

Navigating the North Carolina Criminal Justice System With a Defendant Who Suffers From Mental Illness

A guide for friends, family, and advocates

Written by Patrick Simmons, Intern at North Carolina Prisoner Legal Services,
Georgetown University Law Center, J.D. Candidate, Class of 2014
Michele Luecking-Sunman, Civil Litigation Managing Attorney,
North Carolina Prisoner Legal Services

Special Thanks to:
Frances Castillo, Post-Conviction Managing Attorney,
North Carolina Prisoner Legal Services
and
Jennifer Blue, The Safe and Humane Jails Project,
North Carolina Prisoner Legal Services

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Quick Reference Guide

The Arrest

- Tell the police about the person's mental illness and describe any symptoms
- Ask that the person be taken to a mental health facility instead of being arrested
- Calm the person down and tell them things will be better if they cooperate with the orders of the police
- Tell the person not to answer questions from the police until they have an attorney present
- Request a Crisis Intervention Team officer if you are the one who calls the police
- Go to the police station and inform them of the person's mental illness and ask again that the person be released
- Tell the police about any special treatment and medication the person might require
- Ask the police who provides mental health care in the jail, and obtain assurance that a mental health professional will evaluate the person
- Inform the local management entity (LME) that the person you are concerned about is in jail, and request that they evaluate the individual to determine if he should be diverted from jail to treatment.
- Warn the police about any suicidal tendencies of the person

The First Court Appearance

- Call the police station or jail where the person was first taken and ask where the appearance will be
- Go to the appearance if possible
- Speak with the defense attorney if possible
- Advocate for release into the community and discuss the treatment the person is already receiving if asked to speak on the person's behalf
- Ask that the person be released into your care again if you are normally responsible for the person's care.

In Jail

- Talk with jail staff as soon as possible
- Warn jail staff of any suicidal tendencies, especially if there is a prior history of suicide attempts
- Inform jail staff of the person's mental illness and any special treatment he may require
- Inform jail staff of the person's prescriptions and contact information for doctors the person regularly sees

- Bring a long-term supply of the person's prescriptions, in their original prescription bottles, to the jail if allowed
- Maintain regular contact with jail health staff

Jail Diversion

- Ask about jail diversion at every step - during the arrest, at the police station or jail, at the hearing, at the trial
- Contact the police and find out how to contact the mental health facility if the person was taken there by the police
- Ask the defense attorney to advocate for jail diversion
- Ask the defense attorney that the person be tried in a mental health court if the person was arrested in a county with such a court

Communicating with the Defense Attorney

- Inform the defense attorney of the person's mental illness
- Inform the defense attorney of any treatment the person is currently receiving
- Maintain frequent and professional contact with the defense attorney
- Ask the defense attorney if you can serve as a witness on the person's behalf at trial
- Understand that you and the defense attorney may have different views on what is in the best interest of the person
- Do not talk with the prosecutor

NC Criminal Laws Relating to Mental Illness

- Tell the defense attorney if you believe the person is mentally incompetent to stand trial and you believe the person would be best served by treatment
- Understand that being found incompetent or insane can lead to *indefinite* commitment to a mental health facility
- Understand that mental illness does not always equal mental incompetence or insanity in the eyes of the court

Sentencing

- Advocate for treatment sentencing if the person is found guilty
- Listen to the attorney on the consequences of treatment versus imprisonment
- Understand that if the person has not been found incompetent, treatment is only an option if the person wants to be treated
- Understand the consequences of violating treatment

Incarceration in Jail or Prison

- Maintain regular contact with the jail medical staff or prison mental health staff
- Inform the health staff of the person's mental illness and treatment history
- Maintain regular contact with the person and ask about the treatment he is receiving
- Involve the person's current treatment providers in the establishment of a treatment plan in jail or prison
- Be aware of prison transfers, and monitor to make sure that treatment continues in the prison to which the person is transferred.

Leaving Prison

- Contact the prison staff about a discharge plan, and inquire into resources they may have to connect the person with the proper treatment upon release
- Contact your local Social Security Administration office and/or your local Medicaid/Medicare office
- Inform those offices of the person's impending release so that payments/care can be resumed

Probation, Parole, and Post-Release Supervision

- Contact the probation/parole officer and inform him of the mental illness of the person and the treatment he is receiving
- Establish yourself as a reliable contact in case the probation/parole officer has a problem with the person

The Juvenile System

- Understand that individuals 16 and over are treated as adults in the NC criminal justice system
- Understand that even though juveniles under 16 are usually charged with complaints, they can be charged with crimes as adults
- Advocate for jail diversion at every step of the process: at the arrest, at the police station or jail, at the hearing, at the trial

Introduction

This guide is designed for friends, family members, guardians, and caregivers concerned for a person with a mental illness who has been detained by the criminal justice system of North Carolina. It outlines each step in the process from arrest to reintegration and provides concerned parties with information they can use to provide assistance to such persons.

In North Carolina, adult mental illness is legally defined as “an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control” (NCGS 122C-3).

This guide *does not* address the situation of persons with intellectual and developmental disabilities detained by the criminal justice system of North Carolina. While many of the issues discussed in this guide apply to such persons, this guide is not specifically written for that subject. If you are concerned about a person with an intellectual and developmental disability who has been arrested, please contact The Arc of North Carolina (<http://www.arcnc.org/partners-in-justice> , 919-782-4632).

The authors of this guide would like to acknowledge the Urban Justice Center of New York, whose “How to Help” handbook served as the inspiration for this guide. The authors would also like to thank the members of the National Alliance for the Mentally Ill (NAMI) of Wake County, NAMI North Carolina, as well as certain employees of the North Carolina state government for their assistance in the production of this guide.

