

Exploring Person-Centered Justice for Individuals with Behavioral Health Needs

A New Model for Collaborative Court and Community Caseflow Management

June 21, 2021

An Interim Report

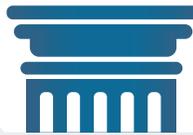
BACKGROUND AND OVERVIEW

Traditional criminal case processes are not meeting the needs of the individuals we serve, and a new comprehensive, collaborative approach is necessary to create fair and effective criminal justice and caseflow management systems that meet the challenges of individuals with behavioral health needs. The Criminal Justice Work Group is committed to redesign systems to meet the needs of the estimated 70% of the individuals seen in our criminal courts today, rather than the 30% of those without substance use disorders, behavioral health needs and/or co-occurring disorders. Currently, state courts generally do not have systems in place to help those with substance use and behavioral health challenges.

Our task is made more urgent given the pandemic and crises across the nation with case backlogs resulting in individuals incarcerated for long periods of time without access to treatment and the lack of access to community-based treatment and inpatient facilities. The Centers for Disease Control and Prevention (CDC) has [estimated at least a 36% increase in the demand for mental disorders](#) (i.e., anxiety and depression) during the pandemic, resulting in increased substance use and other harms. Moreover [suicidal ideation doubled from 2018](#) (10.7% in 2020 from 4.3% in 2018). Reducing barriers to access care within community-based clinics for mental health and substance use will prevent further negative interactions with law enforcement that lead to cases filed with the courts.

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Exploring Collaborative Court and Community Responses for Individuals with Behavioral Health Needs



NEW MODEL DEVELOPED

This NEW MODEL was developed to strengthen the collaborative court and community response to individuals with behavioral health needs. This work is informed by extensive research, including the [Effective Criminal Case Management](#) (ECCM) project. The ECCM project set forth the key elements of effective criminal caseflow management addressing leadership and governance, predictable and productive court events, goals and information and communication and collaboration. ECCM collected data on over 1.2 million criminal cases from 136 courts in 91 jurisdictions in 21 states. While the national Model Time Standards adopted by CCJ, COSCA and others in 2011 suggest that 75% of felony cases should be resolved in 90 days, only 30% were resolved in that time period during the ECCM study; that 90% should be

This report was developed and approved by the Criminal Justice Work Group of the National Judicial Task Force to Examine State Courts' Response to Mental Illness in June 2021 and is pending action by the Task Force Executive Committee. Reactions, comments and suggestions to the report are welcome. It is anticipated that a final version of this report and related recommendations will be adopted and published by the Task Force prior to the Annual Meeting of the Conference of Chief Justices and Conference of State Court Administrators in August 2022.



resolved in 180 days, yet only 57% were resolved in that time period; and that 98% should be resolved in 365 days, and only 83% were resolved in 365 days.¹ While the ECCM project did not specifically study cases involving those with behavioral health conditions, the collective experience of the Work Group is that these cases often take even longer than the study found, and individuals are detained longer in jails, with no data available on improved treatment outcomes or public safety. Research² has also shown significant cost savings for effective treatment and recovery programs over the use of jails.

This NEW MODEL is also informed by the American Bar Association [Criminal Justice Standards on Mental Health](#) which were adopted August 8, 2016 to supplant the Third Edition (August 1984) of the ABA Criminal Justice Mental Health Standards. These Standards provide guidance toward: responding to individuals with mental disorders in the criminal justice system, roles of mental health professionals in the criminal justice system, roles of the attorney representing a defendant with a mental disorder, role of the judge and prosecutor in cases involving defendants with mental disorders, joint professional obligations for improving the administration of justice in criminal cases involving individuals with mental disorders, education and training, and many other standards of relevance to effective collaborative court and community caseflow management.

Guiding Principles

Guiding Principles were developed by the Work Group to direct our efforts to strengthen community responses and minimize criminal justice involvement, to promote early intervention and effective management of court cases, to

institutionalize alternative pathways to treatment and recovery and improve outcomes, and to manage post adjudication events and transitions effectively.

Learning Communities and Focus Groups

An [initial strategies brief](#) was developed based on a community of practice involving nine jurisdictions during the pandemic; we believe these strategies must be further tested and evaluated. A [Pandemic Resource for Courts](#) developed in collaboration with the [CCJ-COSCA Rapid Response Team](#) identified diversion and caseflow management strategies to improve outcomes for individuals with behavioral health needs and informs our further work. The community of practice also identified opportunities for improvement at different stages of caseflow management. An additional [Pandemic Resource for Courts](#) identified ways to reduce jail populations during the pandemic, and provided lessons learned for post-pandemic planning.

