

## Chapter 6

# Diverting Special Categories of Offenders to Community Treatment Programs

### Introduction

The trend toward diversion of special categories of adult criminal offenders from formal judicial processing has come about for several reasons. Perhaps the primary reason is that it is not cost-effective to place in jail the large number of mentally ill, alcohol and substance abuse, indigent, and homeless offenders who crowd the municipal courts each day. They are convicted of a minor offense, fined, and sentenced to time in jail, where there is no treatment available for their mental problem or substance abuse problems. After being released, many of them are rearrested and go through the same process, often only a few days after their prior release from jail.

Not only are the courts backlogged with cases that often require the use of an “assembly line” court process just to keep up, but the local jails tend to be filled to overcapacity. The result is that some low-risk offenders are released before they complete their sentences or are remanded to a jail facility in another county that is not filled to capacity.

While these moves may reduce the overcapacity problem, it is extremely costly to the local government that has to use this alternative. As a result, there has been a recent trend toward decriminalizing some minor offenses and diverting the special problem offenders who need some form of treatment.

Administrators of justice agencies have had to use various mechanisms to assure that their agencies can faithfully follow their missions. For example, from time to time, the sheriff of a county jail will announce that no new defendants will be admitted to the jail, since the number of inmates held in the jail has reached the maximum capacity, and if more are admitted, it would constitute a violation of the law. Another method used to deal with the jail overcrowding problem is to release some offenders before the end of their sentences. This approach tends to draw criticism, particularly if an inmate who was released early commits another serious crime shortly after being released. For these reasons, the diversion of special

categories of offenders from formal processing makes sense, particularly if those diverted are carefully screened and meet the criteria established for either total diversion or partial diversion by being placed in a specialized program.

## **Mentally Ill Criminal Offenders**

The jails in the United States, particularly those located in large metropolitan areas, tend to be overcrowded and dangerous for both inmates and correctional staff. The concern regarding having the mentally ill held in jails has increased nationwide. A National Initiative to Reduce the Number of People with Mental Illnesses in Jails was launched in 2015 by the Center for State Governments Justice Center. This initiative was designed to rally support for achieving a reduction in the number of people with mental illness held in jails. By 2016, more than 240 urban and rural counties, representing about 30% of the US population from 41 states, have passed resolutions to achieve this goal (Center for State Governments, 2016, p. 1).

## **Diverting the Mentally Ill**

Jail diversion programs that target mentally ill offenders were created during the latter part of the twentieth century and in the early twenty-first century in response to research findings regarding the hazards posed by mentally ill criminal offenders as they await court appearances. Scherer (2009, p. 5) notes: “Arrest is often the most damaging moment for a person with a mental illness. First, in many cases, it is confrontational, accusatory, and humiliating, as the individual is being criminalized for a behavior they often can’t control. Second, once an arrest is made, booking as well as the more formal court processes begin, which further criminalizes the illness.”

The police working in many counties throughout the United States, particularly those counties that have relatively small populations, face a dilemma when they encounter a law violator whose behavior shows all of the signs of the individual being mentally ill. Although the police realize that arresting the person and transporting him/her to jail is not the ideal course of action to take, it may be the only option available, since the community does not have other means for dealing with such cases. Police officers also have to consider the potential for the mentally ill person becoming violent and a danger to the community in making a decision to arrest or divert the mentally ill persons they encounter. Although a lack of financial resources in the community to support alternative placements for mentally ill offenders may be the primary reason for not diverting offenders who are mentally ill away from the jail, another factor may be lack of knowledge on the part of police about possible alternatives that are available in the community. Box 6.1 describes a mental health evaluation unit developed in Los Angeles (O’Neill, 2015, pp. 1–3).

**Box 6.1: LA Police Unit Intervenes to Get Mentally Ill Treatment, Not Jail Time**

The Los Angeles Police Department's mental evaluation unit consists of 61 sworn officers and 28 mental health workers from the county. It is the largest mental health policing program in the nation. The unit provided crisis intervention and services to more than 14,000 people with mental illness who came into contact with the police during the year 2014.

Sworn officers who are part of the mental evaluation unit are assigned to the triage desk located at the LAPD headquarters. These officers help police officers on the scene evaluate and deal with people who may be experiencing a mental health crisis. The mental evaluation unit officer stationed at the triage desk asks the officer on the scene to report on the person's behavior in regard to acting disorganized, speaking incoherently, or being aggressive or uncooperative. The officer is also asked to question the person suspected of being mentally ill about such matters as medication, being under the influence of drugs, or having experienced recent crises.