The state of mental health care in North Carolina

It is an unfortunate truth of our modern criminal justice and mental health systems that too often those with mental illness end up in prisons instead of treatment facilities. This is true in North Carolina and nationwide. The latest report from the Wake County chapter of the National Alliance on Mental Illness estimated that in 2009 there were over 6,000 prisoners in North Carolina suffering from some form of mental illness (http://nami-wake.org/files/Prison_Mental_Illness_NAMIWake_Oct10.pdf). In North Carolina, the odds are now 8 to 1 that an incarcerated person with a serious mental illness will be assigned to a prison bed instead of a psychiatric bed.

Incarceration is not treatment

You may think that the person for whom you are concerned will benefit from some time in jail. Some people believe that imprisonment will help those imprisoned to realize their behavior was wrong

and will encourage them to “straighten out.” This is usually not the case with persons suffering from mental illness. Incarceration is not treatment. A person with a mental illness may not realize why he is in jail. The idea that people in jail straighten out assumes they understand that they are being punished for wrongful behavior. A person suffering from mental illness may not be able to understand that he is being punished for his actions or that his actions were wrong. He may be incarcerated because of behavior that was beyond his control due to his mental illness. Jail time will not help him regain control. Incarceration often exacerbates symptoms of mental illness, leading the mentally ill prisoner to feel depressed and out of control, resulting all too commonly in tragic consequences.

What you can do

While you may not be able to do anything immediately about these alarming trends in our mental health and criminal justice systems, there are many ways in which you can advocate for the person for whom you are concerned. Your involvement on behalf of that person could help reduce his sentence, remove him from the criminal justice system entirely, or even save his life. It is vitally important that you do all you can to ensure the person receives the proper treatment he needs and deserves under the law.

The Arrest

Police officers have wide discretion when it comes to making an arrest for a minor crime, like trespassing or disturbing the peace. An officer may arrest someone on the spot if he observes a crime or has been told one has just occurred.

What to tell the police

If you are present when the person is arrested, do your best to inform the arresting officer of the person’s illness. Many police officers in North Carolina are members of Crisis Intervention Teams (CITs) trained to handle situations involving persons with a mental illness. CIT- trained officers should be able to recognize a person with a mental illness but you should still inform the officer of the person’s illness. If the officer is made aware of the mental illness he may then take the person to a mental health facility instead of a jail. When informing the officer of the mental illness you should be sure to describe the exact symptoms so the officer can know what to look for and how to deal with it.

CIT programs are new, and you should not expect all officers to be so-trained. As of January 1, 2012, about 18% of all law enforcement officers in North Carolina have received CIT training. However, all police officers in North Carolina receive some level of training on how to handle mentally ill persons. Police officers have the discretion not to arrest for minor crimes and letting an officer know of the person’s illness may influence the officer to exercise that discretion. Tell the officer that you realize what

the person did was wrong but that the person has a mental illness and needs his medication. Ask the officer to drive the person to a mental health facility or hospital and volunteer to go as well.

Even if the officer takes the person into custody instead of to a mental health facility, the officer should be informed of the mental illness so that the person's treatment in custody is appropriate.

What to tell the person

If you are present when the arrest is made you should tell the person to avoid speaking with the police. Tell the person to explain to the police that he will not answer questions until he speaks with an attorney. The person may not understand his right to remain silent, and it is important that you communicate to him the importance of not speaking with the police so that he does not inadvertently incriminate himself. Because you are encouraging his silence you must then be sure to inform the police of the person's mental illness and any special care that he may require.

Unfortunately, individuals with a mental illness often do not respond well to arresting officers. Oftentimes, an officer will respond to a complaint of a minor crime such as trespassing but additional and more severe charges are added when the arrestee is non-compliant due to his mental illness. This can lead to a serious charge of resisting arrest or assault on a police officer. Because of this possibility, do your best to calm the person if police are present or on their way. Warn the person of the possible consequences if he resists arrest. Assure him that if he quietly cooperates with the officer's instructions he will be treated appropriately by the police. It can be confusing to tell someone to cooperate with the police and also warn him not to answer their questions, but you must differentiate the two. Tell the person to follow the orders of the police, but do so in silence. Tell the person he must follow the orders of the police, but he should not answer their questions.

If you are the one who calls the police

You may be the one who calls the police to respond to a situation involving the person for whom you are concerned. Due to his illness the person may become a danger to himself or others and you may believe that the only ones who can respond appropriately are the police. If this happens, be sure to request a Crisis Intervention Team officer when you make the call to the police. Describe the person's mental illness and its symptoms. If the local police department has such an officer available he will be dispatched to help. If a law enforcement officer who is not CIT trained is intervening, request that a CIT officer be dispatched to the scene. If this is a situation that happens frequently, make contact with the CIT officers of your local police department and establish a relationship with them. If possible, have the person meet with the CIT officer or officers during a calm period so that if a police response is needed again, the person for whom you are concerned will be dealing with a familiar face when the police show up. This can help defuse the situation.

At the police station

After the person has been arrested there is still hope that he may be released. Ask the arresting officer for his name and the location and number of the police station or jail where the person will be taken. Assure the person that you will go to the police station or jail as soon as possible. At the station inform the police again of the person's mental illness and request that the charges be dropped. If the police won't drop the charges, ask that the detainee at least be released into your care (if you feel safe doing so) and promise that you will bring him to court if you believe that you can.

