

Exploring Person-Centered Justice  
for Individuals with Behavioral Health Needs

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**A NEW MODEL FOR  
COLLABORATIVE  
COURT AND COMMUNITY  
CASEFLOW MANAGEMENT**

**FINAL REPORT**  
JUNE 2022



NATIONAL JUDICIAL TASK FORCE  
TO EXAMINE STATE COURTS' RESPONSE TO MENTAL ILLNESS



**State Justice Institute**

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## 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 ensure public safety, control costs, and create fair and effective criminal justice and caseflow management systems that meet the challenges of individuals with behavioral health needs. The National Judicial Task Force to Examine State Courts' Response to Mental Illness (Task Force) is committed to redesign systems to meet the needs of the estimated 70% of the individuals seen in our criminal courts today, who have mental health, substance use, or co-occurring disorders, rather than the 30% who do not. Currently, most state courts generally do not have

systems in place to adequately help those with behavioral health needs.

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.

## NEW MODEL DEVELOPED

This NEW MODEL was developed to strengthen the collaborative court and community response to individuals with behavioral health needs, thereby strengthening public safety. The NEW MODEL strengthens community responses and minimizes criminal justice system involvement, promotes early intervention and effective management of court cases, institutionalizes alternative pathways to treatment and recovery, and improves

outcomes and manages post-adjudication events and transitions effectively. 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. The national [Model Time Standards for State Trial Courts](#) adopted by CCJ, COSCA, and others in 2011 suggest that 75% of felony cases should be resolved in 90 days yet only 30% were resolved in that time period during the ECCM study. The standards also provide that 90% should be resolved in 180 days, yet only 57% were resolved in that time period; and further, 98% should be resolved in 365 days, and only 83% were resolved in 365 days.<sup>1</sup> While the ECCM project did not specifically study cases involving those with behavioral health conditions, the collective experience of the Task Force is that behavioral health 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. Research has also shown significant cost savings for effective treatment and recovery programs over the use of jails.<sup>2, 3, 4</sup>

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 for responding to individuals with mental health disorders in the criminal justice system, including the role of mental health professionals, role of the attorney representing a defendant with a mental health disorder, role of the judge and prosecutor in cases involving defendants with

mental health disorders, joint professional obligations for improving the administration of justice in criminal cases involving individuals with mental health disorders, education and training, and many other standards of relevance to effective collaborative court and community caseflow management.

Learning Communities and Focus Groups were used to gather additional input from prosecutors, defense counsel, and those with lived experience. These focus groups helped to identify barriers, challenges, and opportunities for a shift to a much needed “end user” focused justice system design for courts to implement. The many individuals who participated in these focus groups, and for which we owe deep gratitude, are noted in the Acknowledgements section at the end of this document.



# GUIDING PRINCIPLES TO EXPLORE PERSON-CENTERED JUSTICE: A New Model of Collaborative Court and Community Caseflow Management

## GUIDING PRINCIPLES TO EXPLORE PERSON-CENTERED JUSTICE

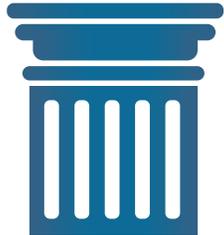
Guiding Principles were developed to direct efforts to strengthen community responses and minimize criminal justice involvement, to promote early intervention and effective management of court cases, to institutionalize alternative pathways to treatment and recovery, and to manage post adjudication events and transitions effectively, thereby ensuring public safety, reducing costs, and improving outcomes.

# Justice . Safety . Health .

Framework for Redefining Collaborative Court and Community Responses for Individuals with Behavioral Health Needs



Strengthen  
Community  
Responses and  
Minimize Criminal  
Justice System  
Involvement



Promote Early  
Intervention and  
Effective  
Management of  
Court Cases



Institutionalize  
Alternative  
Pathways to  
Treatment and  
Recovery and  
Improve Outcomes



