

Understanding the Criminal Justice System In Montgomery County

Important Montgomery County Phone Numbers

District Attorney's Office
610-278-3090

DA's Victim Assistance
610-278-3144

Victim Services Center
610-277-4781

Public Defender's Office
610-278-3295

County Bail Director
610-277-7290

Adult Probation
Norristown Office
610-278-3448/3449/3450

Adult Probation
Willow Grove Office
610-784-5407

Montgomery County
Correctional Facility
610-630-9390

Sheriff's Department
610-278-3331

Women's Center Hotline
800-773-2424

In recent years there has been a concern that individuals who are mentally ill may be incarcerated because of behaviors demonstrated while in a state of decompensation of their mental illness. It is important that the concept of jail diversion be understood. A basic definition of diversion is that individuals who suffer from a mental illness or substance abuse problem, who come into conflict with the law secondary to their illness will be diverted from incarceration and into the appropriate treatment.

The Montgomery County Emergency Service (MCES) is a nationally recognized jail diversion program with a wide variety of services to assist those in need at any level of their involvement and with the legal system. In the next issue we will describe the MCES role in minimizing the contact that consumers have with the criminal justice system.

Part of the MCES mission is to help consumers who have had involvement with the police, courts or correctional system. We also help law enforcement agencies with people who suffer with mental illness. Our Criminal Justice and Forensic Psychiatry Programs link the behavioral health system with the police, courts, and corrections through education, technical assistance, community outreach, and consultation.

Here we give an overview of the criminal justice system in Montgomery County. This is the network of police, court, and correctional processes and procedures that some consumers may find themselves caught up in.

The information given here is intended to be solely educational in nature. It in no way constitutes legal advice or is meant to provide legal guidance. If the reader has questions or concerns about legal issues please contact an attorney. The intent of this information is to give a basic orientation to the Montgomery County criminal justice system and some of its procedures.

"It is important to recognize that individuals with mental illness may commit crimes. If this is the case, and they are aware of their wrongdoing, it is appropriate they face consequences while receiving the needed treatment while going through the legal process."

Rocio Nell, MD, CPE
CEO/Medical Director
MCES



Legal Term Glossary

Abeyance: To hold back, “temporary inactivity or cessation.”

Acquittal: Finding not guilty of a person tried for a crime.

Accelerated Rehabilitative Disposition (ARD): Diversion of a first-time offender to probation without a trial.

Bail Bond: Written agreement posting security to assure court appearance.

Continuance: Postponement of a pending trial or action to a later date.

Grand Jury: A body that hears several cases and decides whether to indict those accused.

Indictment: Formal written accusation by a grand jury charging a person with a crime.

Magistrate: A District Justice or District Court Judge.

Mandatory Sentences: A statutory requirement for a crime that a prescribed sentence be carried out upon conviction of the crime.

Why do some consumers have contact with the police?

Most consumers, even those suffering with serious or chronic mental illness, never get involved with the criminal justice system. However, the nature of some disorders puts those affected at high risk of police contact. This includes activities secondary to a mental health condition; i.e., acting out, delusions, etc., and substance abuse; e.g., intoxication, DUI, etc..

The Sentencing Project (2002) states that the mentally ill commit three basic types of crimes. These crimes are classified in the following manner:

1. Crimes secondary to the individual’s mental illness; i.e., disorderly conduct, trespassing, etc.
2. “Economic crimes” to survive in the community. Stealing food and cigarettes, prostitution and petty crimes.
3. Serious crimes like burglary, assault and robbery.

As mentally ill individuals cycle between the community and jail for minor crimes secondary to their illness, this phenomenon is known as the “revolving door.” Also, according to The Bureau of Justice Statistics, a mentally ill inmate who commits a crime has a higher incident of homelessness prior to their arrest. Another problem is that a large number of mentally ill individuals who are incarcerated report having abused illegal substances one month prior to their incarceration.

Individuals suffering from a co-occurring disorder “are strongly associated with poor social functioning, homelessness, violence, arrest and incarceration.” (The Sentencing Project, 2002, p.8). This group of individuals with co-occurring disorders are difficult to manage in the community and some service providers are unwilling to treat them.

How do the police get involved with consumers?

