they are not, go to the clerk’s office to find out why.

If you go to the arraignment, be prepared for it to be a long, miserable and frustrating experience. You may wait all day and then be told to come back that night; or wait all evening and be told to come back in the morning. No one will offer you help figuring out what is going on unless you ask for it, and even then, it may be hard to get someone to check on whether the person you are advocating for is really there and if so, when s/he is likely to see the judge. The court officers may tell you to sit down and be quiet when you’re just trying to ask a question; even the defense attorneys may not be very helpful — they’re trying to handle dozens of cases at once. It will be very difficult for you to figure out what is going on, for a couple of reasons; the acoustics are often terrible, you may not be allowed to sit in the front row (the front row is for lawyers only), and everyone is speaking quickly and in jargon. The audience in the courtroom will be full of people in the same situation as you; everyone is stressed out, but you can offer each other support.

If you are present at the arraignment, you must let the defense attorneys (they will usually be sitting on one side of the courtroom just in front of the barrier between the audience and the proceedings) know that you are there. If you are at the arraignment, but no one knows you are there, your presence will not help the person being arraigned. The court officers can help you find the lawyer assigned to the case. That lawyer will want to talk to you and will probably point out to the judge that you are present. Tell the lawyer who you are, that the person has a mental illness, and ask the lawyer to tell the judge, if bail is imposed, that the person needs psychiatric attention. You also need to get the lawyer’s card or

write down her/his name and contact information so that you can speak about the case later, if it is not finished at arraignment.

If no defense attorneys are present at the arraignment, be sure to tell a court officer or clerk who you are and why you are there.

#### **First 24 hours: Orders of protection**

Another thing that often happens at the arraignment is that the judge issues an order of protection. An order of protection is a court order protecting a person or place from a defendant. Orders of protection are very often issued in cases where a defendant is charged with harming another person in some way.

There are two types of orders of protection – a “full order of protection” and a “limited order of protection.” A full order of protection means that the defendant cannot have any contact with the person who the order is issued to protect (the alleged crime victim): The defendant cannot go to or near the victim’s house or job, and cannot call, write or e-mail the victim. If the defendant breaks any of these rules, s/he can be arrested and charged with contempt of court, which is a serious offense.

A limited order of protection is issued in situations where the defendant and the victim need or want to have contact with each other – often because they live together or are relatives. When a limited order of protection has been issued, there are no limits on contact between the defendant and the victim, but the defendant is not permitted to behave in an aggressive, abusive, or harassing manner toward the other person. If the defendant violates the order through inappropriate behavior toward the other person, s/he can be arrested and charged with contempt of court.

Judges prefer to issue full orders of protection rather than limited orders of protection, and sometimes this means that a full order of protection is issued even in a case where the victim wishes to have contact with the defendant. A defense attorney may not know to tell the judge that a limited order of protection is more appropriate, or the judge may not be willing to issue a limited order of protection rather than a full one unless the victim requests it. One of the important things that you can accomplish at an arraignment, particularly if you are the defendant’s family member, is helping the defense attorney make it clear to the court which type of order of protection, if any, is appropriate.

Finally, if you are trying to help a defendant against whom an order of protection has been issued, one of the most helpful things that you can do for that person is to assist him/her in understanding and complying with the order of protection. Orders of protection should

be taken very seriously. Even if not only the defendant but also the victim feel that the order of protection is over-broad or unreasonable, the defendant can be in huge trouble if caught violating the order. If you believe the order should be withdrawn or changed from a full order to a limited one, don’t just ignore the order – ask the defense attorney to have it changed. As long as the order is legally in effect, the defendant must comply with it or risk being in serious trouble.

#### **After the first 24 hours: Getting appropriate treatment in jail**

When a person you care about who has a mental illness has entered a jail, you have a real crisis on your hands. Your first priority should be to make sure that the person is safe and gets appropriate treatment while in custody. Not only is it important that the person have continuity of care at this stressful time, the person’s very life may be in danger – most people who commit suicide in jail do it in the first day or two in custody.

The first thing that you need to do is find out which jail and which part of the jail the person is in. When you speak to the jail, be sure to ask for the person’s “NYSID” number as well as the number assigned to the person by the jail – these numbers will come in handy later if you talk to jail staff or visit the person.

The good news is that most jails in New York have mental health services. The bad news is that an individual may not receive mental health services if s/he does not ask for them. And even if the person is identified as having a mental illness or even placed in a special mental health unit, the staff there will not have information about the person’s treatment needs (except perhaps in the form of a chart from a previous incarceration). You have important information about what medications the person has been taking and what medication do not work well for the patient. The mental health staff at the jail need this information.

It may be difficult to get in touch with jail mental health staff or to get them to respond to your concerns. Jail mental health staff may resist talking to you because of confidentiality. If this happens, be polite but firm. Say something like, “Look, I’m not asking you for any information right now. I’m calling to give you some information. This person was arrested Thursday and he is in your jail. He has a mental illness. His diagnosis is schizoaffective disorder and he should be getting 3 milligrams of Risperdal and 500 milligrams of Depakote twice a day. He has a history of suicide attempts and you need to put him on suicide watch right away. When you speak to him, please ask him to sign a release so that you can speak to me about his condition. I will call you back tomorrow morning.”

Write down the name and number of every person you speak to at the jail so that you can follow up if things are supposed to happen and don't. Follow up regularly. Find a way to balance respecting the fact that the people who work in jail mental health services have too much to do and too few resources with letting them know that you're involved and you're not going away.

Get in touch with the mental health staff at the appropriate jail by calling the jail. Find the jail by going to one of the websites on page 28, the pocket part of this guide, or your local telephone book. Again, be persistent. This can be frustrating.

## WORKING WITH A DEFENSE ATTORNEY

Once you've done whatever you can to keep the person out of jail and/or ensure that s/he receives appropriate treatment in jail, the next step is to worry about what is going to happen with the case. There is a cliché that says there are two things you don't want to watch being made; one is sausage and the other is law. The courts where criminal cases are heard can seem very much like an assembly line where defendants go by on a conveyor belt, the highest priority is speed, not the rights and needs of the individual, and no one really gets their "day in court." As an advocate for someone in this position, your job is to stop the conveyor belt, to say to the court, "Hold everything, this is not an object on an assembly line. This is a human being with special needs and you'd better pay attention."

In order to do this, you must work with the defense attorney. There are two reasons that you need to make contact with the defense attorney. The first reason does not necessarily have to do with advocacy – it is simply that the defense attorney has information you may want. The defense attorney is the only person in the criminal justice system who has direct contact with a defendant. The defense attorney will know what the defendant's version of the "crime" is and the defense attorney will have a sense, as soon as s/he meets the defendant for the first time, of what is likely to happen with the case. The defense attorney gets information from the prosecutor about what the police and/or the complainant in the case say happened, as well as any statement the defendant may have made to the police. The defense attorney will also know what the defendant wants to do, for example whether s/he plans to plead guilty or go to trial, and whether s/he is interested in trying to get a disposition that includes mental health and/or drug treatment. If you need information about what is going on with someone's case, the defense attorney is your best source of information.

