Providing Court-Connected Behavioral Health Services During the Pandemic: Remote Technology Solutions

A Pandemic Resource from NCSC

Developed in collaboration with the National Judicial Task Force to Examine State Courts' Response to Mental Illness

July 7, 2020 | Version 1.0

The 2020 pandemic imposed a new reality on all aspects of our society, including both the justice and the behavioral health systems. Face to face interactions are reserved for the rare circumstance, but fortunately, for most interactions remote or virtual technology options have emerged.

Courts are also increasingly involved in facilitating, providing, or overseeing the provision of mental health and substance use disorder treatment. As COVID-19 closures or reductions persist in our courts, court connected behavioral health treatment does not need to stop, and should not stop. In fact, the need for these services has increased during the pandemic.

Research tells us that using remote technology solutions for screening and assessment, behavioral health treatment, and competency evaluations produces outcomes that are as good or better than in-person versions of the same interventions. As we rebuild our systems of service delivery during these restrictions (and post-pandemic) courts should consider when and where continuing to use tele-services, even when in-person options are available, might be less expensive and just as effective.

This brief provides an overview of telehealth resources and options as they pertain to criminal justice related behavioral health interventions, including teleservices to provide:

- behavioral health screening and assessment
- behavioral health treatment
- competency evaluation and restoration

Behavioral Health Screening and Assessment

Screening for behavioral health disorders should be a priority throughout points of contact within a community, including by pediatricians, teachers, and emergency room practitioners. Early identification of mental health issues and trauma can help individuals more effectively manage their mental health issues and create appropriate treatment plans.

Criminal justice related screening and assessment are also critical once an individual has contact with the justice system in order to ensure the system's treatment and supervision responses are tailored to the individual's criminogenic risks and needs. All individuals coming into jail should be screened for mental health and substance use disorders using

an evidence-based tool validated for the population that is screened. Then, if indicated by the screening instrument, an appropriate assessment should follow.

An overview of criminal justice related behavioral health screening and assessment tools can be found under the behavioral health screening and assessment tab of the NCSC Coordinated Court and Community Resources website. A comprehensive overview of behavioral health screening and assessment best practices and instruments also appears in SAMHSA's Screening and Assessment of Co-Occurring Disorders in the Justice System.

As jail and treatment resources are limited during the pandemic, allocating those scarce resources to those most in need of them is even more important, and therefore screening and assessment is especially critical to ensure that those with acute and severe treatment needs receive services. While some screening practices, such as those performed at jail-booking may continue in a traditional in-person format, others may need to be re-engineered as remote or virtual processes. As court-connected providers (probation staff, problem-solving courts, case managers, court navigators, and contracted providers) seek to revise the ways in which they conduct screening and assessment, there are essentially two options.

1. ***Use computer-based screens and assessments***

There are a number of tools that were designed to be administered online. These have been designed to be accurate, validated screens and assessments. Some of them are administered online by a clinician, and others are online self-report tools. Several of these are also in the public domain and free to use. Examples include:

Minnesota Multiphasic Personality Inventory-2 (MMPI-2/MMPI-2 RF)
Composite International Diagnostic Interview (CIDI)
Global Appraisal of Needs (GAIN)
Diagnostic Interview Schedule–Fourth Edition (DIS-IV)
Mini International Neuropsychiatric Interview (MINI)
Drug Abuse Screening Test (DAST)
Substance Abuse Subtle Screening Inventory (SASSI-3)
Brief Symptom Inventory (BSI)
The Behavior and Symptom Identification Scale (BASIS-24)
Centre for Addiction and Mental Health–Concurrent Disorders Screener (CAMHCDS)
Beck Scale for Suicide Ideation (BSS)
Addiction Severity Index-Fifth Version (ASI-5/ASI-6)
The Behavior and Symptom Identification Scale (BASIS-24)
Texas Christian University (TCU) Intake and Assessment Instruments