Another task of the triage officers is to decide which calls require an in-person visit from one of the "co-clinician" teams. These teams serve as second responders to the scene. During 2014, these teams assisted patrol officers in more than 14,000 calls. The majority (2/3) of the cases that only required assistance from the triage desk officer and those that required an on-site visit from a co-clinician team were resolved successfully. Low-grade misdemeanor cases will generally be diverted from jail. However, in felony-level cases in which it is apparent that the criminal acts are in some way related to the person's mental illness, the case will not be diverted. The triage officers also assist SWAT teams in high-profile situations such as potential suicide cases, hostage-taking situations, and other cases in which the alleged law violator is potentially dangerous as well as suspected of being mentally ill.

There does not appear to be much opposition to the diversion of mentally ill criminals from the justice system by those who represent the criminal justice agencies, such as the police, prosecutors, and correctional personnel. It is obvious that jail is inappropriate for people with mental illness who commit minor, nonviolent offenses. Such individuals need to be diverted from jail whenever possible and referred through networking to available community services such as crisis intervention of social services agencies; to a continuum of services which include crisis intervention, outreach, residential, vocational training, family support, and case management; and to other community support services.

The primary reason why there has not been a more extensive development of diversion programs appears to be lack of resources. Federal and state grants to local criminal justice agencies have helped to fund police and court diversion programs.

## Processing the Mentally Ill Criminal Offender

Scherer, in a document titled *Jail Diversion Programs for Those with Mental Illness: An Emphasis on Pre-booking Diversion and Other Diversion Models*” (2009, pp. 1–2), outlines ten strategies police departments, sheriffs, district attorneys, judges, and county mental health officials can follow to provide a continuum of appropriate responses to the mentally ill offender. The strategies are presented below:

- Proactive efforts by outreach teams to homeless shelters and other places for those at high risk of criminal justice system contact to provide services before a crime has been committed.
- Police officers direct diversion at the commission of a crime that is considered minor or for which the officer does not file charges and directly transfers the individual to mental health services.
- Police officers direct diversion at the commission of a crime that is considered minor but threaten to file charges if the individual does not cooperate.
- Police response (often accompanied by mental health officials) through CIT programs responding to 911 calls or other situations and making the referral to treatment instead of taking the person into court and also an alternative to taking a person to the hospital for a 51/50.
- Taking the individual into custody and filing charges and transferring the individual to a mental health treatment program with legal action initiated but not court action.
- After the filing of charges, a diversion at the time of arraignment or the initial pleading of the case but before there has been a trial; after trial mental health court determination in lieu of entering a conviction.
- The more common form of the mental health court which is an alternative sentencing approach after there has been a conviction.
- Not guilty by reason of insanity plea bargain.
- Incompetent to stand trial (debatable as to whether this is really diversion versus delay, but when initiated, it does result in treatment instead of incarceration and could lead to one of the other forms of diversion).

Mental health courts were developed in the latter part of the twentieth century to meet the needs of the millions of criminal offenders who are processed through the justice system each year who have some form of mental illness that directly or indirectly relates to their criminal behavior. The American Law Enforcement and Mental Health Project (2000) was signed into law by the US Congress, and this act provided funding for the development and implementation of 100 mental courts. The mental health court philosophy quickly spread throughout the nation, and the number of courts established increased significantly in the ensuing years. Staton and Lurigio (2015, p. 22) completed a survey of mental health courts located in the state of Illinois. They found that “Officials reported that their respective MHCs received funding from a number of sources including dedicated county funding,

federal grants, local mental health funding, and in-kind contributions from local health care agencies.”

The Council of State Governments Justice Center (2005, p. 1) describes a mental health court as “A specialized court, which employs a problem-solving approach to court processing in lieu of the more traditional court procedures for certain defendants with mental illness.” Mental health courts are community based and judicially administered and employ a team of court staff and mental health professionals to implement treatment plans for those mentally ill defendants placed under the drug court supervision. The treatment program consists of providing incentives (often dropping or suspending the criminal charges), regular meetings before the mental health court judge, and a type of graduation celebrated in the courtroom for those who successfully complete the treatment program. Those who do not complete the program are sanctioned.

McAler (2016, p. 2) notes that each mental health court functions independently within its own district, but the mental health courts have similar characteristics and goals that make them different from the typical criminal courts. These characteristics are:

- Each court requires voluntary participation, so the defendant must consent to be a part of the program and consent to treatment.
- Each court has eligibility criteria; all include mental illness as defined by the DSM IV-TR, and some include developmental disabilities.
- Traumatic brain injury as possible qualifiers for participation in mental health court.
- Mental health courts employ legal and mental health professionals to address a specialized docket that focuses solely on preventing incarceration of mentally ill individuals, offering court-mandated treatment as an alternative.
- Mental health courts also place public safety in the highest regard when considering treatment/housing options for mentally ill offenders.
- In general, most mental health courts offer a higher level of supervision, requiring clients to attend regular status hearings to assess the progress of treatment and to update treatment plans.
- Finally, most programs have defined criteria for completion of the program, marked with a graduation or certificate of completion.