The second reason to talk to the defense attorney is that you may have information the attorney needs, and you may be able to work with the attorney to help the defendant. The defense attorney probably does not know very much about the defendant's psychiatric problems and history. Most defense attorneys have no specialized training in mental health; they may neglect to ask the client about mental health issues and may miss even obvious clues that the defendant has a mental illness. Even if the defendant tells the defense attorney that s/he has a mental illness and takes medications and is in a program, it may not occur to the defense attorney to talk to the program or the family about these issues. By contacting the defense attorney, you educate him/her about the defendant's mental health problems and what supports are available to the defendant in the community to help her/him stay out of trouble in the future.

You generally cannot talk to the judge on your own initiative – s/he will never return your phone calls, and while you may have the opportunity to address the judge in person on a court date, you should do so only with the defense attorney's approval and assurance that what you plan to say will be helpful to the defendant.

Similarly, do not talk to the prosecutor without the defense attorney's blessing. Information that you think will help the defendant may actually be harmful in the hands of a prosecutor. Even the simple disclosure that an individual has a mental illness may lead the prosecutor to fight harder to keep the person in jail. If you disclose harmful information about the defendant to a defense attorney, the attorney is bound by professional ethics to never disclose that information; a prosecutor, on the other hand, is charged with protecting public safety and if you give a prosecutor any information that can be used to harm a defendant, it will be used to do so. Even if you find the defense attorney challenging to deal with, you must remember that the defense attorney is the only person in the criminal justice system whose job it is to look out for the needs and rights of the defendant.

### **If the defense attorney and I are trying to help the same person, why isn't s/he more cooperative?**

When you advocate for someone who is charged with a crime you must start with the person's defense attorney. Sadly, however, nearly every time I speak to family members or mental health workers about advocating for mentally ill criminal defendants, I hear bitter complaints about defense attorneys – stories of unreturned phone calls, abrupt conversations, or just plain refusals by attorneys to speak with their clients' workers and family members. Why is this?



The answer is that while some attorneys may just be rude, the problem is usually one of resources, funding, and caseloads – and, often, different views of the client’s “best interest.”

**“You have a right to an attorney. If you cannot afford one, one will be appointed for you...”**

The U.S. Constitution provides that every person charged with a crime has a right to an attorney, whether or not the defendant has money to hire one. Unfortunately, the right to an attorney does not seem to include the right to an attorney who actually has the time to do a thorough job on every case or the breathing room to return phone calls. Public defenders may be representing 60 or 70 clients at one time. These caseloads are not their choice, but rather are a function of how much the government is willing (or not willing) to pay to provide lawyers for people accused of being criminals. With that many cases, a defense attorney likely has a hard time remembering many clients’ faces and names – your job is to convince the defense attorney that this is a special case.

Most public defenders chose their jobs for noble reasons – a desire to help people in trouble, a concern about the rights of disenfranchised people. Other lawyers representing poor criminal defendants may have a struggling tax law practice and have decided to supplement it by picking up a few criminal cases. One thing virtually all defense attorneys representing poor criminal defendants share, however, is that they have far too many cases and too few resources to devote a great deal of time to an individual case.

**How does a poor person in New York get a defense attorney?**

New York has two kinds of court-appointed lawyers – public defenders and 18B lawyers.

A public defender is a lawyer who works full-time for a not-for-profit or government organization dedicated to providing criminal defense services to people who cannot afford to pay. The organization that a public defender works for is likely to be called the county “public defender” or “legal aid society.” Public defender organizations typically have a number of lawyers on staff plus other staff such as investigators and social workers. You may find, when advocating for a defendant with a mental illness, that it is very helpful to have a social worker from the public defender’s office assigned to help with the case.

An 18B lawyer is a lawyer in private practice who is assigned by the court to represent a person charged with a crime who cannot afford to pay. Each county in New York has what is known as an “assigned counsel plan” that handles the logistics of assigning lawyers to cases. A few counties have only an assigned counsel plan, and not a public defender; in several other counties the assigned counsel plan is

administered by the public defender. 18B lawyers may spend all of their time doing criminal defense or may only take a few cases. Many 18B lawyers are former Legal Aid Society lawyers or former prosecutors.

Which type of lawyer and which individual lawyer ends up representing a particular defendant is largely a matter of chance. Defendants and their families and advocates do not normally have any control over which lawyer or which type of lawyer is assigned to a case. The lawyer who represents a defendant at the arraignment will usually continue to represent the defendant until the conclusion of the case, although there are exceptions to this rule, in situations where a lawyer is relieved (described below) or the case is transferred to a different lawyer within the same organization.

**Can you fire a free lawyer?**

What if you, or the person you are advocating for, strongly believe that the lawyer assigned to the case is not doing a good job? Can you demand a different lawyer?

The answer is “sort of.” First, the only person who can request a different lawyer is the defendant. No matter how unhappy family members may be with an appointed lawyer, they cannot fire the lawyer because the lawyer does not represent them – the lawyer represents only the defendant. Even if the lawyer is hired and paid for by the family, the lawyer’s only responsibility is to represent and obey the wishes of the defendant.

If the defendant is unhappy with an appointed lawyer, s/he can request that the lawyer be “relieved” from the case and a new lawyer be appointed. In order to do this, however, the defendant must tell her/his lawyer that s/he wants a different lawyer, and must have the current lawyer convey this request to the judge. This means that on the next court date, the lawyer will tell the judge that the defendant has requested a new lawyer.

Sometimes the judge will grant this request and a new lawyer will be assigned. Other times, however, the judge will deny the request. A judge may feel that the lawyer is doing a good job on the case, or that the case has been going on for so long that it will take a new lawyer too long to get up to speed, or, particularly in a case where a defendant has already made the same request before and received a new lawyer, that the defendant’s request is unreasonable.

It is worth noting that a lawyer can also choose to make a request to the judge to be relieved from representing a particular client.

### **A free lawyer is better than a cheap one**

Knowing all of this, you might assume that anyone who can possibly come up with the money to hire a lawyer should do so. Many people assume that a paid lawyer will always be better than a free one. This is not necessarily the case, however. People who are wealthy enough to spend a lot of money on a defense attorney should do so – and will probably be required by the court to hire their own lawyer. But people who have limited funds and can meet the criteria to get a court-appointed lawyer should be extremely cautious about selling the car or mortgaging the house to hire a lawyer instead.

Why? Because, in general, a free lawyer is better than a cheap one. A lawyer who takes a case for a low fee has to take a lot of cases to earn a living – and thus can't devote much time to any one case. A cheap lawyer may also be cheap because s/he is not a very good or experienced lawyer. Or s/he may practice tax law or real estate law most of the time and just pick up a criminal case once in awhile to help make the rent; someone who is a great real estate lawyer is, almost by definition, not likely to be a great criminal defense attorney. Inexpensive lawyers often have no support staff – not even a secretary or paralegal, let alone a social worker. In fact, I've encountered lawyers in private practice doing criminal defense who do not have fax machines or answering machines, and offices where when you call, you can hear a television in the background and you know the lawyer is working out of his/her living room. If you hire an inexpensive lawyer in New York, the lawyer you hire will very likely be someone who also does 18B work (many lawyers do both paid and 18B cases) – so you may pay for the same lawyer you could have had for free.