2. ***Modify the administration of tools that are not computer-based***

More traditional psychological or psychiatric assessments can still be utilized with modification. These are assessments that are usually done in person, but can be accomplished remotely. The following resources discuss best practice protocols that

should be employed to ensure the most reliable outcomes and fidelity to the original assessment design:

- American Psychological Association, Best Practices for Remote Psychological Assessment via Telehealth Technologies
- Luxton, Pruitt and Osenbach (2014), Guidance on Psychological Tele-Assessment During the COVID-19 Crisis

Also check for state level issues
There are a number of novel issues that arise when more robust telehealth practices are deployed. Cross-state licensing, billing and reimbursement, privacy, and ethical provisions need to be considered. Each state has its own telehealth-related laws, regulations and Medicaid provisions. This Center for Connected Health Policy interactive map displays current laws and regulations for all fifty states and the District of Columbia, including special reimbursement provisions.

Note that significant waivers of federal reimbursement and other restrictions have been enacted at the federal level during the pandemic to allow for and encourage the use of telehealth options. It is not yet clear how long these waivers will continue. A summary of the COVID-19 related changes to Medicare, Medicaid and HIPAA regulations can be found here, and many of these changes apply both to screening and assessment practices and to the provision of remote behavioral health treatment as well.

Providing Behavioral Health Treatment via Teleservices

The pandemic has changed the profile of defendants penetrating the criminal justice system. For example, in Colorado the Boulder County jail has gone from 40% of its inmates being assessed as requiring behavioral health treatment to 80%. And defendants already in the system before the pandemic, either in custody or on supervision, are likewise more likely to need behavioral health services or an increased intensity of existing services due to the stressors of the pandemic and its economic effects. Yet some courts have reduced or eliminated behavioral health treatment availability.

Providing treatment via telehealth can replace discontinued services and it can also expand the capacity of remaining services.

Implement existing on-line treatment options
Evidence-based remote or online treatment has been found to be as effective as in-person treatment. Examples of these on-line programs include:

- Computer Based Training for Cognitive Behavioral Therapy (CBT4CBT)
- In the Rooms (12 Step)
- The Tribe Wellness Community
- Smart Recovery
- Chess Health

Transition in-person resources to online formats
The pandemic has increased the availability of easy to use online technologies and decreased our reluctance to use them. More treatment providers are embracing telehealth provision of services, and a recent NCSC survey found that less than 3% of court users had no access to the internet or a cell phone. This combination of technologic capability and attitudinal receptiveness provides the opportunity to greatly expand telehealth services. A number of new resources for providers has also emerged:

- American Psychological Association, How to do group therapy using telehealth: Group therapists are responding to COVID-19 by rapidly transitioning from in-person to online therapies
- American Psychological Association, Guidelines for the Practice of Telepsychology
- Journal of Telemedicine and Telecare, Telehealth interventions for schizophrenia-spectrum disorders and clinical high-risk for psychosis individuals: A scoping review

And this Telehealth Models for Increasing Access to Behavioral and Mental Health Treatment toolkit, developed for rural communities, has a comprehensive inventory of resources and related guidance that is now relevant for all communities.

Modify Problem-Solving Court operations, but keep them going
More than ever, our problem-solving court participants need the structure, encouragement, and services of the courts. Abruptly ending the intensive interventions of a problem-solving court program may well leave participants worse off than they were when they started. Treatment, testing, and supervision can all be maintained even with no or limited in-person contact.

A recent webinar, Using Remote Technology to Enhance Criminal Justice Outcomes: Bringing Treatment Courts, Probation and Parole into the 21st Century, describes specific ways in which treatment courts can modify their operations to continue to operate effectively.

There are a number of other treatment court specific COVID related resources available on the NADCP COVID-19 Resources for Treatment Courts webpage.

Competency Evaluation and Restoration
COVID-19 concerns are impacting the movement of defendants throughout the criminal justice and behavioral health systems. Nowhere is that more evident than in the competency evaluation and restoration process. Jails are booking fewer arrestees, but also releasing them more hesitantly, and the resources to which they can be released are fewer. Custodial settings of all sorts are particularly susceptible to viral outbreaks, and testing and quarantine requirements are slowing transfers

between facilities. Clinicians may also be reluctant to travel to these facilities, and to conduct in-person evaluations or restoration treatment sessions.