Law enforcement has a duty to protect society and to protect those that cannot help themselves. First encounters usually occur with the police officers acting as protectors of the public’s safety or in a *Parens Patriae* role of caring for those who cannot care for themselves. Mental health, law enforcement and the criminal justice system have a duty to protect all members of the community as well as uphold the laws that govern our society. Police discretionary powers of *Parens Patriae*, which dates back to English Common Law allows the state to act as guardians for those that cannot protect or care for themselves. The state mental health law also empowers police to act when an individual may harm herself or himself, or others, or is unable to meet basic physical needs.

The District Court Role

District Justice jurisdiction in criminal cases involves everything from a traffic violation to the initial phases in murder cases. All misdemeanor and felony violations are filed in the District Courts. In these cases, the defendants are arraigned, bail is set, defendants are advised of their rights, and a preliminary hearing is scheduled within ten days. At the preliminary hearing, these court cases are either waived to the Court of Common Pleas by the defendant; or, after the hearing, they will be dismissed or bound over to court if a *prima facie* case is found.

Criminal Justice Functions in Montgomery County



Everybody in Montgomery County lives in either a borough or a township. These units of local government are responsible for public safety, which includes police protection. Fifty of the sixty-eight municipalities in the county have local police departments. The other eighteen are covered either by an arrangement with another municipality or by the Pennsylvania State Police.

The county plays several roles: (1) it provides facilities and staff for the District Justices and the Court of Common Pleas; (2) the District Attorney is the chief law enforcement official for the county; (3) the Adult Probation Office is responsible for probationers and parolees serving county sentences; (4) the operation of the Montgomery County Correctional Facility (MCCF); and (5) the Sheriff serves judicial documents, provides prisoner transport, assures courthouse security.

The District Attorney (DA) supervises 38 assistant DAs, the County Detective Bureau, and various specialists. The DA represents the Commonwealth in criminal cases, gives investigative assistance to local police, and has authority over all criminal investigations conducted by local police and the power to bring or decline to bring criminal charges.

Adult Probation performs court-ordered supervision of probationers and parolees over

age 17. Probation officers (POs) assess needs and risk to the community, set the level of supervision, and recommend placement in either psychiatric, drug or alcohol or sexual offender counseling. POs also prepare pre-sentencing reports.

MCCF (the new facility) opened in 1986, to house inmates with terms of 24 months or less, including women and those on work release. The facility now accommodates approximately 1,400 inmates on a daily basis. This includes offenders awaiting sentencing and those who have not posted bail.

The Commonwealth of Pennsylvania is involved with the county criminal justice system in three ways: (1) the Pennsylvania State Police have three trooper stations serving the county; (2) the state judicial system includes the District Justices and the Common Pleas Courts as its first two tiers; and (3) the State Correctional Institution at Graterford.

There are several special police units with limited jurisdiction in the county: the Valley Forge Historical Park Rangers, the Amtrak Police Department, and the Norfolk Southern Police Department. The Federal Bureau of Investigation or other federal agencies may become involved in cases that fall within their jurisdiction.

More Legal Terms

Nolo Contendere: (Latin for “I will not contest it”) plea of no defense to the charge, but not the same as “not guilty.”

Nolle Prosequi (or “Nolle Prose”): Court-approved decision by District Attorney to not pursue a case.

Ordinance: Law enacted by a municipality or a county.

Penal Laws: Statutes and ordinances that define crimes or offenses.

“Petit Jury”: Trial court jury. (court jury of 12 persons)

Prima Facie: Enough evidence to go to trial.

Quash: To make something void (e.g., charges).

Sentencing Guidelines: Statewide recommended sentences for misdemeanor and felony convictions.

Statute: A law enacted by the state or federal government. “Legislative enactment.”

Summary Offense: Acts (such as underage drinking, shoplifting, or disorderly conduct) involving a fine and payment of court cost.

“Dealing with an individual in crisis can be one of the most challenging tasks an officer can face in the community. The officer has to be able to evaluate the situation, ensure the safety of all parties involved and make the appropriate call to ensure services are provided to the individual in crisis. At the same time the individual in crisis may be feeling scared, vulnerable, and traumatized. It is important to remember that the officer is there to assist all those in need and bring a peaceful resolution to the crisis at hand.”

Donald Kline, MS, Director
MCES Criminal Justice/Community Outreach Department



Types of Charges

Generally, crimes that are punishable by terms of one year or less are misdemeanors, and crimes punishable by terms of more than one year are felonies. A misdemeanor is generally punishable by a fine or limited local jail term. Felonies are more serious offenses and may lead to a stay in the county/state prison.