Finally, there is virtually no oversight of lawyers in private practice. If you are dealing with a lawyer working in a public defender agency and you are very dissatisfied with the lawyer's work or cannot ever get in touch with the lawyer, you can speak to the lawyer's supervisor. Lawyers in private practice have no supervisor.

### **What is the defendant's best interest?**

Sometimes social workers/family members/peer advocates and lawyers seem to speak languages so different that they cannot communicate at all. This often happens when a lawyer and someone from the mental health community discuss the best interests of a client who has mental health and/or substance abuse treatment needs, but is also facing criminal charges.

Imagine that you are an outreach worker and have been trying for several months to engage a particularly hard-to-reach client. The client is a man with paranoid schizophrenia who is living on the

streets, refusing psychiatric treatment and shelter, and using crack cocaine and alcohol every day. Your efforts to engage the client seem to be going nowhere and you are concerned that his lifestyle places him at great risk. One day you receive a phone call from the court because the client has been arrested and has shown your card as a contact person. You rush down to the courthouse and find the defense attorney who has been assigned to represent your client.

The defense attorney tells you that the client has been arrested for possession of crack cocaine. Because the client had only two bags of crack, the offense is a misdemeanor, punishable by up to a year in jail. You feel suddenly inspired; while of course you don't view it as a good thing that your client has been arrested, you wonder whether this might not provide the opportunity you've been looking for to break through the client's resistance and help him to get off the street and into treatment. You start outlining for the attorney the treatment plan you would propose for the client – an 18-month residential program, that offers both substance abuse and mental health treatment, assistance obtaining benefits, day treatment, medical care – in hopes that, with your assistance, the defense attorney can suggest to the prosecutor and judge that rather than being sentenced to jail, the client should be mandated to comply with this treatment plan.

The lawyer interrupts you. "This case is small potatoes," he says. "And the guy's only got a couple misdemeanor and no felony priors. I know this A.D.A.– she'll give me two weeks jail time on this case and I'm gonna have the guy take it." With that, the lawyer walks away to deal with some other cases. A few minutes later, your client's case is called, and he pleads guilty to criminal possession of a controlled substance, and is sentenced to two weeks in jail. Two weeks later, when you go out to do outreach, you see him back on his usual corner with a bottle of malt liquor.

What just happened? Well, what just happened was that you and the defense attorney had different views of what was in the client's best interest – and the defense attorney's view trumped yours. Defense attorneys have an obligation to look out for the legal rights of their clients, while social workers are concerned about a more holistic view of what is in a client's best long-term interest. Often these two perspectives are irreconcilable, particularly when a defense attorney has an opportunity to get a client out of the system quickly and a mental health advocate would rather use the opportunity to get the person into treatment.

While a few defense attorneys do not see getting a client into treatment as being part of their job under any circumstances, most are happy to consider their clients' treatment needs, but only when the treatment intervention is proportionate to the sentence that would

otherwise be imposed. For example, if a month later the same client is arrested for selling crack cocaine, and is facing a minimum of two years in prison, the same defense attorney may be begging you to come to court and advocate for the client to go to an 18-month treatment program instead – because this time the client is in a lot more trouble, so 18 months of treatment seems proportionate.

**A defense attorney's job is to get the defendant out of the criminal justice system. Period.**

The system described above can be maddening to someone concerned about the defendant's mental health, because of course there is often no relationship between how much trouble the client is in and how badly s/he needs treatment. Mental health advocates may be frustrated by a sense that the defendant will have to commit a serious offense before the criminal justice system will ever do anything to help the individual. Sometimes family members and mental health workers feel that it is only through criminal justice intervention that a particularly resistant consumer will ever become engaged in treatment – and wish the system was more intrusive about mandating treatment.

While these perspectives are certainly understandable, it's worth stepping back for a moment and remembering what a toxic place the criminal justice system can be and how destructive being in that system can be to people's physical and emotional well-being. Mental health consumers who go to jail are likely to be victimized and mistreated and return to society in much worse shape than when they left. This is why it is important that defense attorneys fight so hard to get their clients out of the system. While it is clearly a mark of progress that courts have become more amenable to sending offenders to treatment as a disposition in a criminal case, the cost of obtaining treatment through the courts can be very high.

For example, the defendant described above may have a choice of taking a sentence of two weeks in jail, or being mandated to an 18-month program. But if, three weeks into the program, he leaves the program and goes back to the streets, he may be sentenced to more than two weeks in jail – perhaps the full year – as punishment for having been “given a chance” and failed. Faced with those options, any competent defense attorney would advise the defendant to take the two-week sentence. Even if the defendant desperately wanted treatment, the defense attorney would have to advise him to do the two weeks in jail and then seek treatment voluntarily after release – when the consequence of failure in treatment will not be so high.

## A FEW VERY PRACTICAL TIPS ON DEALING WITH DEFENSE ATTORNEYS

### **Finding the defense attorney**

First you have to find out who the lawyer is. Hopefully you can find out from the person you are advocating for, but sometimes the system is so confusing that a defendant can go through the entire process and be released from the court or shipped off to jail without having any idea who represented him/her. Should this be the case, with a little detective work, you can find the defense attorney. Go to the website on page 28, the pocket part, or the local telephone book and find the public defender and assigned counsel plan for the county where the person was arrested. Call each organization and ask if they are representing this defendant and, if so, who the individual attorney is and how you can reach her/him.

### **Getting in touch with the defense attorney**

Once you know who the lawyer is, call. Chances are s/he won't be there – most criminal defense attorneys are in court most of the day. The best times to catch them are when the court is closed, typically before 9:30 or 10 AM, between 1 and 2 PM, and after 4:30 PM. Leave detailed messages. Don't leave your name and number and say “Call me.” Say, “You are representing my client/family member, John Doe. I have some important information regarding the circumstances of the offense he is charged with and his psychiatric history that I need to discuss with you.”

Keep calling. If you leave a couple of messages and don't hear back, call the attorney's supervisor, if there is one. Don't trash the lawyer; just say, “I know Ms. Smith is very busy in court but I have some very important information that perhaps you can get to her.”

### **Talking to the defense attorney**

Once you get in touch with the defense attorney, be concise. It is difficult to emphasize enough how important this is, not just the first time you speak to the lawyer, but every time. The defense attorney is incredibly busy, and is far more likely to return your phone calls and keep you apprised of developments in the case if s/he knows that you will be brief. Don't tell the defendant's whole story, starting with the first psychiatric break 17 years ago. The most relevant facts are whether the person is seriously ill, what was going on in his/her life at the time of the offense, and what supports are available to the defendant in the community. It is not a bad idea to practice what you want to say (in two minutes or less!) before calling, but don't insist on telling the story your way; let the lawyer ask you questions, and answer them.