Staton and Lurigio (2015, p. 22) found in their study of mental health courts located in Illinois that the first-generation MHCs generally did not accept felony offenders, particularly if they had committed a violent offense. The reason for the rejection of felony offenders was the fear that they would be a danger to the community. However, the large majority of the second-generation MHCs accepted felony offenders, including those who had committed violent offenses. They also found that the MHCs accepted clients who had substance abuse disorders concurrent with their mental health problems.

Staton and Lurigio (2015, p. 22) stated, “In all the MHCs, mental health workers screened referrals to determine client eligibility. Referrals to Illinois MHCs can originate from judges, probation officers, public defenders, state’s attorneys, private

attorneys, and potential clients' family members." Once accepted into the MHC program, the clients followed the treatment program prescribed by the MHCs. They were generally supervised by a special probation officer or by a combination of court personnel and community or county mental health workers.

## Drug Courts

The development and implementation of drug courts that required those who were brought before a drug court judge as a result of being charged with a drug-related offense (alcohol included) to agree to participate in a program that provided sanctions as well as treatment was stimulated by the passage of the Violent Crime Control and Law Enforcement Act in 1994 (Kratcoski & Dahlgren, 2004, p. 596). This act provided funding to local jurisdictions to set up community-based programs for drug-using offenders. The drug court concept was embraced by justice officials across the nation. The drug courts that were developed varied in structure and operation but tended to have some common characteristics. These included that, to be eligible for the drug court, the offense must be drug related. Participation was voluntary, that is, the defendant had the option of being tried in the drug court or in the regular criminal court. For those who chose the drug court, the determination of guilt or innocence would be deferred, and, if the person successfully completed the program, the charges might be dropped. The presiding judge of the drug court had wide discretion in deciding who was eligible for the court (generally violent offenders were excluded) and the types of sanctions and treatment programs in which the defendants were required to be involved. The treatment programs were staffed by both court officials (probation officers) and professionals such as psychologists, counselors, and social workers.

As with many criminal justice initiatives for which federal money became available, the initial drug courts were established more on the idea that such an approach to handling the offender who was under the influence of some form of drug seemed to be reasonable than on empirical research that demonstrated the effectiveness of drug courts (drug traffickers were generally not eligible for the drug court programs). A US Department of Justice report (US Department of Justice, 1999, p. 97) showed that 200 drug court programs examined had an average retention rate of more than 70%. This study cited completion rates for 55 of the programs. The completion rates ranged from a low of 8% to a high of 95%.

Travis (1995, p. 1) states, "The drug court approach departed from the traditional court approach by systematically bringing drug treatment to the criminal justice population entering the court system. Traditionally, the court has referred selected offenders 'out' to treatment as a condition of probation. In the drug court, treatment is anchored in the authority of the judge who holds the defendant or offender personally and publicly accountable for treatment progress."

A US Department of Justice examination of drug courts (1997, p. 9) states, "The mission of drug courts is to stop the abuse of alcohol and other drugs and related

criminal activity. Drug courts promote recovery through a coordinated response to offenders dependent on alcohol and other drugs. Realization of these goals requires a team approach, including cooperation and collaboration of the judges, prosecutors, defense counsel, probation authorities, other correctional personnel, law enforcement, pretrial services agencies, TASC programs, evaluators, an array of local service providers, and the greater community.”

The evaluation of the success of drug courts is very difficult, since criteria for referral eligibility to the courts are often quite different. For example, some courts only accept defendants who engaged in a felony crime that was related to drugs, while others generally exclude defendants charged with a felony-level crime, particularly if it involved some form of violence. The resources for the treatment portion of a drug court program can make a difference on the likely success or failure of the participants. Also, the characteristics of the participants and the support systems they have (family, job, community support) will have an effect on the outcome. Kratoski and Dahlgren (2004, p. 597) state, “The differences in eligibility criteria, program structure, treatment offered, types of supervision, and the incentives given for completion of the program must always be considered when gauging the effectiveness of drug court programs in comparison with the traditional handling of drug offenders.”

The manner in which success or failure is defined is important and should always be considered when deciding if the program should be continued. One of the requirements of drug court participants is that they periodically appear before the presiding judge in open court and discuss their progress in the program. During this meeting, the judge will question them on the degree to which they have made progress toward fulfilling the conditions set by the court, such as finding employment, completing community service, staying away from others who have been convicted of criminal offenses, and not using any illegal drug. These open court experiences consist of a one-on-one interaction between the judge and the offender. The judge will either applaud or condemn the efforts of the participant. The judge can consider mitigating circumstances for those who have shown some progress, but not at the level expected. Harrell (1998) notes that administrators of drug courts expect some of the participants to fail or test positive on required drug tests. For these cases, rather than terminating such persons from the program, other options can be used, such as sending the person to jail for a short period or requiring the person to participate in a detoxification program. Those who are terminated from drug court programs have either committed a new felony-level offense, failed to comply with the program requirements, or have tested positive on several urine tests.