If the police will not release the person then you must again remind them of his mental illness and any special care he may require. This includes any prescription the person needs and especially any suicidal tendencies the person may currently have or has had in the past.

North Carolina law requires that local law enforcement administer a mental health screening to all detainees after booking. Booking is the process of fingerprinting and photographing an arrestee. The standardized form used for this task asks a series of questions concerning the detainee's mental health. If the person answers yes to certain questions, or if the administering officer is concerned for any other reason, the detainee will be evaluated by a mental health professional, either at the jail or at a mental health facility where the detainee will be taken. The jail is responsible for arranging the mental health evaluation and treatment of jail detainees, including evaluations subsequent to screenings, and may do this by contracting with a qualified medical or mental health professional. These evaluations do not remove the detainee from the criminal justice system however. The detainee will continue in the system but may receive additional mental health care and supervision.

In North Carolina, Local Management Entities (LMEs) are responsible for managing mental health care services in the area that they serve. There is an LME for every county in the state and the contact information for every LME can be found in Appendix 1 of this guide. If the person for whom you are concerned is arrested, call the local LME and inform them that the person has been arrested and where he is being held. You should also request that a mental health professional from the LME evaluate the person to determine if he should be diverted from jail to treatment. Ask the LME staff what jail diversion options exist in your area and how they can assist.

Remember that with one hundred counties in North Carolina there are a wide variety of practices and procedures across the state. If you experience difficulty speaking with the jail or police station, or if you believe that something is wrong with the way they are dealing with the person, consider calling one of the agencies listed at the end of this guide, including NAMI (919-788-0801, 800- 451-9682).

The First Court Appearance

The first court appearance will usually occur within 48 hours of the arrest. At the first appearance, the person will be asked what he or she intends to do about an attorney. If the person can afford to hire an attorney it should optimally be done before the first appearance. If the person cannot afford to hire an attorney, a court-appointed attorney or a public defender will be assigned to represent him at the first appearance if he qualifies for the appointment of counsel. Should the person attempt to represent himself or herself by signing a form called a “Waiver of Counsel”, you may ask the judge to speak and inform him or her that you believe it is not in the person’s best interest to represent themselves, and cite their mental illness as a major concern. It is important to note that many judges may not hear from you unless you have a Power of Attorney and even still they may not hear from you at all. If they do, and if the client insists upon representing herself, her wishes may prevail over yours despite your best efforts.

Attending the appearance

Appearance procedures vary from county to county. If you can find out when and where the person will appear before the court, and if the county allows others to be present at the appearance, you should do your best to attend. Call the police station or jail where the person was originally taken. The police or detention officers there should be able to provide you with the address and contact information for the court where he will appear.

The appearance may be your first chance to speak with the defense attorney. Tell the defense attorney about the person’s mental illness as well as any information that you think might help the defense attorney represent or communicate more effectively with the person. Additionally you may be given a chance to speak on the person’s behalf depending on the practice of the court. If you are given the opportunity to speak, use that opportunity to let the court know of the person’s mental illness and his need for psychiatric help. Even if you cannot speak, your presence will indicate to the court that the person has community ties and may convince the court to treat him more leniently.

At the first appearance your loved one will be informed of his charges and the judge decides whether or not to release the person on bond. If the charges are minor, the case may be dismissed or the prosecutor may reduce the charges or opt for a deferred prosecution. A deferred prosecution is an agreement offered by the District Attorney whereby the DA’s office agrees to dismiss the case if the person stays out of trouble for a certain period of time. Deferred prosecutions must ultimately be approved by the judge. Unless the person pleads guilty or the case is dismissed, the case continues and the judge must then decide whether the person will be released and, if so, with or without bond.

The amount of the bond depends on the seriousness of the charges as well as a determination about whether or not the person is a flight risk, i.e. how likely the Court thinks it is that the person will return to Court on his own free will if he is allowed to be released. If the Court releases the person without bond, or on an unsecured bond, he may simply go home. If a bond is set and neither the person nor friends or family can afford to pay the bond, or if the court decides not to release the person altogether, the person will then be taken to jail to await trial. At this point many people opt to use the services of a bail bondsman. Please be aware that there can be significant legal repercussions for those who choose to use a bail bondsman, including the loss of personal property or real estate. We encourage you to exercise caution and diligence should you wish to employ the services of a bail bondsman.

In Jail

Preventing suicide

Detention officers in North Carolina are trained to identify warning signs of suicide by people detained in jails. Even so, law enforcement and detention officers are not mental health experts and should be informed of any suicidal tendencies on the part of the person. Informing the authorities of such tendencies may save the person's life. A 2010 study by the National Institute of Corrections of the Department of Justice found that 23% of jail suicides occur within the first 24 hours of detainment. Therefore it is vital that you inform the detention facility staff of any suicidal history as soon as possible. (<http://static.nicic.gov/Library/024308.pdf> pg. 13)

Even though the mandatory mental health screening requires the officer to ask about the person's current prescriptions, you should also inform the jail staff of any prescriptions the person is taking, as well as the dosage and frequencies. It is also a good idea to tell the jail staff where the person is receiving mental health treatment and the names of their doctors. Your loved one may be reluctant or unable to divulge such information, so his health may depend on you relaying this information to jail staff.

If you inform the jail staff of the suicidal tendencies of your loved one and you believe the jail is ignoring your warnings, do not stop there. Contact the Local Management Entity and inform them of the person's suicidal tendencies and where the person is jailed. At the same time, contact the sheriff's office directly and tell him that the jail staff is ignoring your warnings. Document all your calls. If you believe your warnings are being ignored by the jail staff and the sheriff's office, call NCPLS (919-856-2200).