Prison Release Options

Completion of Sentence

Serving the full sentence and being released from custody.

Probation

Community supervision for a set period of time by a probation officer.

Parole

Serving only part of his or her sentence, and reporting to a parole officer.

How can consumers avoid involvement with the police?

Treatment Compliance – Seeking help with any mental health or substance abuse problem and following the plan of care is the best single way to avoid or minimize the symptoms or behaviors that may result in police contact.

Relapse Prevention - Relapse is a return of symptoms or behaviors. In mental illness one way relapse can happen if the illness worsens. It may happen if the treatment or the treatment team change. In substance abuse it may happen if treatment is stopped or if old habits return. It may occur if sources of stress arise that are hard to deal with.

Every consumer should know the warning signs of relapse and have a personal relapse prevention plan.

Early Crisis Intervention – Sometimes consumers, family members, or others in the support network may see that a crisis is about to happen. Everyone should know in advance who to call for help if a crisis occurs. In Montgomery County, the MCES Mobile Crisis Service will respond.

Avoid Substance Abuse – Consumers should avoid drinking and self-medicating with street drugs.

What happens when consumers have contact with the police?

Referral to provider – A police officer may identify an individual in need of services. If the situation is manageable, and no serious infraction has occurred, the contact may end with a referral to MCES, another mental health provider, or the police may take the individual to a source of help.

Non-Traffic Citation – This is a notice to appear in District Court. It records the offense, the date, time, and place that it occurred, the date and location of the court appearance, and the name of the issuing officer. If the individual signs the citation, which indicates that he or she agrees to appear in court, there is usually no further action at that time. A copy of the citation is sent to the local District Court.

Filing Charges - The decision to file charges is usually made by the police and the District Attorney's Office. A charge is a formal complaint accusing an individual of a crime.

Affidavit - Is a written statement of the fact made under oath and done so voluntarily.

Complaint - This is a formal charge presented to a judge or district justice, which charges an individual with a crime.

Arrest - This is taking a person into custody. Also a police officer may detain an individual for the purpose of investigation which is not an arrest.

Summons - This is used in lesser crimes instead of a warrant. A notice to appear in court for a specified crime.

Warrant - A written order directing a police officer or person authorized to serve the document. The individual is taken into custody and brought before the issuing authority.

Bench Warrant - A warrant issued from the court of Common Pleas.

What happens after a citation or arrest?

Booking – When someone is arrested, the usual procedure is to take him or her to the police station. The individual’s processed arrest is recorded, and the individual is photographed and fingerprinted.

Detention - If bail is not secured, the individual will be detained at the Montgomery County Correctional Facility.

Bail – Monetary or other security (such as a bail bond) is given to the court to temporarily secure a person’s release from custody and assure his/her appearance in court. It may be forfeited if the individual fails to appear before the court. The District Justice can set, modify, revoke or deny bail. A bail bond is an obligation, signed by the accused, to secure his/her presence at trial and which he/she may lose by not properly appearing for trial.

Arraignment or Initial Court Appearance - The first court appearance, to hear the charges read, be advised of his/her rights and have bail determined takes place before a District Justice. This generally happens within hours of arrest. Presently, the County is divided into 30 districts. District Justices have initial jurisdiction over all criminal cases, making decisions on the issuance of warrants, and finding sufficient justification to send misdemeanor and felony cases to the Court of Common Pleas for further action.

Preliminary Hearing (Prima Facie Hearing) - Hearing at which the District Justice determines if a case has the minimum amount of evidence necessary to allow it to continue in the judicial process. Such a case is known as a “prima facie case.” Prima facie evidence is evidence that appears strong enough to send the case to Common Pleas Court.

Possible Outcomes – A District Justice can deal with summary offenses and misdemeanors. In all other cases the District Justice is limited to hearing evidence against the accused and determining if the evidence justifies a trial. In such cases, the accused is bound over to await action by the District Attorney in a higher court. If evidence of guilt is inadequate the accused may be discharged. Charges may also be held in abeyance.

Release on Own Recognizance (ROR) - The District Justice may, in the case of minor offenses and some bailable felonies, release the individual without bail based on their written promise to appear in court. The District Justice must be convinced that the individual will keep their promise to appear. An initial ROR does not preclude the possibility that bail may be imposed or that the individual may be taken into custody.