## **The Stark County CHANCE Drug Court Program**

The Stark County Drug Court and Day Treatment Center (CHANCE) was implemented in 1998. The primary goals of the Center are:

To identify nonviolent felony offenders with substance abuse problems who are likely to benefit from the program, to offer individualized treatment to those selected by referrals to community service agencies, to encourage participants to make needed adjustments in their lifestyles by seeking employment and looking for educational opportunities, to closely monitor the participants to ascertain whether the recommended treatment is followed and they have discontinued their substance abuse, and to rehabilitate them by reducing or eliminating their criminal activity, so that incarceration is not needed (Kratcoski & Dahlgren, 2004, p. 596).

Referrals to the CHANCE Drug Court are made by the county prosecutor. The typical process followed is that after the police make an arrest, the defendant may be released on bail or held in jail awaiting arrangement. A pretrial service personnel member screens the offender and determines if the person meets the criteria for a drug court referral. If so, the case is referred directly to the prosecutor's office. A prosecutor will review the case. If the prosecutor is convinced that the offense of the defendant who has been charged with a criminal offense is in some way related to drug use and abuse, and the offender meets the criteria for participation in CHANCE, the case is scheduled to be heard by the drug court judge. The criteria for eligibility are:

- The current felony-level offense is one for which probation is allowed under the Ohio criminal code.
- The offense of the alleged offender cannot be more serious than a third-degree felony (Ohio criminal law has five degrees of felony crimes, the most serious being the first degree).
- The offender has no more than two prior felony offenses within the past 6 years.
- The charge against the offender is drug related or drug driven; but offenders with drug trafficking charges are excluded.
- The offender is charged with an offense that does not carry a mandatory jail sentence of more than 10 days.
- The offender is charged with a nonviolent offense and has no history of violent behavior patterns.
- The offender is capable of participating in and completing the drug court program (those with serious patterns of criminality, mental illness, mental disability, or physical health are excluded from participating in the program).
- The offender demonstrates an interest in and willingness to participate in a 12-month treatment program.
- The offender must have an established Stark County residence (Kratcoski & Dahlgren, 2004, p. 600).

An evaluation of the CHANCE Drug Court program completed several years after its implementation found that the CHANCE participants had either chronic or minor problems relating to the following (listed in order of most frequent to least frequent):

- Alcohol abuse
- Housing
- Mental health

- Drug abuse
- Family disruption
- Physical health
- Employment
- Education

The Stark County CHANCE Drug Court has not changed significantly over the more than 15 years of its operation, with the exception that the criteria for acceptance were broadened after it was realized that a large number of those with drug or alcohol abuse problems were multiproblem offenders. As a result, more counseling and treatment programs for those with mental health and family violence problems that translated into criminal behavior were added.

The typical sanctions given to the large majority of the participants include intensive supervision – and/or requirements that the offender pay court costs and fines; pay a program fee; pay restitution, if relevant; complete a specified number of hours of community service; and submit to periodic drug screens and drug treatment, if drug abuse is a problem – or driver’s license suspension (used for those with alcohol problems).

The treatment programs for the participants are individualized and based on the assessment of the offender’s needs that was completed when the person first entered the program. Typically, those with multiple problems are required to attend the Day Care Center, where a variety of treatment modalities are provided, including individual and group counseling pertaining to anger management or family violence, and programs that help the offender develop social skills or prepare for a job interview.

In an interview with Allison Jacob, Director of the Stark County Day Reporting Program (Kratcoski 2016; Jacob 2016) she stated that the anger management program follows an educational and self-evaluation procedure in the treatment process. The participants are given several situational case scenarios in which those involved in the situation express anger in some way. For example, a person does not respond to an insult made by his boss but later picks a fight with a fellow worker over some trivial matter. The participants are asked to discuss the situations and try to determine why the person is responding with anger. They also have the opportunity to complete a self-assessment of the sources of their anger and the appropriateness of their responses to anger-producing situations.

The domestic abuse (Family Abuse Management) program uses the program *Creating a Process of Change for Men Who Batter* (Pence et al., 2011, p. 18). The theoretical framework for the treatment program is based on the notion that men who batter their spouses or significant others follow a pattern of violent behavior or sexual abuse toward those family members over whom they have power. When frustrated, disappointed, or experiencing prolonged periods of anxiety, the man explodes and expresses the pent-up anger.