A second virtual learning community is planned to offer a [virtual Community of Practice](#) for up to five interdisciplinary teams seeking to implement effective criminal case management of individuals with behavioral health needs and to provide opportunities for peer learning and sharing. This community of practice will further test and evaluate the strategies identified as part of the NEW MODEL of collaborative court and community caseflow management.

Focus Groups are also planned to gather additional input from prosecutors, defense counsel and those with lived experience. These focus groups will identify barriers, challenges and opportunities as we shift to a much needed “end user” focused justice system design for courts to implement. The Criminal Justice Work Group will further develop and provide state courts nationwide with a roadmap, tools, and resources to use this NEW MODEL to improve responses to individuals with behavioral health needs.

GUIDING PRINCIPLES TO EXPLORE PERSON-CENTERED JUSTICE:

A New Model of Collaborative Court and Community Caseflow Management



The following Guiding Principles serve as the foundation of our ongoing work to re-examine and redefine caseflow management practices for individuals with behavioral health needs.

In all of our work, we intend to:

1. **Encourage all judges** to use their leadership role as convenors to foster collaborative community and court strategies to promote community safety and improve outcomes for individuals with behavioral health needs.³
2. **Develop new caseflow management systems** through a multidisciplinary, non-adversarial team approach to address the complex social and behavioral problems presented to the courts and communities.
3. **Facilitate evidence-based practices** across community, court, and behavioral health systems.

Justice . Safe

4. **Identify, measure, and proactively address issues** of explicit and implicit bias, disproportionate access to resources, and systemic racism.
5. **Adhere to the principles** of due process, procedural fairness, transparency, and equal access to justice at all times.
6. **Develop trauma informed, person-centered, responsive practices** that focus on individuals with behavioral health needs for all case types and provide multiple pathways to treatment and recovery and diversion.
7. **Promote individual attention to each case and each person**, and treat all cases and individuals proportionally, demonstrated by judicial control of the process and procedural justice.
8. **Treat all individuals with respect and neutrality** and grant all individuals a voice, engendering trust in the justice system.
9. **Listen to and gather input** from individuals with lived experience, and their families.
10. **Ensure that our new models** of collaborative court and community caseflow management provide for accountability, public safety, and improved treatment outcomes by adhering to defined performance measures.
11. **Design and foster timely and efficient court and community procedures** to improve the justice experience of the individual with behavioral health needs.
12. **Leverage and share resources** across community, court, and public and behavioral health systems.

Evidence-Based Practices

Institutionalization, Sustainability, and Funding

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The Leading Change Model and Behavioral Health Resources Hub



The [Leading Change Model](#) serves as the foundation for developing a coordinated court and community response to caseload management that will more holistically meet the needs of the individuals we serve and will better ensure public safety. Additional information can be found in the [Leading Change Guide](#) and on the [Behavioral Health Resources Hub](#). “The Hub” is a repository of continually updated resource links and information highlighting best practices to help courts and communities provide effective responses and supports for individuals with mental health and co-occurring disorders.

To address behavioral health needs in each community, certain court and community responses must be developed early on. The most effective approach is to design responses that are regularly engaged in by community collaborators. The resources on “the Hub” build on the [Sequential Intercept Model](#) (SIM), which identifies appropriate responses at particular intercepts that can keep an individual from continuing to penetrate the criminal justice system.

Meaningful system change requires leadership. Courts and judges in particular are in a unique position to convene stakeholders and to lead these groups to consensus and [action](#). Of course, each community will be at a different place in implementing these practices.

Exploring person-centered justice for individuals with behavioral health needs and managing more effective caseload management for these individuals requires not only judicial leadership and the collaborative approach addressed in the Guiding Principles but also requires a renewed commitment to fair and timely justice, improved outcomes, and enhanced public safety.

The 4 Pillars of the New Model of Collaborative Court and Community Caseload Management

Four Pillars have been identified as critical to an effective collaborative court and community effort to promote person-centered justice for individuals with behavioral health needs. Each of the Four Pillars include a number of essential elements that must also be addressed as part of this NEW MODEL. The Four Pillars address how to:

1. Strengthen community responses and minimize criminal justice system involvement;
2. Promote early intervention and effective management of court cases;
3. Institutionalize alternative pathways to treatment and recovery and improve outcomes; and
4. Manage post-adjudication events and transitions effectively.

The following summarizes each of the pillars and essential elements, and additional resources and practices will be developed as the focus groups and community learning opportunities continue.