Bail and Pre-trial Release Services

Bail Services interviews defendants, makes bail recommendations, supervises defendants, conducts background checks, does drug testing, and arranges electronic monitoring of offenders.

A bail interviewer meets the defendant and gathers information to assess eligibility. The bail interviewers recommend to the District Justice or a Judge of Court of Common Pleas the amount and type of bail.

Appropriate offenders may be diverted back into the community. Selection is based on strict criteria such as type and severity of the offense, prior criminal history, detainer and/or open case history.

Investigations for pre-trial release check that the offender’s information is accurate. The offender is given a drug and alcohol assessment. The background findings, chemical dependency screening and legal status are documented. The condition(s) for pre-trial release, such as electronic monitoring, drug testing, outpatient treatment, community service, must be accepted by the defense attorney, DA, and offender in a court order signed by a Judge.

The stigma surrounding mental illness is almost insurmountable in this country, combined with the fear and over-exaggeration that a consumer with a mental illness is more violent than society as a whole is not true. There have been many misconceptions about mentally ill individuals committing violent offenses in the American society, which are manifestations of media hype and sensationalism. This fear has been fueled by recent sensational and widely publicized reports both locally and nationally. Research suggests a link between mental illness and violence during acute psychotic symptoms. Studies have also shown that violence is increased by the use/abuse of drugs and alcohol across the board, not just persons with mental illness (MacArthur Violence Risk Assessment Study, 2001). Numerous studies have shown that people with mental illnesses aren’t more violent than the general population.



About the Insanity Defense

In Pennsylvania, legal insanity means “laboring under such a defect of reason, from disease of the mind, as to not know the nature and quality of the act he was doing or, if the actor did not know the quality of the act, that he did not know that what he was doing was wrong”. The Pennsylvania law is based on the “M’Naghten Rule”. For a defendant to be found not guilty by reason of insanity, he/she must be determined to have been mentally ill at the time of the crime and unable to know what he or she was doing or that it was wrong.

Disorders that may be valid for the insanity defense include:

- Organic Psychosis
- Schizophrenic Disorder
- Bipolar Disorder with Psychosis
- Delusional Disorder or Brief Psychotic Episode
- Severe Mental Retardation or Dementia.

What happens if a consumer is charged with a crime?

Competency Assessment – In cases involving consumers, a pre-trial evaluation by a forensic psychiatrist may be ordered by the court to address legal questions such as competence to enter plea and the following issues.

- **Competency to Stand Trial:** Is the individual aware of having committed an act that is wrong (awareness of legal charges) and able to work with counsel (awareness of pending legal proceedings)?
- **Criminal Responsibility:** Does the individual suffer from a disorder which caused a defect of reason which interfered with the ability to recognize the nature of the act that he or she was committing or that the act committed was wrong?
- **Capability of Criminal Intent:** Was the individual able to differentiate between right and wrong and act with the awareness that the act that they were committing was wrong?

Criminal Court – If competent to stand trial, the accused appears in the court of common pleas and is arraigned. This is a formal reading of the charges in open court. Through his or her attorney, the accused may plead guilty or not guilty. If guilt is admitted, the judge proceeds to sentencing. If a plea of not guilty is made the case continues. A jury is impaneled and the trial begins. The defense attorney and the district attorney, present their evidence, witnesses, and arguments. When both sides have completed their presentations, the judge instructs the jury on any crucial points and the law. The jury then deliberates the case. If it reaches a verdict of “guilty” the judge then sentences the defendant. If a verdict of “not guilty” is returned, the defendant is acquitted and cannot be tried again for the offense.

Sentencing – Terms less than 24 months are generally served at the county prison. Longer terms must usually be served at a state

prison. Common pleas judges can sentence offenders to county prisons for terms up to five years. Prison sentences as fixed by the courts, carry a maximum penalty of up to 20 years for a first-degree felony, up to 10 years for a second-degree felony, and 7 years for a third degree felony. The maximum penalty for a first-degree misdemeanor is 5 years, 2 years for a second-degree misdemeanor, and 1 year for a third degree misdemeanor. Summary offenses may involve imprisonment for up to 90 days.

“Not Guilty by Reason of Insanity” (NGRI) – This is the outcome of the “insanity defense.” Because some consumers are not capable of knowing or choosing right from wrong, the insanity defense prevents them from being treated as criminals. Consumers found NGRI are not automatically set free. They are usually admitted to a psychiatric facility until their sanity is established, and may be in such settings longer than if they had been convicted and sent to prison.