Speak plain English. It's a rare lawyer who knows a MICA from an SPMI. Use words that a layperson would understand and when jar-

gon is unavoidable, explain what it means. By the same token, don't hesitate to nicely ask the lawyer to stop talking about VOP holds and Wade-Huntleys.

You also must remember that, no matter how concerned you are about the defendant, the defense attorney does not work for you. The defense attorney represents the defendant, and that means that if the defendant tells the attorney not to talk to you, the attorney may not talk to you. Similarly, if the defendant is making choices that seem clearly to not be in his/her best interest (for example, refusing a generous plea bargain offer involving treatment), the defense attorney must obey the client's wishes.

Follow the defense attorney's advice unless it seems completely wrong. Information that you think is relevant may actually not be. For example, if the defendant says he did not do the thing he is accused of, then his psychiatric history and his need for treatment don't have much to do with the case; it will come down to whether the prosecutor can prove that he did it.

If you think the defense attorney is completely wrong, speak to her/his supervisor about your concerns. If the lawyer is an 18B, there is no supervisor, so your only options are to encourage the person you are advocating for to request a different lawyer or to ask for help from the local assigned counsel plan.

Follow through on any promises you make to the defense attorney. If you tell the defense attorney that you will make a phone call to a treatment provider or get a letter from a program or come to court, do it. The defense attorney will be counting on it, and may have conveyed your promise to the judge. Judges are impressed when someone other than the defense attorney cares enough to advocate for the defendant, but they get angry when people promise to find programs or make plans for a defendant then fail to follow through. The defendant will bear the consequences.

When there is an upcoming court date, check in with the defense attorney. By calling the defense attorney a day or two before the court date, you can make plans to meet in the appropriate court part at a specific time. You can also find out whether the defense attorney will be there or will be sending another lawyer in his/her place (this often happens), and what the defense attorney expects to happen that day.

## **LAWS RELATING TO DEFENDANTS WITH MENTAL ILLNESS: 730 EXAMS AND NGRI PLEAS**

There are two sections of the New York State Criminal Procedure Law which in effect provide for a mentally ill criminal defendant to be

diverted out of the criminal justice system and into mental health services. These two sections deal with "730 exams" and verdicts or pleas of "not responsible by reason of mental disease or defect" (commonly referred to as a NGRI or "not guilty by reason of insanity" defense).

### **730 Exams**

Under Criminal Procedure Law section 730, a judge who has reason to believe that a criminal defendant may be "incapacitated" must order that the defendant undergo a psychiatric examination. "Incapacitated" in this context means that because of mental disease or defect, the defendant is unable to understand the proceedings against him or assist in his own defense. A "730 exam," as such exams are referred to, can be requested by a defense attorney or a prosecutor, or may be ordered upon the judge's own initiative.

When a 730 exam is ordered, the case is delayed while the defendant is seen by two psychiatric examiners (psychiatrists or psychologists). During this adjournment, the defendant usually stays in jail, and is brought to the court or a hospital for the 730 exam. Each 730 examiner makes an independent determination as to whether the defendant is "fit" or "not fit" to proceed with the case. The 730 exam is very narrow; it looks only at the defendant's ability to assist in his/her own defense, and about two thirds of defendants are found fit after undergoing the exam.

If the defendant is found not fit to proceed and the case is a misdemeanor, the charges will be dismissed and the defendant hospitalized at a state psychiatric hospital for as long as the hospital believes the person needs to stay there. If the charges are a felony, a "not fit" defendant will be hospitalized at a state forensic hospital (Kirby, in New York City; Mid-Hudson, in New Hampton; Central New York Psychiatric Center, in Marcy; or Rochester Psychiatric Center) until s/he becomes "fit," and then returned to court.

### **NGRI [Not Guilty by Reason of Insanity] Pleas**

Under New York law, a defendant must be found not guilty if s/he demonstrates that at the time of the offense, "by reason of mental disease or defect," s/he was unable to appreciate either the nature and consequences of the conduct, or that such conduct was wrong. NGRI is an "affirmative defense," meaning that the prosecutor does not have to prove that the defendant was "sane" at the time of the offense; it is the defendant's duty to prove that s/he was too ill to be held responsible.

NGRI defenses are rarely used. One reason is because they are often unsuccessful (for example, in Andrew Goldstein's case), leaving the defendant facing sentencing after trial without the flexibility available in the plea bargaining process (in Goldstein's case 25 years to life). Another reason for the limited use of the NGRI defense is that defen-



dants found NGRI are not set free — they are committed to a secure state forensic hospital for indeterminate (and usually very long) periods of time, so in many cases it may not be in the defendant’s legal best interest to seek to be found NGRI. Finally, many seriously mentally ill defendants refuse to permit their defense attorneys to use an NGRI defense even when it is in their best interest — either because they do not believe they have a mental illness (Colin Ferguson, for example), or because they prefer incarceration in a prison to long-term hospitalization.

### **730 and NGRI: No “Get out of jail free” card for defendants with mental illness**

Neither the 730 process nor the NGRI defense comes close to addressing the need for special ways of diverting mentally ill criminal defendants. Both standards (“fit to proceed” and “not responsible”) are very narrow; the majority of mentally ill criminal defendants are organized enough to understand the proceeding against them and were legally responsible for their actions. However, thousands of these “fit” and “responsible” defendants are seriously mentally ill and should be dealt with in ways that address their mental health needs. New York State law does not provide a mechanism to do so.

Another limitation of the 730 and the NGRI provisions is that both are most likely to be used in cases with very serious charges, and neither has much benefit to offer the mentally ill repeat misdemeanor or “nuisance” offender who passes again and again through the revolving door of the criminal justice system. In misdemeanor cases, even repeat offenders are unlikely to go to jail for very long, so remaining confined pending a 730 exam, or being retained in the hospital after being found unfit, may constitute a greater “punishment” than the sentence available through plea bargaining. This discourages defense attorneys from requesting 730 exams in most misdemeanor cases even when they know their client has serious psychiatric problems. Preparing to go to trial with a NGRI defense also requires time and resources that neither a defense attorney, a defendant, nor the court is likely to invest in a misdemeanor case.

As a result, for the vast majority of mentally ill criminal defendants, including virtually all mentally ill misdemeanants, there is no special legal mechanism for addressing their mental health needs.

## **ADVOCATING FOR A DEFENDANT TO BE SENTENCED TO TREATMENT**

If the person you are advocating for is in danger of being sentenced to jail or prison, you will probably want to advocate for the person to be sentenced to treatment instead. Increasing numbers of defendants, even some charged with fairly serious crimes, are being given the

option to go to treatment rather than prison or jail, but it is important for you to understand the process and some of the obstacles involved in making this happen.

### **The defendant must want treatment.**

No one is ever sentenced to treatment unless they agree to it. No matter how much you think the defendant needs treatment, s/he will not be sentenced to treatment unless s/he chooses that option.

### **The defense attorney must think treatment is a good deal.**

Although it is the defendant’s decision, if the defense attorney thinks that a treatment disposition is disproportionate to the seriousness of the offense, or believes that the defendant will not succeed in treatment, this disposition probably will not happen.