The treatment uses a series of lesson plans in which examples of domestic violence occur, and the participants are asked to discuss the appropriateness of the responses and their implications. The overall purpose of the treatment is to have

the abusers alter their behavior and respond to their spouse and family members with respect, trust, sharing of responsibilities, and fairness. Another recent emphasis of the CHANCE program is alternative processing for those who have mental health problems.

Research completed by Kratcoski and Dahlgren (2004, p. 610) on the recidivism of the participants of the CHANCE (Drug Court) program revealed that more than two-thirds of the participants did not commit another criminal offense and the offense for those who did commit a new offense either while in the program or after completing the program was of a minor nature. This finding is consistent with other reports on the recidivism of drug court participants. It is worth noting that only 15% of those who graduated from the program had committed a new offense at the time the research was completed. Kratcoski and Dahlgren (2004, p. 614) concluded, “The questionnaires completed by the CHANCE participants who successfully completed the program and graduated revealed that the relationships they developed with the judge, probation officers, and CHANCE treatment staff were as important in assisting them in making positive changes in their lives as were the treatments they received during their period of participation. These relationships, according to the CHANCE participants, were grounded in respect, caring assistance, and being treated as human beings rather than criminals.”

Judge John G. Haas was instrumental in establishing the Stark County Drug Court and CHANCE program. He served as the presiding judge for several years and has continued to give his support and expertise to the program. The following interview with Judge Haas reveals his impressions of the program.

**Box 6.2: Interview with Judge Haas, Court of Common Pleas, Stark County, Ohio**

John G. Haas graduated from Miami University, Ohio, with a BA teaching certificate in 1966. He received a Juris Doctorate from the Ohio State Law School in 1970. He was elected to the Common Pleas Bench in Stark County, Ohio, and serves in that position at the present time. He was the first judge to serve as the judge of the Stark County Drug Court program in 1998 and currently serves as the judge of the Stark County Domestic Relations Court and the Reentry Court. Judge has received many honors and awards during his career.

**Interviewer: Peter Kratcoski (PK). Interviewee: Judge John G. Haas (JH). Interview completed—9/15/2016.**

QPK: Judge Haas, do you recall why you became interested in developing a special docket for drug/alcohol abusers in Stark County?

AJH: Yes, I recognized that treatment coupled with potential punishment with court supervision could be an effective way to minimize recidivism.

QPK: What factors motivated you (and court staff) to pursue the plan to develop a drug court?

(continued)

**Box 6.2** (continued)

AJH: The availability of a federal grant that could be used to study other programs already in operation and to observe what factors make them successful and to implement the best program for Stark County without impacting the County budget.

QPK: Have there been any significant changes in the structure of the drug court and in its policies since its inception?

AJH: We have expanded the program to include minor trafficking cases. The admission criteria is essentially the same. We have added several new programs in the day reporting program.

QPK: I know you no longer preside over the Drug Court, but have you been following the progress of the court?

AJH: Yes, I follow the progress very closely as with all of the special courts under the Stark County Court of Common Pleas.

QPK: In your opinion, have the goals of the court been accomplished? (If available, back up your answer with statistics on the numbers of defendants, recidivism, noteworthy examples of success stories.)

AJH: The statistics would indicate that the Drug Court is successful. In 2016, there were 68 participants in the drug court (CHANCE) program. Thirty-six (63%) have successfully completed the program and graduated.

To date, we conducted 3,382 drug screens and only 190 (5.6%) were positive. Our recidivism rate for a 3-year period (2013–2015) ranged from a low of 12% to a high of 15%. This is far below the recidivism rate for drug courts nationally, which is about 25%.

In addition, since 1998 we have graduated 528 participants and saved the taxpayers an estimated \$24,063,500 or 952 years of incarceration, if these participants were incarcerated in a state correctional facility.

QPK: Since developing the drug court, Stark County Court of Common Pleas has started other specialty court dockets (veterans' court, etc.). In your opinion, is the movement toward specialty courts a positive move for the people of Stark County?

AJH: We have added the Reentry Court and Domestic Violence Court, which I oversee, as well as the Mental Health Track (Hope Program) and the Honor (Veterans) Court. I believe these special courts are beneficial to the defendants and the citizens of the county. The mandated appearances before the judge make the defendants more accountable. The interaction in the court is more personable than what is usually found in the traditional courts. The supervisors and providers of service who appear in court are also held accountable.

## **Diversion of Minor Offenders**

### ***Community Courts***

Another example of the trend toward diverting some categories of criminal offenders rather than processing them through the criminal justice system is the implementation of “community courts.” As with mental health courts and drug courts, the community courts established throughout the United States and in Europe, Canada, Australia, and South America have different titles, structures, and different criteria for eligibility. Lee et al. (2009, p. 1) state, “Community courts are a type of problem-solving courts that seek to address crime, public safety, and quality of life problems at the community level.” Community courts do not specialize in addressing one specific problem, such as is the case with drug courts, mental health courts, or family courts. While the goals of community courts in general may be similar, that is, to develop communications between the judiciary and the community, speed up the processing of the low-level misdemeanor offenders, and provide assistance to those offenders who are in need of social and psychological help, the specific goals of individual community courts may differ.