“Guilty but Mentally III” – A person who makes an insanity defense may be found ‘guilty but mentally ill.’ This means that the person was mentally ill and legally insane at the time he or she committed the offense. As a result of his or her disorder or disease the person did not understand the nature of the act or, if they did, he or she did not know that it was wrong.

Probation – A sentence may be suspended and the person may return to the community, and be supervised for a set period of time by a probation officer under the supervision of the court.

Parole - Released from incarceration prior to the expiration of the sentence. The individual will be monitored by a parole agent to ensure compliance with parole conditions.

The Criminal Jury Trial Process

The District Attorney (DA) makes an opening statement outlining the case against the defendant. Next the defendant's attorney usually makes a statement outlining the defense.

The DA then presents evidence to the jury, and may call witnesses to testify. The defendant has a right to cross-examine witnesses. At the close of the prosecution's case, the defendant may offer evidence, and call witnesses, which the DA may cross-examine.

One lawyer may object to a question posed by the other. The Judge decides if the question is proper. Sometimes there is a side bar

conference. Here the Judge meets with the attorneys out of hearing of the jury. After all witnesses have been called and all evidence has been presented, both sides may then address the jury. This is the closing argument.

The last stage of the trial is the charge to the jury by the Judge. No one is allowed to enter or leave at this time. The Judge explains to the jury the rules of law that apply to the case, and points out the basic issues. The jury now deliberates a fair verdict in the case. After it reaches a decision, the foreperson announces the verdict in open court.

What does MCES do to divert appropriate consumers from with the criminal justice system?

“Pre-booking Diversion” – This includes law enforcement training and community-based crisis intervention via the Mobile Crisis Intervention Service. The criminal justice department provides liaison services and on-scene evaluation on a twenty-four hour basis. Other services include twenty-four hour hotline, assessment, referral and hospitalization via voluntary or involuntary commitments. By providing emergency assistance around-the-clock, MCES provides law enforcement with an appropriate avenue of treatment for the seriously mentally ill instead of criminal charges. The team works to have charges dropped, reduced or to arrange release from custody with the condition of treatment.

“Post-booking Diversion” - MCES works with the Public Defender, District Attorney, District Judges, Common Pleas Court, and Probation and Parole, and assists individuals with mental illness in the criminal justice system. MCES works to have charges

dropped, reduced or to look for alternative sentencing with treatment as the goal. MCES works within MCCF to ensure appropriate treatment, and attempts to divert consumers back into the community. Once in the community, MCES provides intensive follow-up until the consumer is in the mental health/substance abuse system. Other MCES services include forensic intensive case management for community-based follow-up to ensure stabilization.

“Coterminous Diversion” – This occurs when an individual who has been taken into custody by the police is taken directly to MCES for an emergency psychiatric evaluation while charges are being filed. In this type of diversion the person receives treatment at MCES and criminal justice staff have time to work with the person and law enforcement. The goal is to reduce or drop charges in lieu of arrest and possible incarceration.



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The MCES criminal justice diversion model for individuals with mental illness will be more fully presented in our next issue.

Help for Crime Victims

Consumers suffering with serious mental illness are much more likely to be victims of crime than offenders. The Victims Services Center is a source of help 24 hours a day/7 days a week. It offers a crisis intervention and counseling hotline, victim advocacy and emotional support at the police station or hospital, help in dealing with and understanding the legal and court systems, referrals to other community resources for victims and their families, and ongoing counseling.

Contact: Victims Services Center, 18 W. Airy Street, Norristown, PA 19401, 888-521-0983 or 610-277-0932.

Possible Court Systems Change

The county courts are a key part of the criminal justice system, which is the focus of this issue. Pennsylvania Senate Bill 917, introduced in 2001, and amended in April 2002, could significantly change this system. It proposes creation of county mental health courts. These courts would address the special needs of offenders with a diagnosable mental illness. The goals of the proposed courts include a single point of entry for defendants with mental illness, ongoing court supervision, consolidation of all charges and cases against an individual, faster case processing, centralized case management, better access to care and diversion from prosecution in cases where this is deemed appropriate by the court. Such courts have been established in Allegheny County, PA and have been in operation in several states, including Florida and Washington for several years. The U.S. Department of Justice offers funding for mental health court start-ups. We will give an update on SB 917 in our next issue.

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