In many states competency evaluations are conducted in some sort of custodial facility, and in most states restoration services are provided in a state psychiatric facility or other inpatient setting, almost all of which have imposed waiting or testing requirements. Many of these facilities have stopped accepting forensic patients entirely. This leaves a number of defendants stuck in jail, or at least detained without services. In *Jackson v. Indiana* (1972), the U.S. Supreme Court held that the nature and duration of an incompetent defendant's commitment must bear a relationship to the purpose for which he or she was committed. This constitutional requirement is not tolled because of a pandemic. Fortunately, both competency evaluation and restoration are well suited to remote technology solutions.

Reduce the volume of competency cases

A series of systemic recommendations is outlined in the recent NCSC Competence to Stand Trial report, and the first several relate to reducing the number of cases in the competency process. While not a technology solution, reducing the volume of cases is a first step in allocating pandemic-reduced resources more wisely.

Law enforcement discretion in the way of booking restrictions has already helped in this regard (*Recommendation #1, Divert cases from the criminal justice system*), and prosecutorial and defense counsel discretion can further reduce the inflow of competency cases (*Recommendation #2, Restrict which cases are referred for competency evaluations*). For example, a number of states reserve the competency process for serious cases only, such as felonies.

Use teleservices to conduct remote competency evaluations

An initial randomized control study reported in the Journal of the American Academy of Psychiatry and the Law found that using a telemeservices evaluation produced assessment scores consistent with the in-person evaluations. A 2018 review of that study, those that have followed, and the emerging legal findings concludes that "[T]he use of (videoconferencing) can be a viable way to meet the demand for timely adjudicative competence evaluations… [These] evaluations make the most sense when they improve the efficiency of services while maintaining the same standards of quality of traditional evaluations."

Using remote technologies presents logistical advantages too. Defendants need not be transported to an evaluation site, and evaluators don't need to travel to one. Multiple evaluations can be scheduled in batches, to make economical use of the evaluator's time. Likewise, the physical location of evaluators is not an issue, so the pool of available evaluators may well increase.

The technology needed is minimal. The evaluator needs only a laptop with a camera, and access to appropriate software, which in many cases is free. The security of the software can be an issue, though improvements in these applications

are quickly advancing, and several platforms have been deemed HIPAA compliant. The defendant needs a compatible arrangement, though many jails already have technology options for video or remote arraignments.

The state of Washington recently published a helpful Telehealth Implementation Guidebook that walks through the details of implementing remote services in forensic and other settings.

To the extent that the obstacle to the greater use of remote technology for evaluations is attitudinal, recent events have likely increased everyone's level of comfort and proficiency with virtual options. And whether the defendant being evaluated is in jail, an outpatient setting, or in a forensic facility, remote evaluation would appear to be cheaper, quicker, and safer for everyone involved.

Use teleservices for restoration treatment

Because the vast majority of restoration treatment is provided on an inpatient basis, usually in a psychiatric hospital or other treatment facility, options for using remote service delivery may not be as broad as with the evaluation process. But telepsychiatry, or the provision of psychiatric services remotely, is a well-established and researched treatment delivery model. The relevant research and best practices are outlined in the Providing Behavioral Health Treatment via Teleservices section of this brief.

Moving forward

Teleservices technologies have been steadily advancing over the last decade, but our collective amenability to using those technologies has lagged. The pandemic has forced both the behavioral health and criminal justice systems to accelerate the adoption of this new way of doing business.

Our job now is not to try to rebuild the old systems and processes after the pandemic abates, but to build new systems that take advantage of those technologies and tools that have been proven to be cheaper, quicker, and more effective than traditional approaches. Innovative court systems have already done the hard work of piloting these technologies, and there has now been sufficient research done to tell us which processes benefit the most from teleservices. All that remains is to take advantage of the experience of those innovative courts, and of the resources gathered in this brief.