### **The judge and the prosecutor must agree to a treatment sentence.**

If the person is on probation or parole, then probation or parole must also agree. This may be an area where you can be of great help to the defense attorney, by using your knowledge about the defendant to convince the judge and prosecutor (and probation or parole) that this person would benefit from treatment, and that there are treatment programs capable of helping the defendant avoid re-offending. Follow the defense attorney’s advice about how to do this.

### **Someone must find a treatment program that will accept the defendant.**

Sometimes this is the hardest part. Usually, at least in a serious case, the judge and/or prosecutor will insist that the defendant go to a residential treatment program. There are not enough residential treatment beds in New York, the application process for these programs is very complicated, and many programs will not accept people straight from jail. You and the defense attorney will need to find someone (usually a social worker) who can do the application process to get the defendant into a program. This social worker may be from the defense attorney’s organization, may work for the court, or may be part of a community agency providing this service. Some counties may not have anyone who’s job it is to find programs for defendants; in this case, you or the defense attorney may have to do it yourselves.

Even once there is a social worker trying to get the defendant into a program, the process can be very frustrating. Specific issues, like whether the defendant has a substance abuse problem or if the defendant is taking medications that are controlled substances (e.g., Klonopin), as well as the seriousness of the defendant’s criminal behavior, will have an impact on how difficult it is to find a program. Once there is a social worker looking for a program, you should stay in touch with that worker and check in regularly to

encourage her/him to make the case a priority, but you should also understand that the process may take months.

#### **The defendant must succeed in treatment.**

When someone is sentenced to treatment, that is almost never the end of the case. Typically, the person has to plead guilty before being released to the program and then is required to comply with the program and to report regularly to probation or the court. If the defendant leaves the program, refuses to take medication, uses drugs, or otherwise does not cooperate with treatment, the treatment program will notify the probation department or the judge. In this event, the judge may give the person another chance, or may lose patience and sentence the person to jail or prison – perhaps for longer than the person would have received had s/he pled guilty in the first place rather than going to treatment at all. If you are working with someone who has been sentenced to treatment, you must make sure the person understands and remembers the consequences of failure.

### **ADVOCATING FOR DISCHARGE PLANNING**

After you've ensured that the person you are advocating for gets appropriate treatment while in jail, and you've worked with the defense attorney to arrange the best possible disposition, you may face one more difficult task. If the person you have advocated for will be leaving jail or prison and returning to the community, s/he will need discharge planning. Discharge planning is the process of ensuring continuity of care as a patient leaves one treatment provider (the jail or prison) and goes to another (in the community). Prior to this transition, there must be a plan in place for how the person will get medications, treatment and public benefits (if necessary), and where s/he will live. A recent lawsuit established that mental health consumers leaving jails and prisons have a right to discharge planning, but you will still need to advocate to make sure it actually happens.

Get in touch with the mental health staff in the jail or prison several months in advance of the person's release day, and ask them very specific questions about what their plan is for ensuring that the person leaving jail/prison will have a continuous supply of medication, case management services, community mental health services, assistance accessing public benefits, and placement in housing or residential treatment, if necessary, immediately upon release.

Follow up. Stay in touch regularly with the discharge planner in the

jail or prison assigned to the case. Make sure that when the person you have been advocating for leaves jail or prison s/he has everything necessary for success in place already. Remember, the person you are advocating for has a right to this assistance.

### **ADVOCATING FOR SOMEONE ON PROBATION OR PAROLE**

First you must understand the difference between probation and parole. Probation is a sentence. Probationers are supervised in the community for either one year (if they committed a B misdemeanor), three years (for an A misdemeanor), or five years (for a felony offense). Probationers must report to a probation officer and comply with specific conditions set by the probation officer. If a person on probation fails to comply with probation, the probation officer may return to the court that sentenced the defendant to probation and ask the court to issue a warrant for the person's arrest based on a violation of probation. If a warrant is issued and the person is arrested, s/he will appear before the same judge and the judge will decide whether to continue probation or sentence the defendant to incarceration.

Parole is the supervision of someone who has returned to the community after serving a sentence in State prison. Parolees must report to a parole officer and comply with specific conditions set by the parole officer. If a person on parole violates any condition of parole, the parole officer can arrest the person immediately and s/he will be sent to jail to await a hearing regarding whether s/he violated parole and should be sent back to prison.

Mental health consumers on probation or parole definitely need advocates. Probation officers may be supervising well over 100 probationers; parole officers also have high caseloads. Most of these officers also do not have any special training in mental health issues. By helping a probation or parole office understand the mental health issues that a consumer is dealing with, and by making it clear that the consumer is getting help, you may be able to prevent a probationer from violating probation and going to jail or prison, or a parolee from returning to prison.

Make contact with the probation or parole officer before there is a problem; with the consumers permission, call up and introduce yourself and, if you work for a mental health program, tell the officer a little about what your program offers. By making contact early, the officer will be more likely to call you if there seems to be a problem, and you will be more credible should you need to advocate for the consumer later on.

## CLEARING UP A WARRANT

If a defendant does not appear on a scheduled court date, does not go to court when required to by an Appearance Ticket, or does not pay a fine or do community service as ordered to by the court, the judge will almost certainly issue a warrant for his/her arrest. The warrant is likely to be issued the same day as the missed court date, or within days or weeks of not paying a fine or missed community service.

### Can you ignore a warrant?

As an advocate, you may wonder what to do when your client, family member, or friend has a warrant. How important is it to "clear up" a warrant? The answer is that it's pretty important.

The first reason for clearing up a warrant is that someone with a warrant for her/his arrest is unlikely to be able to ignore it forever. There is a lot of variety in how aggressive police in different places are about tracking down people with warrants and arresting them; it's possible that if a warrant is issued against you the police will be at your house that evening to arrest you, or it's possible that the police will never bother to look for you. One general rule is that police put much more effort into "executing" warrants against people charged with serious offenses than into picking up people who skipped paying a fine or doing community service. But even if the police don't come looking for a person with a warrant, the warrant is still out there and will "pop up" if the person has another encounter with police. Warrants do not disappear on their own – there is no "statute of limitations" or time limit on how long a warrant can be pending.

Even if a consumer is 100% confident that s/he will never have another encounter with the police, there is another good reason to clear up a warrant. In recent years, the Social Security Administration has started checking individual SSI applicants and recipients to see whether they have warrants anywhere in the United States. If Social Security finds out that you have a warrant, they send you a mean letter that says that because you are a "fugitive" you will no longer receive SSI, and that you cannot reinstate your benefits until the warrant is cleared up. I've even seen a case where Social Security demanded that a man pay back all the SSI benefits he'd ever received – because of a 16 year old warrant. So if someone you care about has a warrant and receives or hopes to receive SSI, you definitely need to help the person get rid of the warrant.

There's one last reason for clearing up a warrant – stress. As long as you have a warrant, you are a real live fugitive, no matter how minor the offense or how good your excuse. Some people don't find this anxiety-producing, but other people are very worried by having

a warrant "hanging over their head." Sometimes the stress of worrying about a warrant is worse than any real consequences of facing the music and clearing it up.