Jails are required by law to provide mental health care

North Carolina law requires that all county jail facilities provide for emergency medical care (NCGS 153A-224(b) and 225). Additionally, the Secretary of the Department of Health and Human Services is required by law to set minimum standards for local confinement facilities, including mental health standards. This, however, does not guarantee the person will be properly cared for while in jail. You must communicate with the jail staff and make them aware of the person's mental illness so they can provide the proper care.

Aside from statutory law, detention officers have a common law duty of reasonable care to detainees. If detention officers are informed of the detainee's mental illness they can be held liable if they do not then administer the proper care under the circumstances. Questions of liability will be addressed in greater detail in a later section.

Communicating with jail health staff

Jail mental health staff may be reluctant to talk to you about the health of the detainee due to concerns about violating the person's confidentiality. Emphasize that you are simply informing the staff about the needs of the person, not requesting information. You may also ask that the mental health staff request that the person sign a waiver or release form so that the staff may speak to you about the health of the person.

Maintain regular contact with the jail health staff. You cannot just assume they are acting on your information. Establish regular intervals in which you speak with the staff so you can be sure the person is getting the proper care. Provide the health staff with contact information for any doctor or mental health specialist that the person has seen recently.

If the jail allows it, bring a supply of the person's prescription to the jail. This will help ensure that the person gets the medicine he needs. While the jail staff is required to provide any medication that a person needs, they may substitute a cheaper alternative drug to the one the person is currently taking, and that medicine may not be exactly what the person needs. Jail staff may be open to receiving a supply of a prescription, as this will save the jail money. If you do bring a supply of the person's prescription, bring as much as you can and be sure that the prescriptions are up to date and are in the original pharmaceutical bottle labeled with the person's name and prescribing medical professional.

Jail Diversion

Jail diversion is an emerging concept in the criminal justice world. The theory of jail diversion is that both the state and individuals with mental illness are better served by guiding those individuals to

mental health treatment in the community or a hospital rather than processing them through the criminal justice system and housing them in a jail or prison.

The good news is that jail diversion is growing in popularity in North Carolina. As previously stated, many counties now have Crisis Intervention Teams trained to properly handle a situation involving a person with a mental illness. A decision by a CIT officer to not arrest is a form of “pre-booking” jail diversion. If the person for whom you are concerned is fortunate enough to receive pre-booking jail diversion, the incident will not result in an arrest record.

In addition to the CIT programs, there is now a Local Management Entity (LME) assigned to every county in North Carolina. LMEs are responsible for the mental health care system in their area. Unfortunately, the areas these LMEs serve can be quite large, often encompassing multiple counties, stretching thin their resources. There may not always be the best communication between local law enforcement and LMEs. Additionally, even though every county has a corresponding LME, not every county has a mental health facility where a person can be taken. Many counties in North Carolina have no such facilities.

Although jail diversion is a growing trend, the majority of the time a mentally ill person will still be processed through the criminal justice system in the same manner as any other citizen of North Carolina.

Mental health courts

Some counties have implemented mental health courts. They represent a form of “post-booking” jail diversion. These courts have been designed to hear cases of people with mental illnesses and determine the legal response that would meet the psychiatric needs of the person. Mental health courts, however, are still only in the experimental phase and there are only a handful of such courts in the entire state. At the time of the writing of this guide, Orange, Chatham, Mecklenburg, Guilford, Brunswick, and Forsyth counties had mental health courts. If the person for whom you are concerned was not arrested in a county with a mental health court then he cannot be heard in a mental health court. Even if the person was arrested in one of those counties, he will not automatically be sent to mental health court. Mental health courts are most appropriate for persons that may need the continued oversight of a mental health court to maintain compliance with treatment. If the mentally ill person for whom you are concerned is arrested in a county with a mental health court, speak with his attorney on the possibility of having his case heard there.

Eligibility for jail diversion

Jail diversion is not available for everyone. Persons charged with higher level felonies, especially violent crimes, will most likely not receive the option of jail diversion. Felonies by law often carry mandatory minimum imprisonment sentences. If the person for whom you are concerned has committed a violent crime, the arresting officer may not be willing to apply pre-booking jail diversion. As for post-booking jail diversion for violent offenders, much will depend on the nature of the crime, the mental illness of the person, and the willingness to apply jail diversion by the district attorney. The more serious the crime, the less likely the defendant will be diverted.

Working with an Attorney

If you are not successful in your attempts to remove the person for whom you are concerned from the criminal justice system before the case goes to trial you must then be sure to keep open lines of communication with the person's attorney. You may be the person's strongest advocate in life, but as far as the law is concerned the defense attorney is now his chief advocate. As such, you must ensure that you and the attorney have a good working relationship. The life and liberty of the person for whom you are concerned depends on you and the defense attorney working as a team. A criminal Defendant has two choices when seeking an attorney to represent him or her in the criminal proceedings. One option is to hire a private criminal defense attorney. The other option is to request a court-appointed attorney or a public defender. The Court will determine whether or not a person is only eligible for a court-appointed attorney or public defender by having the person complete a financial Affidavit. Please note that the individual charged with the crime may be required to pay for the services of the court-appointed attorney or public defender if he or she found guilty of the crime.

Like it or not, the defense attorney is now the person with whom the person will have the most contact. You may be a family member but the law will still afford your family member greater access to the attorney than to you. Because of this, the defense attorney is now your main source of information for the person's condition. The defense attorney may be able to provide you information on the person's condition in jail and what he may need. However, you must remember that the defense attorney will not be able to speak with you about her client's case unless the client has given her permission to do so.