Lee et al. (2009, p. 11) note that most community courts have several key features. They are:

- **Individualized Justice:** Community courts base judicial decision-making on access to a wide range of information about defendants.
- **Expanded Sentencing Options:** Community courts have an enhanced range of community and social service diversion and sentencing options, some of which are co-located at the court and some of which involve referrals to community-based providers. Conversely, community courts seek a corresponding reduction in conventional sentences such as jails, fines, and time served.
- **Varying Mandate Length:** Community courts develop a multitrack system, in which a (typically small) proportion of defendants receive medium- or long-term judicially supervised treatment for drug addiction, mental illness, or other problems, while the majority of defendants receive short-term social or community service sanctions, typically 5 days or less in length.
- **Offender Accountability:** Community courts emphasize immediacy in the commencement of community or social service mandates and strict enforcement of those mandates through the imposition of further sanctions in response to noncompliance.
- **Community Engagement:** Community courts establish a dialogue with community institutions and residents, including obtaining community input in identifying target problems and developing programs.
- **Community Impacts:** Community courts seek community-level outcomes, such as reductions in neighborhood crime or repairing conditions of disorder through community service.

The Midtown Community Court (Center for Court Innovation, 2016) was established in 1993 through the joint efforts of community leaders, neighborhood residents, and justice officials in the Times Square area of New York City to deal with quality of life issues in that neighborhood such as prostitution, illegal vending, vandalism, and shoplifting from the neighborhood business establishments. The Court was established to provide a rapid response to those involved in such offenses by having the cases heard as soon as possible in the community court and to mete out appropriate sentences that fit the nature of the crimes and the needs of the offenders. For example, in the Center for Court Innovation Midtown Community Court, offenders who are convicted are required to provide community service such as cleaning subway stations, cleaning streets and parks, and removing graffiti from public buildings. The court can also order drug treatment and health-care education for those who need such assistance.

The Brownsville Community Court, located in Brooklyn, is similar in operation to the Midtown Community Court with some variations for younger offenders between the ages of 18 and 24. Supported by an in-house clinic of social workers and case managers, the court provides judges in Kings County Criminal Court with a broad range of alternative sentencing options, including short-term social services, community restitution, psychoeducational group sessions, and more intensive longer-term clinical interventions for younger offenders age 16–24 living or arrested in Brownsville. Clinic staff also receive referrals from the Department of Probation, Crossroads Juvenile Detention Facility, the Office of Children and Family Services, and community-based organizations (Brownsville Community Justice Center, 2016, p. 1).

The Downtown Austin Community Court deals primarily with those in homeless situations and some college students. Its jurisdiction (Elmore, 2016, p. 2) is “to hear Class C misdemeanors, such as public intoxication, minor drug possession, and possession of drug paraphernalia charges.” The homeless community make up a large portion of those who appear before the Downtown Austin Community Court judge. These defendants are given an option of receiving either a conventional or a judicially unconventional sanction.

A comprehensive evaluation of the Red Hook Community Justice Center located in Brooklyn, NY (Lee et al., 2009, pp. 5, 6), revealed that the court goals of establishing community engagement, providing alternative sanctions, reducing costs, and engaging the defendants were largely achieved. The research showed that the large majority of the defendants brought before the Red Hook Community Justice Center court received alternative sentencing such as a community service mandate and were given jail time primarily as a secondary sentence if the defendant failed to complete the requirements of the original sentence. Also in keeping with the restorative justice philosophy, a large proportion of defendants received an ongoing court involvement sanction, meaning they had to give back something to the community. The court provided individualized treatment, and those who needed special services, such as drug treatment, were required to participate in a treatment program as a condition of their sentence. In addition, the Justice Center was successful in diverting a large proportion of juvenile delinquency cases from

prosecution, but still provided supervision and services to the diverted youths through the probation department.

## Veterans' Courts

Veterans' courts are similar to community courts in that they are not directed toward addressing a wide range of offenders but directed toward a specific category of offenders, that is, military veterans. However, those veterans who go before the specialty problem-solving courts are likely to receive treatment similar to that provided in the mental health and drug courts.

The criteria for eligibility for a veterans' court vary in accordance with the laws established in the state and local jurisdiction in which the court is established. For example (Marchman, 2012, p. 617), quoting Senate Bill 1940, Chapter 617 of the Texas Health and Safety Code, notes that, according to the Code, "A veteran who has been arrested for or charged with any misdemeanor or felony offense may be eligible if the attorney for the state consents to the defendant's participation and the court finds the defendant is a veteran or current member of the U.S. armed forces and suffers from a traumatic brain injury (TBI), post-traumatic stress disorder (PTSD), or other mental illness or disorder that is a result of military service in a combat zone or other hazardous area and affected the criminal conduct at issue. Upon the defendant's successful completion of a veteran's court program, the court will dismiss the criminal action."