Manage  
Post-Adjudication  
Events  
and Transitions  
Effectively

Community Behavioral Health

Diversity, Equity, and Inclusion

Evidence-Based Practices

Court Leadership

Institutionalization, Sustainability, and Funding

Data-Driven Decision Making

NATIONAL JUDICIAL TASK FORCE TO EXAMINE STATE COURTS' RESPONSE TO MENTAL ILLNESS

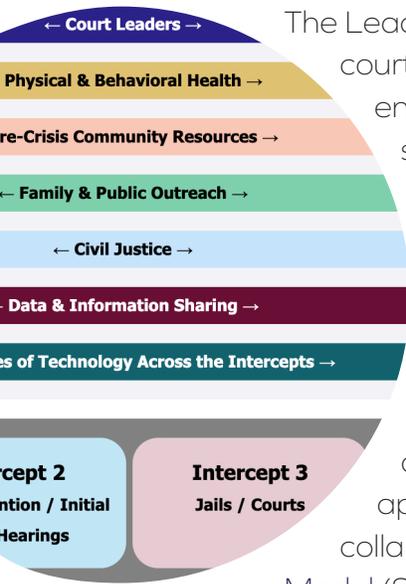
## A NEW MODEL OF **Collaborative Court and Community Caseflow Management**

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.<sup>5</sup>
2. **Promote early intervention** consistent with legal and mental health professional standards. Screening, assessment, deflection, diversion, and intervention strategies should be employed at the initial stages of the process to minimize criminal justice system involvement.
3. **Develop new caseflow management systems** through a multidisciplinary, non-adversarial team approach to address the complex social and behavioral health issues presented to the courts and communities.
4. **Facilitate evidence-based practices** across community, court, and behavioral health systems.
5. **Identify, measure, and proactively address issues** of explicit and implicit bias, disproportionate access to resources, and systemic inequities.
6. **Adhere to the principles** of due process, procedural fairness, transparency, and equal access to justice.
7. **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.
8. **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.
9. **Treat all individuals with respect and neutrality** and grant all individuals a voice, engendering trust in the justice system.
10. **Listen to and gather input** from individuals with lived experience, and their families.
11. **Ensure that the new model** of collaborative court and community caseflow management provides for accountability, public safety, reduced costs, and improved treatment outcomes by adhering to defined performance measures.
12. **Design and foster timely and efficient court and community procedures** to improve the justice experience of individuals with behavioral health needs.
13. **Expand leverage, and share resources** across community, court, and behavioral health systems.

# 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 caseflow management that will better ensure public safety and more holistically meet the needs of the individuals served. Additional information can be found in the [Leading Change Guide for Trial Court Leaders](#), [Leading Change Guide for State Court Leaders](#), and on the [Behavioral Health Resource 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 behavioral health 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 caseflow 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 enhanced public safety, reduced costs, fair and timely justice, and improved outcomes.

## The 4 Pillars of the New Model of Collaborative Court and Community Caseflow 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.

# PILLAR I

## ESSENTIAL ELEMENTS

1. Comprehensive Behavioral Health Crisis Systems
2. Deflection
3. Stop the “Revolving Door” into the Justice System
4. Prosecution Alternatives

## Strengthen Community Responses and Minimize Criminal Justice System Involvement

Fragmentation often exists across systems, which can lead to duplication of resources and a lack of continuity, gaps in services, and a disjointed response in meeting the behavioral health needs of individuals within a community. 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 ensure 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.<sup>6</sup> Every community is different, and the approach taken should be tailored to each specific environment. For example, the challenges in a rural community in terms of available services and how those services are delivered will be very different than what is found in an urban environment. Courts must lead and can influence the strengthening of community responses.

## 1. Comprehensive Behavioral Health Crisis Systems

Court leaders should be knowledgeable about what constitutes an effective behavioral health crisis system and encourage community stakeholders to strive for improvements. Crises that involve behavioral health issues represent the widest point of the funnel that potentially leads a person to the criminal justice system. The earliest contact with a person in crisis often represents the first opportunity to divert the person to care and treatment rather than to jail and punishment. Appropriate interventions at this point lead to better outcomes for the individual, more efficient use of justice system resources, and increased public safety. 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 a Comprehensive Behavioral Health 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.