Public defenders and court-appointed attorneys across the state usually have a great deal of experience both representing criminal defendants and dealing with mental illness. They are professionals who have chosen to work for people who cannot afford an attorney and you should not assume that they will not do a good job simply because they are not being paid by the person or his family and friends. If you need to contact a public defender, the IDS public defender directory can be found in Appendix 5 of

this guide. If you find you are able to afford a private attorney be sure to look for one who has experience in criminal law in the county where the person is charged with the crime.

If you believe that the attorney is not doing an adequate job representing the person for whom you are concerned, unfortunately you do not have many options. Though the Constitution guarantees an attorney to all criminal defendants, it does not guarantee a particular attorney of the person's choosing. The attorney works on behalf of the person and can only be removed if a judge decides it is in the client's best interest to remove the attorney and find a replacement. For whatever reason, the judge may find the person's request for a new attorney unreasonable and the person will have to continue with the same attorney. In serious cases, however, a judge may permit your loved one to be assigned a different court-appointed attorney or public defender. In these cases, it may be helpful for you to document your efforts to communicate with the original attorney in the event you need to bring your dissatisfaction with his or her services to the Court's attention.

What the defense attorney needs from you

The defense attorney also needs information from you. Although the attorney will undoubtedly speak with the person about his health, the person may be reluctant to reveal his mental illness. Before speaking with you, the attorney may have no idea his client is suffering from mental illness. You also may feel reluctant to reveal the mental illness of the person, but it is vital that his attorney be made aware of his condition. Knowledge of mental illness can be vital to the attorney's argument for a lesser sentence. If you explain to the attorney that his client is currently on medication, is currently in a program, or is currently being supported by the community, the attorney may be able to explore treatment options. If the person for whom you are concerned is reluctant to talk about his mental illness, or denies that he is mentally ill, you may need to provide evidence of his illness to the attorney in the form of medical records, prescriptions, receipts from psychiatric visits, etc.

Serving as a witness

The defense attorney may ask you to be a witness in the case. You cannot however, demand to be a witness or talk directly to the judge. Therefore if you wish to testify on behalf of the defendant, speak with his attorney and explain how you can benefit the defendant. The attorney may agree that you should testify and will then seek the court's permission to admit your testimony. If you are a witness, the defense attorney will prepare you thoroughly for what you should (and should not) say.

Conflicting goals

At some point in the trial, you may feel that the defense attorney is not representing the person's best interest. This may be due to a conflict in goals between you and the attorney. The goal of a criminal defense attorney is to protect the constitutional rights of the client and insure a fair and just outcome. While you may also have this goal, you may feel that the person could benefit from court-ordered treatment. Ultimately what the person wants will dictate what arguments the attorney will make. The person may be swayed more by the attorney's argument for a limited jail sentence than the possibility of spending years in a treatment program.

In the end all you can do is talk with the attorney. The attorney should be sympathetic to his or her client's needs. If the attorney is aware of the full psychiatric history of the client he or she may be convinced that treatment is the preferable option. However, if the client does not want this, then the attorney cannot argue for it.

Do not talk with the prosecutor

Do not speak with the prosecutor. His job is to prosecute your loved one and secure a conviction. In no way does he have the best interest of the criminally-charged person in mind. It is not his job. Do not tell the prosecutor of the person's mental illness. The prosecutor may use that information to argue that the person is dangerous and needs to be removed from society by imprisonment. Allow the defense attorney to determine whether information regarding the person's mental illness should be presented to the prosecutor or the court.

NC Criminal Laws Relating to Mental Illness

In North Carolina, there are two ways in which a defendant who is mentally ill can be removed from the criminal justice system at trial: by being found incompetent (inability to proceed) or by being found not guilty by reason of insanity. Although you cannot force the defense attorney to pursue either of these routes, you should be aware of their standards and consequences.

Incompetence

Incompetence means that the person is not mentally able to proceed with trial. He does not have the mental capacity to understand what is transpiring or the consequences of any plea bargain or legal strategy his attorney may present him with. If the person is shown to be incompetent then he cannot be forced to proceed in court because doing so would violate his constitutional right to a fair trial.

Questions of competency may be raised at any point in the trial. Defense attorneys are usually the ones to request a competency evaluation, but it may be requested by either the defense or the prosecution or by the judge herself. If the judge agrees a competency evaluation is needed, medical experts will be appointed by the judge to determine the mental capacity of the person and/or the judge will order the person to a mental health facility for no more than 60 days to determine his ability to proceed with the trial.

If the judge orders a competency evaluation, the person may not refuse. The only time a person can refuse a competency evaluation is if it is done by a mental health professional hired by the defense attorney with no order from the judge.

The trial order for an evaluation of a person's ability to proceed asks if the person is "able to understand the nature and object of the proceedings against him or her, to comprehend his or her own situation in reference to the proceedings, and to assist in his or her defense in a rational and reasonable manner." The trial order is only used if an examination by a local mental health facility is deemed inadequate; the person will be sent to Central Regional Hospital in Butner if a more thorough evaluation is necessary. If the person is charged with a felony, he is generally always sent to this facility for evaluation, whereas misdemeanants are often only evaluated locally.