In a document titled *What Is a Veterans Treatment Court?* (Harrell, 2016, p. 1), it is stated that "The Veterans' Treatment Court model requires regular court appearances (a bi-weekly minimum in the early phases of the program) as well as mandatory attendance at treatment sessions and frequent and random testing for substance use (drugs and alcohol)."

The benefits of such courts for veterans are that they appear before a judge who has a good understanding of the sources of their problems, that is, how their experiences in the military are connected in some way to their present problems that led to their involvement in the justice system. Since the judges and staff of the veterans treatment court have established relations with the Veterans Health Administration, Veterans Benefits Administration, and state departments of veterans services, the veterans brought before the court who are in need of physical services or psychological counseling can make the necessary referrals and be assured that the veterans receive the counseling and treatment they need.

An example of the process followed in a Veterans Treatment Court is given in Box 6.3.

**Box 6.3: Stark County Honor (Veterans) Court**

\*Information was abstracted from *Stark County Honor Court* document, published by the Stark County Common Pleas Court General Division.

The Stark County Honor Court is housed in the Stark County Court of Common Pleas Special Docket for Military Veterans.

**Process.** “The Honor Court provides individualized judicial oversight with regular court appearances before a treatment team and a volunteer veteran mentoring program connecting offenders to volunteer veterans from the local community.”

The defendant enters a plea of guilty to the offense(s) and signs an agreement to participate in the Honor Court program for a minimum of 12 months and a maximum of 24 months.

Defendants can be placed in one of three tracks depending on the offense (s) to which they have pled guilty.

**Track 1** is a diversion program for nonviolent fourth and fifth felony charges. These offenders will have the charges dismissed and the record sealed if they complete the program.

**Track 2** defendants charged with all others felony offenses not excluded from Honor Court eligibly are placed under Intensive Supervision Probation. They are released from probation on the successful completion of the program.

**Track 3** defendants meet the criteria for judicial release, ISP, or post-release control and are discharged from probation upon completion of the Honor Court program.

**Eligibility.** In order to be eligible for appearance before the Honor Court, the defendant must be a veteran or on active duty of a branch of the US military; enter a plea of guilty to the offense(s); sign waivers, releases, and agreements; be a Stark County resident; and not have received a dishonorable or bad conduct discharge from the US military. Persons who have prior felony offenses of violence, had prior participation in a diversion program, and have a prior conviction for a sex offense and who are unwilling to permanently release firearms confiscated or used in the current offense are excluded from participation in the Honor Court.

**Treatment Program.** The Stark County Court of Common Pleas collaborates with a number of organizations and service agencies to administer the program and to provide the services needed in the treatment. These agencies include the Veterans Administration; Stark County Veterans' Center; law enforcement agencies, including the Canton Police Department and the Stark County Sheriff's Office; legal agencies including the Stark County Prosecutor's Office, Stark County Public Defender's Office, and Community Legal Aid; court-administered programs, including Stark County Pretrial Release, Stark County Day Reporting Program, and Stark County Intensive

(continued)

**Box 6.3** (continued)

Supervision Probation; and other medical facilities or service agencies that provide medical care and psychological and employment counseling.

**Expected Results.** It is expected that the services provided to the participants, coupled with supervision and mentoring, will result in a successful completion of the program and an adjustment in the lives of the participants to the extent that they will be able to continue their lives without additional engagement in criminal activity and in line with the values of their community and the nation.

## Programming for the Older Offender

Kratcoski and Edelbacher (2016, p. 4) note that although the portion of all arrest of those who are 65 years old or older in the United States in any year is relatively small (slightly more than 5%), the number of crimes committed by this age group is increasing each year, and the trend is likely to increase. They note, “As a result of improvements in health, communications, and education, changes in life styles, including the types of employment, and changes in social relationships, the life span for the populations of most countries of the world has increased. People are living longer, working longer, and in general have more formal and informal contact with many people outside their primary social relationships.”

The factors mentioned above result in older people having more opportunity to commit some types of crimes such as theft, fraud, drug- and sex-related crimes, and even violent crimes.