### What does it mean to "clear up" a warrant?

So how does a person get rid of a warrant? Well, unfortunately, the term "clear up" makes it sound easier than it is. There is no magic way to make a warrant disappear. In fact, usually the only way to clear up a warrant is to go to the court that issued the warrant and say, in effect, "I made a mistake, I'm sorry, here's my excuse [if you have one], I'm here voluntarily because I want to deal with this, now please don't throw the book at me." Remember, it's not just the warrant that's pending, it's also the reason for the warrant, so if criminal charges were pending they're still pending and if the defendant did not complete a sentence s/he will be re-sentenced.

So what's likely to happen if a defendant "voluntarily returns" to court to deal with a warrant? In part it depends on factors like whether the person has an excuse and how old the warrant is. If there is a fantastic excuse – for example, the defendant was in a psychiatric hospital, or a social worker is able to come to court and verify that the defendant was unable to follow the court's orders because of a psychiatric disability – or if the warrant was issued only a day or two ago, the defendant may not be in any additional trouble. In this situation, the defendant will probably just have to follow through on whatever it was that s/he failed to do before – show up for court, pay the fine, do the community service.

If it's just not possible for the defendant to do what the court requires, for example if a disability makes it impossible for the person to do community service or if s/he cannot afford to pay the fine, this is the moment to explain that to the court. This is a situation where having an advocate in court, particularly a mental health worker, will make the defendant much more believable. If you are the advocate, you may also want to try to bring a letter from the defendant's psychiatrist. If you are not able to take the time to go to court, giving the defendant a letter to take to the judge is better than nothing, but being there in person is much more likely to influence the judge.

If the defendant does not have a good explanation for the warrant, s/he is likely to be in more trouble now than before the warrant was issued, particularly if more than a couple of days have gone by. "More trouble" could mean different things – it could mean that rather than being released "on recognizance" while charges are pending, the defendant is required to pay bail or go to jail. It could mean that s/he is sentenced to jail time rather than paying a fine or doing community service. This advice hardly makes people want to

rush out and fling themselves upon the mercy of the court. But there's one more very important thing to remember, besides the fact that leaving warrants "hanging" doesn't usually work out very well – you will almost certainly be in less trouble if you go to court voluntarily to clear up a warrant than if the police bring you in involuntarily. Judges, understandably, are impressed when a defendant is responsible and has initiative enough to come to court and risk punishment. "Voluntary returns" on warrants are usually treated far more generously than "involuntary returns."

Deciding whether to go to court to deal with a warrant can be a difficult and stressful decision to make, and the only person who can make the decision is the person with the warrant. After all, if the judge is in a terrible mood and will not listen to excuses or give second chances, it's not the advocate who goes to jail, it's the consumer. As an advocate, the best thing you can do for a consumer with a warrant is help her or him understand the options and possible consequences of going and not going to court, explain what you'll do to help if s/he decides to go, and give the person time to make a decision without pressure. Remember that the consumer has probably been to this court and seen this judge before, and may have a good sense of what is likely to happen.

#### **Steps to take in helping a defendant clear up a warrant**

If the consumer decides that s/he wants to clear up the warrant, the following are steps you can take as an advocate in helping to do so:

1. *Make sure there really is a warrant.* Sometimes people get confused, or just don't know whether they have a warrant or not. Before you waste a day at the courthouse, try to call and find out for sure. Call the court where the person thinks they were suppose to have appeared or were sentenced to pay a fine or do community service and ask if the court can tell you whether there is a warrant for the person. You should not need to disclose where the defendant is; if someone you speak to about the warrant wants to know, explain that the defendant is going to come to court to deal with it and ask for specifics about when and where s/he should appear. If the court does not keep track of warrants, chances are the police in the county do; ask the court if they can tell you where to call.

2. *Try to get in touch with the defense attorney.* The defense attorney who represented the person in the case where the warrant was issued may be able to help the person clear up the warrant. Call the lawyer, explain that there is a warrant and let the lawyer know if you are able to go to court with the defendant and whether the defendant has a good excuse for the warrant. If you are able to get in touch with the defense attorney, s/he should be able to tell you when and where to go to court, and perhaps meet you there.

3. *Go to court.* Even if you're not able to reach the defense attorney or s/he is not able to help clear up the warrant, you're going to have to go to court if you want to clear up a warrant. Get as much specific information as you can from the court or defense attorney about where you should appear and when. Generally, what you should do is find out at what time in the morning the court opens, show up about ten minutes early, go through security, and then explain to the court officers that you are there to clear up a warrant and ask where to go. You will probably be sent to the clerk's office, where they will pull the file and then send you and the file to a specific courtroom (or "part") that deals with people returning on warrants. When you get there, if you have not arranged to meet the defense attorney, you should ask a court officer or lawyer whether there is a lawyer there who can "stand up" on the case when it is called. If a lawyer is able to help you, be sure to explain to the lawyer any excuse the person has for the warrant. Then have a seat. Be prepared for a long wait – clearing up a warrant can take all day. But even though it can feel like a huge waste of time, please remember that this is a moment, like the arraignment, where the mere presence of an advocate can make a huge difference – often the difference between jail and a second chance.

#### **What if the warrant is a result of violating probation or parole?**

There is another way to end up with a warrant aside from failing to show up on a court date or failing to pay a fine or do community service. Probation and parole officers have the power to have a warrant issued (either directly, or by asking a judge to do so) if a person under their supervision fails to report or fails to comply with the conditions set by probation or parole. It is difficult to know how quickly a warrant will be issued after an individual violates probation or parole; with parole, it may be immediately, while with probation it may take months.

If the person you are advocating for believes that s/he has a warrant because of a probation or parole violation and wants to clear the warrant up, the best place to start is with the probation or parole officer. As an advocate, you can call the officer, inquire about whether a warrant has been issued, try to prevent a warrant from being issued if it has not been, and try to convince the officer to give the person you are advocating for another chance even if there is a warrant. This is another situation where a mental health consumer is far more likely to be successful at staying out of jail if s/he has an advocate.



## FIND HELP

Advocating for someone in New York's criminal justice system can be an incredibly confusing, frustrating, and overwhelming experience. Find people who can help you understand what is happening to the person that you are advocating for, and how you can be the most effective advocate possible. Hopefully, you can get some of this information from the person's defense attorney, but if s/he does not return your calls or is not willing to take the time to explain things to you, don't give up.

Families or consumers facing a criminal justice crisis can reach the NAMI-NYS Associate Director for Criminal Justice by calling the toll-free help line, 1-800-950-3228. You can also contact NAMI-NYS by e-mail at [naminys@naminys.org](mailto:naminys@naminys.org) and you may consult their website at [www.naminys.org](http://www.naminys.org). In addition, NAMI-New York State has many affiliates across the state which can provide specific advice and consultation to people in need. You may contact NAMI-NYS or consult their website to find a NAMI affiliate near you.