If the person is found competent then the trial will proceed. (NCGS 15A-1002) A finding by the court that the person is incompetent can lead to involuntary commitment if the judge determines the person is a threat to himself or others. Once committed to a mental health facility, the person will remain there until physicians at the facility deem him fit to be released. If the person was originally charged with a violent crime, the person will then be brought back to court to once again determine if he is mentally fit to proceed. (NCGS 122C-277). Charges of non-violent crimes and especially misdemeanors will often be dismissed after the confinement period, but this is at the discretion of the prosecutor. If the judge makes the determination that the person will never be competent to proceed then the charges will be dismissed. The judge may also dismiss the charges if the person has been in commitment for a time exceeding their maximum permissible period of confinement for the crime charged or the judge may dismiss after five years of commitment for a misdemeanor or ten years for a felon.

Not guilty by reason of insanity

Unlike incompetence, insanity is a defense. However, it is very difficult to prove. In North Carolina, "the test of insanity as a defense to a criminal charge is whether the defendant was laboring under such a defect of reason from disease or deficiency of mind at the time of the alleged act as to be (1) incapable of knowing the nature and quality of his act, or (2) incapable of distinguishing between right

and wrong with respect to such act.” *State v. Mancuso*, 321 N.C. 464 at 469, 364 S.E.2d 359 at 363 (1988), citing *State v. Evangelista*, 319 N.C. 152, 353 S.E.2d 375 (1987).

In cases raising the defense of insanity, the attorney may argue that although the person committed the crime in question, he should be excused from punishment because he is insane. Unlike incompetence, the court does not order a mental examination for insanity. The burden of proof for insanity is on the person. His defense attorney must present evidence (most likely medical testimony) that his client is insane and the jury must find this evidence sufficiently compelling to return a verdict of not guilty by reason of insanity. The court will most likely order its own psychiatric evaluation of the defendant so that the prosecution will be able to counter the evidence presented by the defense. A person can be found competent, able to stand trial, but still be found not guilty by reason of insanity.

If the person is found not guilty by reason of insanity he will be involuntarily committed for an indefinite period of time. However, once released he cannot be brought back into court as he has, in fact, been found “not guilty.” The decision to release a person found not guilty by reason of insanity is at the sole discretion of a superior court judge after receiving a professional mental health evaluation from the staff of the facility where the person is taken. Even if the person is deemed sane by the facility staff, the judge can refuse to release the person. Therefore, a not guilty by reason of insanity sentence can, in effect, be a life sentence to a mental health facility.

Evidence of mental illness is often insufficient to prove either incompetence or insanity. The person may be found competent to proceed with trial despite his mental illness. A jury may also find him guilty of the alleged crime if they do not believe his mental illness amounts to insanity.

Consequences of incompetence and insanity

The consequences of being found incompetent or not guilty by reason of insanity are serious. In both cases, the person will be involuntarily committed for an indefinite period of time. In effect, this can mean far greater “punishment” than the imprisonment sentence the defendant might otherwise receive.

Diminished mental capacity

Some crimes require a certain mental state on the part of the person. For example, in North Carolina, a conviction for first-degree murder requires a finding that the person premeditated and deliberated the killing. If a defense attorney can show that his client did not have the requisite mental capacity to premeditate and deliberate then a jury cannot find his client guilty of first-degree murder. A person’s mental illness may limit his mental capacity.

Whether or not diminished capacity can be argued in defense of the person for whom you are concerned will depend on the crime that he is charged with. Again, this makes it important that you convey to the defense attorney the person's history of mental illness.

Sentencing

If the person is found guilty, the judge must then impose a sentence. It is still possible, depending on what the person is convicted of, for the person to be sent to a mental health facility for treatment in lieu of imprisonment. This however, is not the norm.

For treatment to occur there needs to be unanimous agreement of the parties. First, the person needs to agree to treatment, unless the person is involuntarily committed to treatment. If there was never a question of mental competence or sanity, the person cannot be involuntarily sent to treatment. The defense attorney must also think treatment is a good idea. Although it is ultimately up to the person, if the attorney does not believe treatment is a viable option his opinion will most likely sway the person. The judge and the prosecutor must also agree to treatment.

In order for a judge to sentence the person to treatment, there must also be a treatment center that is willing to take the person. As mentioned in the introduction, because of cuts to the state's mental health infrastructure, there simply aren't enough beds to go around. Be aware that the search for a facility that will accept the person may take months while the person is waiting in jail. You and your attorney should seek out a social worker to handle the person's application and keep in close contact with that social worker as he performs the search.

Treatment v. probation

A sentence of treatment is not necessarily probation. With probation a person is found guilty but is set free on the condition that they will be subject to some level of court supervision. A sentence of treatment may not set free the person and may require him to live for a time in a mental health facility. Alternatively the person may be sentenced to probation in conjunction with a form of mental health treatment that does not require the person to live in a mental health facility.

Incarceration in Jail or Prison

If the person is found guilty and sentenced to imprisonment he will then be housed in either a state prison run by the North Carolina Department of Public Safety, Division of Adult Correction or, if

the sentence is less than a year, he will serve his time in the county jail. As mentioned above, state law requires county jails to provide adequate mental health services to their inmates.

State-run prisons are also required by law to provide adequate mental health services to prisoners (NCGS 148-19). You may not agree with the state's assessment of what is considered to be "adequate" however. According to the NC Department of Public Safety, Division of Adult Correction, the Department maintains a men's inpatient mental health care facility of 216 beds at Central Prison, and a women's inpatient mental health care facility of 150 beds at the North Carolina Correctional Institution for Women, both in Raleigh. (http://www.doc.state.nc.us/DOP/health/new_facilities.html) A large percentage of inmates suffer from a mental illness, so the number of psychiatric beds in North Carolina is inadequate for a prison population of almost forty-thousand. It is not just our prison system that is falling short, however. This scarcity of psychiatric beds mirrors the scarcity of beds in our community treatment facilities.