Strengthen Community Responses and Minimize Criminal Justice System Involvement

ESSENTIAL ELEMENTS

Ideal Behavioral Health Crisis Systems

Deflection and Diversion

Stop the “Revolving Door” into the Justice System

Prosecution Alternatives

Strengthen Community Responses and Minimize Criminal Justice System Involvement

Structured ongoing collaboration among community stakeholders is required to build sustainable community-based responses for individuals with behavioral health needs and to minimize justice system involvement. The courts can either convene these efforts or insure they are “at the table” and are promoting ideal behavioral health crisis systems, deflection and diversion systems, the identification of individuals who are entering and reentering the justice system and courts, as well as promoting prosecution alternatives.

A robust community behavioral health system with the key elements as identified below should be examined and implemented, as appropriate, to meet the needs of communities across the states as well as the individuals who need these services.⁴ Courts must lead and can influence the strengthening of community responses.

a. Ideal Behavioral Health Crisis Systems

Moving to the [988 mental health crisis line](#) effective July 2022 provides a tremendous opportunity for courts and communities to provide a continuum of more effective responses to individuals experiencing a mental health crisis. [The Roadmap to the Ideal Crisis System](#) includes essential elements, measurable standards, and best practices for behavioral health crisis response, and the SAMHSA publication [Crisis Services: Meeting Needs, Saving Lives](#) serve as foundational resources. A public health response rather than a criminal justice response will save criminal justice costs and promote public safety, while at the same time, connect individuals with treatment and promote recovery.

b. Deflection and Diversion

Law enforcement plays a gatekeeper role to the criminal justice system; contacts with law enforcement provide opportunities for deflection and diversion and a response that more effectively addresses mental health crises.⁵ First responder training, mobile crisis teams, wrap-around services and pre-arrest and pre-booking diversion programs are highlighted in the [Behavioral Health Resource Hub](#) and provide numerous approaches to consider.

c. Stop the “Revolving Door” into the Justice System

Cross-system collaboration is critical to identify “high utilizers” and will create more effective responses. Individuals with behavioral health needs cycling through justice and behavioral health systems place a strain on limited system resources. Specifying criteria to identify those who cycle through justice and behavioral health systems can help target and inform responses tailored to these individuals and their needs. A national healthcare model called [Certified Community Behavioral Health Clinics](#) (CCBHCs) allows for health care staff to be embedded into courts at little to no cost to the justice system with the ability to immediately screen and begin to treat those with behavioral health conditions. This model and other strategies⁶ can not only interrupt the cycle for individuals and affected families but can lead to significant resource savings across systems and minimize repeating court filings.

d. Prosecution Alternatives

Many prosecutors recognize that individuals with behavioral health needs are over-represented in the criminal justice system. Understanding this, and understanding behavioral needs generally, can help inform prosecutor decision making. Filing and charging decisions as well as diversion programs can be informed by this knowledge and understanding.

Promote Early Intervention and Effective Management of Court Cases

ESSENTIAL ELEMENTS

- Screening and Assessment
- Behavioral Health Triage
- Jail Practices
- First Appearance and Pretrial Practices
- Prosecution Practices
- Effective Defense Representation
- Effective Court Caseflow Management

Promote Early Intervention and Effective Management of Court Cases

Early screening and identification of behavioral health needs and criminogenic risks coupled with timely criminal justice and court response to identify needed treatment and responses are essential to the new model of collaborative court and community caseflow management.

a. Screening and Assessment

Screening and assessment are critical at all points of justice system intervention. From an individual's first contact with the justice system and throughout the process, screening and assessments must be ongoing to ensure the system's response is tailored to the individual's needs, including criminogenic risks and needs. All individuals should be screened regardless of custody status for mental health and substance use disorders, criminogenic risk, and trauma using an evidence-based tool validated for the population that is screened. If indicated, an appropriate assessment should follow. If a person is not booked into jail but rather summoned to court, the court and the community should develop practices to ensure appropriate screening and assessment are conducted in a timely way to ensure that appropriate diversion and deflection alternatives are explored.

b. Behavioral Health Triage

By definition, triage is a process of determining the priority of "patient" treatments needed by the severity of their condition or likelihood of recovery, with and without treatment. Its application to court processes has already been embraced in civil⁷ and family law⁸ cases based upon the complexity of the case and should now be applied to criminal cases, to include cases where the individual has behavioral health

needs. Community behavioral health providers can be embedded into jails and courts to conduct screening and assessments, including criminogenic risk and needs, and can identify appropriate diversion to treatment and recovery pathways at the earliest possible stage. Ideally, a court-led triage team will collect and share the appropriate information with community or other providers for early decision making.