## CAN WE STOP THE CRIMINALIZATION OF MENTAL ILLNESS?

People with mental illness do not belong in jail and prison. Sending them there wastes money, wastes lives, and lets the government off the hook for its broken promise of deinstitutionalization. Many of the "crimes" that mental health consumers end up in jail and prison for today would be viewed as symptoms if we had enough residential and hospital treatment beds.

In the last year or two, the issue of people with mental illness in the criminal justice system has become something of a hot topic. But those of us who care about mental health issues – consumers, families, friends, treatment providers and advocates – should not assume that being in the spotlight will do anything to fix the problem.

The criminalization of mental illness is just one symptom of much broader problems with crumbling mental health systems across the country, but it may be the most tragic symptom. It is also a symptom of our country's ever-expanding criminal justice system and tendency to view incarceration as the solution to every social problem. We must make federal, state and local officials realize what they have done by incarcerating hundreds of thousands of mental health consumers. Everyone who cares about mental health must work together to stop criminalization and demand a real community mental health system, regardless of whether someone you care about has been arrested – yet.

## FOOTNOTE

<sup>1</sup> This handbook does not discuss the juvenile justice system and Family Court, where young people under age 16 and charged with crimes are usually prosecuted. Nor does it cover the federal system where people charged with federal offenses are prosecuted. Anyone over the age of 16 charged with a crime (and children as young as 13 charged with some serious violent felonies) are treated as adults by New York's criminal justice system.

## HELPFUL WEBSITES

### Police

This website provides links to websites for law enforcement agencies in New York. Use this website to find contact info for the agency that arrested the person.

<http://search.officer.com/agencysearch/agencyresult.asp?state=NY>

See also the NYS Division of Criminal Justice Services website (not as user-friendly, but includes addresses and phone numbers and departments that do not have their own website).

<http://criminaljustice.state.ny.us/crimnet/ojsa/agdir/contents.htm>

### Courts

This website provides phone numbers (but not addresses) for all the courts in New York, organized by county. Use this website to get in touch with the court where the person you are advocating for will be arraigned.

<http://www.courts.state.ny.us/county.html>

See also the NYS Division of Criminal Justice Services website. This site includes addresses and phone numbers for each court, but you have to know what type of court you are looking for. Look under City Court and County Court. If the person has been indicted for a felony, s/he will be in Supreme Court. If s/he is under 16, the case will be in Family Court.

<http://criminaljustice.state.ny.us/crimnet/ojsa/agdir/contents.htm>

### Jails

The best website for finding a jail's address and phone number, by county, is the DCJS website below. Use this website to find your local jail, so you can find out if a specific person is in custody there, visit the person, and/or get in touch with the mental health staff or warden's office to let them know about the person's mental health needs.

<http://criminaljustice.state.ny.us/crimnet/ojsa/agdir/contents.htm>

The following website also lists the addresses (but not the phone numbers) of every jail in New York State.

<http://www.scoc.state.ny.us/nysscoc/jailadre.htm>

## Public defenders

This New York State Defenders Association website lists addresses and phone numbers for all public defender organizations and assigned counsel (18B) administrators across New York State by county. Use this website for the contact info you need to find the lawyer representing the person you are advocating for.

<http://www.nysda.org>

## Support groups

NAMI-NYS lists local affiliates of the National Alliance for the Mentally Ill in New York State. Use this website to find a support group in your area.

<http://www.naminys.org/>

You can also find the national office of NAMI in Washington DC, and a list of affiliates across the country, at:

<http://www.nami.org/>

## Prisons

The New York State Department of Correctional Services website has a map showing all prisons, contact info for every prison, and an inmate lookup option that allows you to find what prison a specific person is in (prisoners are moved frequently and unexplainably).

<http://www.docs.state.ny.us/>

The New York State Office of Mental Health website includes a description and list of services OMH provides in New York State prisons, with phone numbers.

<http://www.omh.state.ny.us/omhweb/facilities/cnpc/facility.htm>

## Government officials

The following websites will help you find your state legislators and county mental health officials, who you may wish to ask for help if you feel that the person you are advocating for is being mistreated.

New York State Assembly Members

<http://assembly.state.ny.us/mem/>

New York State Senators

<http://www.senate.state.ny.us/>

New York State Office of Mental Health list of county government mental health agencies, with phone numbers.

[http://www.omh.state.ny.us/omhweb/aboutomh/county\\_svcs.html](http://www.omh.state.ny.us/omhweb/aboutomh/county_svcs.html)

## Information about mental health consumers in the criminal justice system

American Association of Community Psychiatrists – several sets of professional standards regarding incarcerated consumers

Standards for correctional mental health services

<http://www.comm.psych.pitt.edu/finds/mibb.html>

Standards for discharge planning for consumers leaving correctional facilities

<http://www.comm.psych.pitt.edu/finds/postrelease.html>

American Radio Works – this site gives a human face to incarcerated consumers

[http://www.americanradioworks.org/features/mentally\\_ill/index.html](http://www.americanradioworks.org/features/mentally_ill/index.html)

Bazelon Center for Mental Health Law – a great source for national information on mental health advocacy issues

Information on the criminalization of mental illness

<http://www.bazelon.org/crimjustfactsheets.html>

Information on jail diversion

<http://www.bazelon.org/jaildiversion.html>

Information on discharge planning from correctional facilities

<http://www.bazelon.org/dischargeplanning.html>

Information on obtaining Medicaid upon release from a jail/prison

<http://www.bazelon.org/findingthekey.html>

Mental Health Matters – A good website with a great deal of mental health information, including criminal justice issues

<http://www.mental-health-matters.com/law.html>

National GAINS Center for People with Co-Occurring Disorders in the Justice System - information on programs to keep consumers out of jail

<http://www.gainsctr.com>

Urban Justice Center – To find the NYC version of this handbook (and hopefully this version as well) plus "Prisons and Jails: Hospitals of Last Resort," a report about criminalization in New York, and a fact sheet on mental health courts, go to Mental Health Project publications.

<http://www.urbanjustice.org/>

## Information about mental illness and mental health services

About.com – A good resource for information about health problems and treatment for them, including mental illness and substance abuse

<http://home.about.com/health/>

Corporation for Supportive Housing – Information about the NY/NY agreement to build supportive housing for homeless consumers in New York

<http://www.csh.org/nynyinfo.html>

Mental Disability Rights International – This organization provides an international perspective on the rights of people with psychiatric disabilities.