Of course, not every person suffering from mental illness requires a bed in an acute psychiatric care facility such as the one at Central Prison. Many only require daily medication and some require periodic visits with psychologists or psychiatrists. To ensure the person for whom you are concerned is receiving the proper care, you should contact the health care staff of the facility in which he is incarcerated. A contact list for all North Carolina prisons can be found in Appendix 3. A contact list for all county jails can be found in Appendix 2. You should also maintain regular contact with the person and ask if he is receiving the proper care. In order for the mental health staff of the jail or prison to speak with you about the mental health of the person for whom you are concerned that person will have to sign a waiver or release form. You should ask that a release form be brought to the person, but you should understand that it is that person's right to refuse to sign the release. If you have trouble getting the prison staff to provide the person with a medical release form, contact NCPLS (919) 856-2200.

Prison and jail mental health staff should be open to communication with friends and family members about the mental health past of the incarcerated person. Oftentimes such communication makes it easier for health staff to diagnose and treat the person. Provide the mental health staff with the contact information of the mental health professionals that provided treatment to the person before the incarceration. Those professionals can help the mental health staff of the jail or prison to create an appropriate treatment plan. Understand, however, that while the person is incarcerated the final decision on his treatment rests with the mental health staff of the jail or prison.

Transfers

Every prison facility in the North Carolina Department of Public Safety, Division of Adult Correction has some level of mental health care available. Inmates with no current mental health issues

are often housed in prisons with few mental health care resources. However, each facility has access to a psychologist or psychiatrist if an inmate develops a mental health issue. Sometimes the psychologist or psychiatrist meeting with the inmate will have to do so via teleconference, but a meeting of some kind should be available. If a person living at a prison with few mental health resources develops a mental health issue he will often be sent to Central Prison for a mental health evaluation and then be sent to live in a prison with more mental health care resources.

In addition to the inpatient health care facility at Central Prison, the Division of Adult Correction maintains mental health care facilities at Alexander Correctional Institution in western North Carolina and at Maury Correctional Institution in eastern North Carolina. People suffering from mental illness are generally sent to these facilities after they have been treated at Central Prison and the mental health staff there believes the person needs additional, but less intense, care before returning to his “home” facility.

If the person for whom you are concerned is being held in a county jail and requires substantial mental health treatment, that person may be transferred to a state-run prison, either Central Prison (if male) or the North Carolina Correctional Institution for Women. If the staff of the county jail does not believe they can adequately provide the mental health care the person needs, then a judge in the district where the person was convicted may order the county sheriff to transfer the person to a state-run prison. He will remain there until the mental health professionals at that prison decide he may be returned to county jail.

Transfers from one prison to another prison also frequently occur for any number of reasons. In order to be aware of a transfer, you must maintain regular contact with the health staff of the jail or prison where the person is housed. Once the person has been transferred, contact the prison where they have been taken and get in touch with the health care staff there to ensure they are aware of his medical history, prescriptions, and doctor contact information. It can be frustrating to have to establish a working relationship with a new person on the health staff every time the person for whom you are concerned transfers prisons but it is necessary that you do so.

Correctional officers

Correctional officers are not mental health experts. They are trained to maintain control in the prison facilities above all else. This can sometimes lead to unfortunate situations when a correctional officer determines that a person with mental illness needs to be brought under control.

The Division of Adult Correction has plans to implement CIT training in their prison facilities statewide. This will be the same CIT training that police officers receive. Training is scheduled to begin in Central Prison soon after the publication of this guide and then expand outwards so that there are CIT-trained correctional officers at every DAC prison. This training will give these correctional officers the

ability to defuse a situation involving a person with mental illness in the same way that a CIT-trained police officer can, and should lead to fewer instances of injuries to prisoners suffering from mental illnesses.

Leaving Prison

Unless the person has received a life sentence (or has been sentenced to death), he or she will eventually be released. To ensure a reintegration that is as smooth as possible you should get in contact with the staff of the prison responsible for prisoner mental health as well as any staff responsible for discharge planning. You should do this several months before the person is scheduled to be released. It is the policy of the Division of Adult Correction that any inmate receiving mental health care must have a comprehensive aftercare plan in place at least 30 days prior to release (<http://www.arcnc.org/file/CJSGuide.ppt>). You need to confirm that upon release, the person will be provided with a sufficient supply of medication. You should also inquire about any resources the discharge staff may have relating to community health services, or placement in residential mental health facilities if necessary.

Disability payments

If the person for whom you are concerned was receiving government disability payments before imprisonment, those payments may have ceased while imprisoned. Supplemental Security Income (SSI) from Social Security will be cut off after twelve months of incarceration. Once released, a person can reapply for those benefits, but that will be considered a new application and that application process may take a significant amount of time -certainly much longer than it would take payments to resume if temporarily suspended. Social Security Disability Income (SSDI) payments are suspended after 30 days of jail confinement, but are not terminated and may be resumed once the person is released.

Medicaid and Medicare

If the person was on Medicaid before confinement, his payments may be suspended, but upon release they must resume if the person is still eligible for Medicaid. In North Carolina, a person receiving SSI payments is automatically covered by Medicaid. If the person had Medicaid through SSI before imprisonment, then that Medicaid coverage will be cut off once the SSI payments are cut off, after 12 months. In order to restore Medicaid coverage, SSI payments must first resume and that can take time. A released prisoner seeking to restore his SSI and his Medicaid may find himself without healthcare

coverage for weeks. As such, the Social Security Administration (SSA) should be contacted well in advance of the person's release date to get the ball rolling on paperwork so that a gap in coverage can be avoided. If the person was on Medicaid without being on SSI, then federal law requires that Medicaid coverage be resumed as soon as the prisoner is released.