In addition to opportunity, the motivation to commit crimes must also be considered. For example, people who may have had a steady income during their productive years may not have had much motivation to steal, but in their older years, if they find themselves living on an income that is barely sufficient to cover the increasing cost of living and with no backup funds for emergencies, the motivation to fulfill their basic needs such as food and shelter through stealing may increase. The ability to commit specific crimes is also a factor to consider when analyzing the criminal activity of the elderly. One might expect that the amount of personal violent crimes of the elderly would decrease significantly as members of this age group grow older and are less able to physically engage in violence. However, in the United States, because of the easy access to firearms, an older person is not inhibited from committing a violent act. A study of older homicide offenders (Kratcoski & Walker, 1988, p. 73) found that the predominate weapon used by the older persons in the study to kill their victims was by far (89%) a firearm.

A study by Fattah and Sacco (1989, p. 69) found that for less serious offenses, such as shoplifting, drunk driving, family violence, vagrancy, alcohol-related offenses, and illegal behavior by those who were apparently mentally confused,

the police were generally sympathetic toward the older offenders and believed that they needed supervision rather than harsh punishments. Cutshell and Adams (1983, p. 3) found that prosecutors were more likely to drop the charges for older offenders who were arrested for shoplifting than for younger offenders charged with the same offense.

There has not been any concerted movement to develop specialty courts for elderly criminal offenders. Aday and Krabill (2006, p. 240) note that, "The decision to hold an older adult responsible for his actions, send him to trial, and issue him a prison sentence is neither quickly nor easily made. The complexity of the crimes and the diverse characteristics of the perpetrators makes establishing any uniform policy extremely difficult." Aday and Krabill (2006, p. 241) point out that some research findings suggest that judges give older offenders, even those who commit minor offenses, more harsh sentences than they give to offenders in other age groups who commit similar offenses, while other research indicates that judges tend to take mitigating circumstances into consideration and give the older offenders less harsh sentences.

In addition to the factors of age, health, type of crime committed, and the character of the older offender that a judge must consider when sentencing an older offender, the matter of the difficulties a jail or prison sentence creates for those who administrate jail and prison facilities must be taken into consideration. For example, elderly offenders may suffer from chronic physical and mental health problems, be in need of special diets, or unable to participate in the normal activities required of someone incarcerated in a jail or prison.

## Summary

There has been a concerted movement to divert special categories of criminal offenders from official court processing during the past several years. These special categories include persons who commit minor offenses, persons who exhibit mental health problems, those who commit alcohol- and drug-related offenses, and special categories of adults who are diverted because of the triviality of the offenses they committed or because of their age. There are several reasons for the changes in philosophy and changes in the laws that brought about the movement away from incarceration and toward treatment in the community for drug abuse offenders, those with mental health problems, and other categories of offenders. First, the cost of holding such offenders in jail and in long-term correctional institutions is prohibitive; second, there is considerable evidence that the punishment received did more harm than good to the inmates, their families, and the community; third, the type of treatment such offenders needed to eliminate or reduce the effects of the problem is generally not available in correctional facilities; and fourth, the prediction that those offenders with mental health problems and drug abusers diverted to community treatment would in some way pose a special threat to the security of the community just did not materialize.

With the assistance of federal, state, and local funding, justice agencies have been able to establish specialty courts such as mental health courts, drug courts, veterans' courts, and community courts. All of these special courts rely on community resources and cooperation from various service agencies to provide the type of treatment offenders with special problems need. Research on the effectiveness of specialty courts reveals that the large majority of those who complete the programs attached to the courts do not recidivate.

## Discussion Questions

1. Discuss the factors that have contributed to the creation of specialty courts for certain types of offenders. Do you think the diversion of these special types of offenders is justified?
2. Why is the process of arrest and confinement so traumatic for a mentally disturbed person? How can the police act to make these processes less disturbing?
3. When mentally ill persons are released back into the community, do you think those who live near that mentally disturbed person should be notified that this condition exists, as they are when a sexual predator is released? Why or why not?
4. Why do you think that drug courts and day reporting have been successful in helping many drug offenders? Discuss the elements of the programming that you think hold the key to their success.
5. Do you think the length of supervision should be longer for offenders handled through community courts than for offenders who have committed similar offenses who are handled through regular courts and placed on probation? Why?
6. What do you think is the most important function of veterans' courts? How can veterans' organizations assist these offenders, once they have come to the attention of the courts because of committing criminal offenses? Do you think veterans' criminal offenses should be erased from court records if they are successfully treated?
7. If veterans who have committed criminal offenses do not meet the eligibility requirements for referral to a veterans' court, should they still be given special consideration in criminal courts, even if they have committed very serious offenses?  
What could be done to assist them?
8. Discuss why extension of the life span for Americans has resulted in increased criminality by this age group.
9. What do you think are the types of criminal activity that may decrease as a person ages? Do you think the availability of the Internet has had an influence of the types of crimes committed by older adults? In what ways?

10. Incarceration of older offenders creates many problems for jail and prison administrators. What are these problems? Do you think older offenders should be housed in separate facilities or kept in the general prison population? Why?

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