c. Jail Practices

Best practices in jails include universal screening using validated tools and information sharing platforms and agreements with courts, prosecutors, defense counsel, and others. The [Stepping Up Initiative](#) identifies key data to collect regarding the management in jails of those with behavioral health needs. Sheriffs and jail administrators should promote the necessary collaboration with justice and behavioral health systems to ensure continuity of care and examine early opportunities for jail diversion whenever possible.⁹ Effective court case management systems require jail data to minimize days in custody and transport of individuals.

d. First Appearance and Pretrial Practices

First appearance before a judge is an important first event where the individual is arraigned on the charges, indigency and release decisions are made, counsel is assigned, and early discovery is exchanged. First appearance may also provide an opportunity for the prosecution, defense, behavioral health and court to identify next steps for an individual with behavioral health needs. Pretrial release decisions regarding those with behavioral health needs must be timely. Incarceration, even for a short period of time can have disproportionately negative impacts on individuals with behavioral health needs. Pretrial Risk assessment tools are an important component of decision making.

e. Prosecution Practices

Prosecutors should ensure that their practices, in the community and in the courthouse, allow for the needs of those with behavioral health issues to be addressed.¹⁰ Prosecutors should promote training about mental illness within their offices, familiarize themselves with best practices for working with individuals with mental illness (including ensuring that their practices are trauma-informed for all involved in the criminal justice system), promote restorative justice, minimize misdemeanors, and end the criminalization of mental illness, among other practices.

f. Effective Defense Representation

Defense counsel have an important role in understanding the behavioral health needs of clients and advocating effectively for their clients. As they are the professionals most proximate to the community members struggling with mental illness, defense counsel has the opportunity to provide leadership in the community and in the courthouse to address the needs of those with behavioral health issues. Defense attorneys and

defender offices should have training and expertise in identifying mental illness, working with clients with mental illness, and in developing diverse and client-centered treatment plans for clients. Some offices have specialized units or training on mental health and/or social workers who work alongside the attorneys to connect clients to appropriate treatment and services based on their needs.

g. Effective Court Caseflow Management

Courts must control case progress and court events through judicial leadership and control of their dockets. Courts must be accountable and hold attorneys and community providers accountable in ensuring that the court process and treatment modalities meet the specific needs of the individual. Individuals with behavioral health needs must have available to them multiple pathways to treatment and recovery. Other key elements of effective court caseflow management include monitoring the progress of criminal cases, tracking the time between intermediate case events, and ensuring each court event is meaningful. The [ECCM project](#) found that the primary drivers of case processing time are the number of continuances per case and the number of hearings per case with the amount of time between hearings.

Institutionalize Alternative Pathways to Treatment and Recovery and Improve Outcomes

ESSENTIAL ELEMENTS

Diversions

Civil Alternatives

Competency

**Specialized
Behavioral Health
Dockets**

Courtroom Practices

**Problem-Solving Courts
and Treatment Courts**

**Other Pathways
and Strategies to
Treatment and
Recovery**

Institutionalize Alternative Pathways to Treatment and Recovery and Improve Outcomes

Implementation of court-led, team-based, problem-solving approaches to address individuals with behavioral health needs must effectively divert these individuals away from traditional case management processes and toward treatment and recovery interventions. Diversion is an essential pillar of this new collaborative model. The information about the individual obtained during the early intervention, including screening and assessment, as well as effective management of the court case in the initial phase must be used to make informed decisions about the most appropriate pathway to treatment and recovery. The criminogenic risk and needs, coupled with behavioral health screens and assessments, and court case characteristics and history, will inform the decisions about the alternative pathway to use to improve outcomes.

a. Diversions

A continuum of diversion options and access to treatment and recovery must be developed and available in every jurisdiction. These options must consider expanded access to treatment and supportive services. The preferred approach is early deflection and diversion before a case is filed. However, if a criminal charge is filed, all judges must have access to a continuum of diversion options, programs and practices which address the defendant's clinical needs and criminogenic risk and needs. Crucial to this effort are the resources to conduct screenings and assessments.

b. Civil Alternatives

The civil system provides an alternative to the criminal justice system for many individuals depending upon their clinical and criminogenic needs. Individuals who require little or no criminal

justice oversight should be redirected to the civil system for assisted outpatient treatment, a civil commitment proceeding, or other civil alternatives and responses.

c. Competency

The Criminal Justice Work Group has adopted numerous recommendations to reform all aspects of the competency to stand trial process. If the court is proceeding with competency evaluations, restoration, and trial, the court must, to the extent possible, manage the progress of the case to avoid an individual languishing in jail and decompensating at any point in the process. Creating specialized dockets that facilitate access to appropriate diversion and restoration resources for these complex cases is one approach to consider.