If the person was on Medicare before imprisonment, Medicare coverage will not resume until the person's SSDI payments resume. To resume SSDI payments, SSA must verify the person is no longer imprisoned. (http://www.bazelon.org/LinkClick.aspx?fileticket=_Ns68MefCJY%3d&tabid=319)

Probation, Parole, and Post-Release Supervision

As mentioned above, probation is a form of sentencing. Probationers are released to the community following sentencing, but must submit to supervision by the court for a period of time based on the seriousness of their crime. Parole, on the other hand, is the supervision of one who has been released from prison after serving a portion of their time.

Neither probation nor parole officers are mental health experts. While they will most likely be aware of the mental illness of the person for whom you are concerned, the more information you can provide them with, the better. Get in touch with the relevant probation or parole officer as soon as you can. Establish yourself as a contact person for the officer in case there is a problem in the future. Explain any mental health program or treatment the person is involved in. Although probation and parole officers are charged with supervision of the released person, they do not have to be adversaries. In fact, they should be as concerned with the well-being of the person as you are.

Probation and parole officers often work at the municipal office or courthouse of the city or county in which the released person lives. Contact information can be found in Appendix 7.

The Juvenile System

North Carolina considers anyone 16 years or older to be an adult for the purpose of committing a crime. Anyone tried as an adult will face the same punishment as an adult if found guilty. Additionally, if the person for whom you are concerned is 13 years or older, and has been charged with a high level felony, that person can also be tried as an adult. Whether or not to try such a young person in the adult criminal system is entirely at the discretion of district attorney, and ultimately, the judge.

The juvenile justice system works differently than the adult criminal justice system. A flowchart of the system can be found in Appendix 6. Juveniles are usually charged with complaints instead of crimes (unless they are particularly serious crimes). If found guilty, the punishment for a juvenile ranges

from some form of probation to a period of time in a youth development center to a sentence in a detention center.

According to the 2011 annual report from the NC Department of Public Safety, Division of Juvenile Justice, 89% of youth committed to youth development centers in that year were found to have a diagnosable mental health problem beyond conduct disorder (http://www.ncdjdp.org/resources/pdf_documents/annual_report_2011.pdf). While incoming juveniles to both detention centers and youth development centers are screened for mental health issues, the state has not been able to provide the same level of mental health care provided by the Division of Adult Correction. Many centers do not have full time mental health staff and most contract out their mental health services. (http://www.ncdjdp.org/resources/statistics_legislative/07-08/detention_centers.pdf)

Aside from the stated institutional differences, all of the aforementioned advice applies to juveniles living with mental illness who have been detained by the North Carolina criminal justice system.

Additional Assistance

Hopefully this guide has provided you with some valuable insights and helpful tips on how to navigate the criminal justice system and advocate for a person with mental illness who has been arrested. If you require more assistance, please contact the following organizations:

<http://nami.org> The National Alliance on Mental Illness 1-800-950-NAMI

<http://naminc.org/> The North Carolina Chapter of NAMI 919-788-0801, 800- 451-9682

<http://www.ncpls.org/> North Carolina Prisoner Legal Services 919-856-2200

<http://nmha.org/> Mental Health America 703-684-7722

<http://www.doc.state.nc.us/dop/health/mhs/index.htm> Division of Prisons Mental Health Section
919- 838-4000

<http://www.doc.state.nc.us/Publications/2010Handbook.pdf> Handbook from NC Department of
Corrections for family members and friends of prisoners

<http://www.ssa.gov/pubs/10133.pdf> Social Security guide for prisoners from SSA

<http://www.arcnc.org/file/CriminalProcess.pdf> Guide to the criminal process from The Arc

<http://www.ncdhhs.gov/mhddsas/lmeonblue.htm> Local Management Entities (LMEs) by County

http://www.ncdjjdp.org/facilities/detention_centers.html -List of juvenile detention centers

http://www.ncdjjdp.org/facilities/youth_development_centers.html -List of youth development centers

Appendix 1 –LMEs

<http://www.ncdhhs.gov/mhddsas/lmeonblue.htm>

Appendix 2 –County Jails

<http://www.ncjaa.org/wp-content/uploads/2012/08/NCJAA-Handbook-Dec2012-FOR-PUBLICATION.pdf>

Appendix 3 – Prisons

<https://www.ncdps.gov/Index2.cfm?a=000003,002240>

<http://www.doc.state.nc.us/dop/OfficialDOPRegionMap.pdf>

http://www.doc.state.nc.us/dop/policy_procedure_manual/index.htm

Appendix 4 –Mental Health Screening Samples

<http://www.ncdhhs.gov/mhddsas/providers/NCjaildiversion/bjmhscreen09.pdf>

Appendix 5 –Public Defender Directory

<http://www.ncids.org/State%20Defender%20Offices/Directory%20Pages/Public%20Defender%20Directory.pdf?c=Defender%20Offices%20and%20Depts,%20Statewide%20Defender%20Directory>

Appendix 6 –Juvenile Justice System Flowchart

http://www.juvjus.state.nc.us/resources/pdf_documents/jj_process_diagram.pdf

Appendix 7 –Community Corrections Contact (Probation and Parole)

http://www.doc.state.nc.us/dcc/RegionalOffices/DCC_Field_Roster.pdf