<http://www.mdri.org/>

Mental Wellness -- A drug company site with some helpful info re: mental illness and diagnoses

<http://www.mentalwellness.com/index.htm>

National Mental Health Association- A national advocacy organization with affiliates across the country.  
<http://www.nmha.org/>

New York City Voices – An outstanding mental health consumer journal.  
<http://www.newyorkcityvoices.org/>

Psychiatric Times  
<http://mhsources.com/pt/>

SAMHSA national mental health treatment program locator  
[http://www.samhsa.gov/public/look\\_frame.html](http://www.samhsa.gov/public/look_frame.html)

SAMHSA national substance abuse / alcoholism treatment program locator  
<http://findtreatment.samhsa.gov/facilitylocator.doc.htm>

### Information about the criminal justice system

Correctional Association of New York  
<http://www.correctionalassociation.org/>

Critical Resistance  
<http://www.criticalresistance.org/>

CURE – Citizens United for the Reform of Errants  
<http://www.curenational.org/about.html>

CURE-NY  
<http://www.users.bestweb.net/cureny/>

Families Against Mandatory Minimums  
<http://www.famm.org/>

Lindesmith Center – Drug Policy Foundation  
<http://www.lindesmith.org/>

National Center on Institutions and Alternatives  
<http://www.igc.org/ncia/>

National Coalition to Abolish the Death Penalty  
<http://www.ncadp.org/>

Open Society Institute / Criminal Justice Initiatives  
<http://www.soros.org/crime/>

Prison Moratorium Project  
<http://www.nomoreprisons.org/front.htm>

Sentencing Project  
<http://www.sentencingproject.org/>

Statistics on Crime by State  
<http://www.stateline.org/crimeandcourts/>  
Prison Awareness Project  
<http://www.students.washington.edu/th123/homepage.htm#california>

360 degrees  
<http://www.360degrees.org/>

William Moses Kunstler Fund for Racial Justice  
<http://www.kunstler.org/>

## GLOSSARY OF CONFUSING TERMS

**Adjournment** – A postponement in a criminal case. The time between court dates.

**Adjournment in Contemplation of Dismissal (ACD)** – A disposition where the charges will be dismissed if the defendant is not rearrested in the next six months.

**Allocution** – Answering questions and admitting to a crime in order to plead guilty as part of a plea bargain.

**Alternative to Incarceration (ATI)** – A program that a defendant is ordered to attend rather than being sentenced to jail or prison.

**Appearance Ticket** – A ticket ordering you to appear in court on a specific day to answer charges against you.

**Arraignment** – The first appearance before a judge after a person is arrested. Should be held within 24 hours of arrest. The purpose is to inform the defendant of the charges against him and decide whether to release the person or set bail.

**Arrestee** – A person in police custody following arrest.

**Assistant District Attorney (ADA)** – Prosecutor working for the District Attorney.

**Bail** – An amount of money a defendant must pay in order to be released from jail while a criminal case is pending. Designed to ensure that defendant does not run away.

**Bail Bondsman** – A person who makes a living by helping defendants pay their bail and taking a fee for doing so.

**Bench Warrant** — A warrant issued by a judge, usually because an individual did not return to court when they were supposed to.

**Charge** – Accusation regarding the specific law a defendant is said to have violated.

**Conviction** – Having been found guilty of an offense.

**Criminal Court** – The court where every criminal case starts, regardless of whether it is a felony or a misdemeanor. There is one in each borough.

**Criminal Procedure Law** – Set of New York State laws governing the procedures in criminal cases.

**Defendant** – Person charged with a crime.

**Defender Service** – Organization that represents indigent criminal defendants.

**Department of Correctional Services** – The New York State agency that operates all of New York State’s prisons.

**Detention** – Being held in jail awaiting trial (usually because you can’t afford bail).

**DIN #** — “Department Identification Number” used by the New York State prison system (the Department of Correctional Services) to keep track of prisoners.

**Disposition** – The conclusion of a criminal case.

**District Attorney** – The person who prosecutes people charged with crimes. There is one District Attorney in each county. S/he is elected and has “Assistant District Attorneys” working for him/her.

**Division of Parole** – The New York State agency that supervises people released from prison on parole.

**18B** – Attorney in private practice appointed to represent an indigent criminal defendant. 18B attorneys are paid by the court

**Felony** – Crime punishable by more than a year of incarceration.

**Forensic** – Relating to the law or legal proceedings.

**Full Order of Protection** – A court order that a defendant may not have any contact, in person, by phone, or mail, with a specific person.

**General Population** – Regular (non-segregated) section of a jail or prison.

**Indigent** – Poor.

**Inmate** – Person in jail or prison.

**Jail** – Local correctional facility where people awaiting trial and people sentenced to less than one year of incarceration are held.

**Limited Order of Protection** – A court order that a defendant, although permitted to have contact, may not behave in an aggressive, abusive, or harassing manner toward a specific person.

**MICA** – “Mentally Ill Chemically Addicted.” Term used to refer to someone who is dually-diagnosed with mental illness and substance abuse and requires integrated treatment for both problems.

**Misdemeanor** – An offense punishable by a year or less of incarceration. There are two kinds of misdemeanor; an A misdemeanor is punishable by up to a year in jail, while a B misdemeanor is punishable by no more than three months in jail.

**NYSID** – New York State Identification number. This number is given to you the first time you are arrested, to match your fingerprints. It stays with you for the rest of your life, even if you are never arrested again.

**Parole** – Supervision in the community of someone who has been released from prison.

**Penal Law** – Set of New York State laws listing what actions are criminal in New York

and what the sentences are for each offense.

**Plea Bargain** – An agreement where a defendant pleads guilty to an offense in return for a specific sentence (usually a better sentence than s/he would have received after losing a trial).

**Prison** – A state correctional facility where people convicted of felonies and sentenced to more than one year of incarceration are confined.

**Probation** – A sentence of 1, 3, or 5 years of supervision in the community.

**Prosecutor** – A lawyer representing “The People of the State of New York” whose job is to prosecute people accused of crimes and defend the interest of the community in public safety and quality of life. The prosecutor does not represent crime victims.

**Public Defender** – A defense attorney who is paid by the government to represent criminal defendants who cannot afford to hire a lawyer. A public defender usually works full-time for a not-for-profit organization funded by the government.

**Punitive Segregation (also “bing” and “box”)** – Unit where inmates being punished for disciplinary infractions are held in solitary confinement.

**RAP SHEET** – Record of every time an individual has been arrested, and what happened in each case.

**Released on Recognizance (ROR’d)** – Released from custody without being required to pay bail, but required to return to court on a specific date.

**Satellite Unit** – A mental health facility within a New York State prison.

**Sentence** – The punishment imposed at the conclusion of a criminal case.

**SPMI** – “Seriously and Persistently Mentally Ill.” This is a term used by the New York State Office of Mental Health. Whether an individual is “SPMI” or not depends on how much mental illness impairs his/her functioning. This term is important because many programs determine eligibility based on whether or not the person is “SPMI.”

**Suicide Watch** – When a jail inmate who is believed to be potentially suicidal is checked on regularly as a preventative measure.

**Supreme Court** – The court felony cases are transferred to from Criminal Court after the defendant is indicted by a grand jury. There is one in each borough.

**Warrant** – A notice to the police that a person is wanted and should be sought out and arrested.

## CUSTOMIZE THIS HANDBOOK FOR YOUR COUNTY!

This handbook will be far more useful to people in your town if it is accompanied by a list of the phone numbers family members and others will need to locate and advocate for a consumer. Our goal in creating and distributing this handbook is for someone in each county (perhaps a NAMI staff member or volunteer) to compile an insert with a list of essential local phone numbers, and distribute the handbook with that insert. On the next page is an outline of some of the types of phone numbers you will want to compile; You may want to copy the next page, fill the numbers in, then make copies of the version with the numbers and staple it into