d. Specialized Behavioral Health Dockets

Specialized Behavioral Health Dockets and Calendars are another tool for the effective management of cases involving individuals with behavioral health needs. Judges can manage cases in diversion programs and when the defendant successfully completes the program requirements, the case can be dismissed, or an alternate disposition can be made depending on the case. Specialized dockets can also consolidate other cases involving the same individual and may segregate individuals by criminogenic risk. The frequency of court appearances should be based upon the criminogenic needs of the individual.

e. Courtroom Practices

Judges and court personnel require training and education on trauma informed practices as well as effective practices for interacting with individuals with behavioral health needs. Bench cards have been produced by the [Judges and Psychiatrists Leadership Initiative](#) (JPLI) and [others](#)¹¹ to guide these interactions. Key components of procedural fairness are also important and include Voice (allowing litigants to be heard), Neutrality, Respectful Treatment, and Trust (the perception the judge is sincere). Research confirms that implementing procedural fairness techniques leads to better compliance with court orders and reduces recidivism, including for individuals with behavioral health needs.¹²

f. Problem-Solving Courts and Treatment Courts

Problem-solving and treatment courts are a proven, effective intervention for high risk, high need individuals but for others with significant behavioral health needs alternative tracks or approaches are needed. The Criminal Justice Workgroup will be developing recommendations to strengthen mental health and other problem-solving courts later in 2021.

g. Other Pathways and Strategies to Treatment and Recovery

Courts are employing a number of pathways and strategies to improve access to treatment and recovery. These strategies include court employees or embedded community behavioral health providers who serve as Navigators or Court Liaisons to identify and connect individuals to treatment and supports. Court and Community teams, similar to problem-solving court or treatment teams, can also promote treatment and recovery for individuals who are not high risk, high need but would benefit from alternative pathways and strategies to promote treatment and recovery. The use of tele-health and remote hearings that have [expanded during the pandemic](#) are also proving effective to promote person-centered justice. Another option is moving away from high volume dockets to a more individualized appointment process tailored to the individual needs of an individual.

Manage Post-Adjudication Events and Transitions Effectively

ESSENTIAL ELEMENTS

**Under
Construction**

Manage Post-Adjudication Events and Transitions Effectively

The Fourth Pillar of managing post-adjudication events and transitions effectively will be addressed as the work progresses following the community of practice and the focus groups described earlier. Proactive caseload management and community-based responses to promote positive behavioral health outcomes continue to be essential during this phase of collaborative caseload management. This Pillar will describe effective practices regarding Community Supervision, Transition Plans and Aftercare, Reentry Practices, and the Court's responsibility to manage the progress of the case and role in ensuring positive outcomes for the individual.

ACKNOWLEDGMENTS

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Others too numerous to mention were invited to contribute to the work of the Subcommittee, and we are grateful for all who participated.

ENDNOTES

- ¹ The ECCM timeliness data was calculated using total time to disposition, as there were significant data quality issues around counts of inactive days across sites.
- ² Miami-Dade County 11th Judicial Circuit Criminal Mental Health Project Criminal Justice/Mental Health Statistics and Project Outcomes, <https://perma.cc/BT65-A2GX>
- ³ CCJ COSCA Resolution 11 (2006): In Support of the Judicial Criminal Justice/Mental Health Leadership Initiative. https://www.ncsc.org/_data/assets/pdf_file/0015/23721/01182006-in-support-of-the-judicial-criminal-justice-mental-health-leadership-initiative.pdf
- ⁴ <https://wellbeingtrust.org/news/unifiedvision/>
- ⁵ <https://bjaojp.gov/program/pmhc>
- ⁶ <https://csgjusticecenter.org/publications/how-to-reduce-repeat-encounters/>
- ⁷ The Civil Justice Initiative: <https://www.ncsc.org/cji>
- ⁸ The Cady Initiative for Family Justice Reform: <https://www.ncsc.org/fji>
- ⁹ Growing research shows evidence of the harmful effects of jail over time: <https://www.safetyandjusticechallenge.org/wp-content/uploads/2019/04/Justice-Denied-Evidence-Brief.pdf>
Research also indicates that jail sanctions produce diminishing returns after approximately three to five days (Carey et al., 2012; Hawken & Kleiman, 2009).
- ¹⁰ https://fairandjustprosecution.org/wp-content/uploads/2018/12/FJP_21Principles_Interactive-destinations.pdf
- ¹¹ The American Psychiatric Association; The Council of State Governments Justice Center; The National Judicial College; Policy Research Associates
- ¹² <http://www.amjudges.org/publications/courtrv/cr53-4/PJ-Bench-Card-Full-Final.pdf>

www.ncsc.org/behavioralhealth