## 2. Deflection

Court leaders should be knowledgeable about opportunities for deflection from law enforcement engagement and deflection from the criminal justice system to help shape effective court and community responses for people with behavioral health needs. Keeping people who should not be in the justice system out, and redirecting them to treatment, leads to increased public safety, better outcomes, and cost savings for those with behavioral health needs and for the justice system.

Law enforcement plays a gatekeeper role to the criminal justice system; contacts with law enforcement provide opportunities for deflection and a response that more effectively addresses mental health crises.<sup>7</sup> First responder training, mobile crisis teams, wrap-around services, and pre-arrest and pre-booking deflection programs are highlighted in the Behavioral Health Resource Hub and provide numerous approaches to consider. Diversion opportunities should also exist once a case enters the criminal justice system. They may include deferred prosecution programs where the charges are dismissed subject to engagement in a prescribed treatment program, successful completion of the requirements tied to diversion options or satisfaction with some other intervention strategy.

### 3. 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 strategies<sup>8</sup> 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.



### 4. Prosecution Alternatives

Prosecutors’ offices function as public safety agencies, and part of their core mission should involve reducing recidivism and its root causes. Identification of the historic drivers to criminality, including mental health and substance use disorders and the co-occurrence of these issues is critical, as is acknowledgement of poverty related factors including housing and food insecurity, and the impact of trauma on parties in criminal cases. Prosecutors must also understand that mental health and substance use disorders, and other needs should contribute to prosecutor decision-making, including filing and charging decisions, diversion, and sentencing recommendations. Collaboration with defense counsel is an important component to identifying appropriate solutions and treatment. Many prosecutors recognize that individuals with behavioral health needs are over-represented in the criminal justice system. Understanding this, and understanding behavioral health generally, can help inform prosecutor decision making. Filing and charging decisions as well as deflection and diversion programs can be informed by this knowledge and understanding.

# PILLAR II

## ESSENTIAL ELEMENTS

1. Screening and Assessment
2. Behavioral Health Triage
3. Jail Practices
4. First Appearance and Pretrial Practices
5. Prosecution Practices
6. Effective Defense Representation
7. 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.

### 1. Screening and Assessment

From an individual's first contact with the justice system and throughout the process, screening and assessments must be conducted early on, and then updated periodically to ensure the system's response is tailored to the individual's needs, including criminogenic risks and needs. Regardless of custody status, all individuals should be screened 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 to ensure that appropriate diversion and deflection alternatives are explored. Collaboration and cooperation between justice and behavioral health providers is necessary to ensure individualized decision making. Particular attention should be focused on practices and systems that adversely affect marginalized communities and impact racial justice.

## **2. 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 civil<sup>9</sup> and family law<sup>10</sup> 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.

## **3. 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. All courts should reach out to their county officials and jail administrators and learn more about the [Stepping Up Initiative](#) and/or other county efforts to develop and implement systems-level, data-driven plans that can lead to measurable reductions in the number of people with mental illnesses in local jails. Courts and counties can partner on the important

goal of reducing the number of individuals with mental illnesses in jail by focusing on a range of strategies to reduce arrests, shorten jail length of stay, increase connections to treatment, and lower recidivism rates. Collaborative court and community case management for individuals with serious mental illness is recommended to take a person-centered approach to reducing the number of individuals with mental illnesses in jails. Continuity of care also includes ensuring a smooth transition back to the community upon discharge. One element in ensuring successful reentry is providing an adequate supply of prescribed medication and the transition of documentation listing all medications currently being prescribed for presentation to medical professionals as needed. Medications should only be given for a clear clinical purpose.

## **4. 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 provider, 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.

Courts should make use of pretrial risk and needs assessments to expedite pretrial release decisions and conditions of release within 24-48 hours of justice system contact. They should also provide proactive case management to ensure individuals are screened for risk and needs as early as possible in the case process, including monitoring for people in frequent contact with the justice system, and divert when possible. First appearances must be meaningful events and early efforts need to be made to connect individuals with community services providers and available services.

## **5. Prosecution Practices**

Prosecutors should ensure that their practices, in the community and in the courthouse, consider the needs of those with behavioral health issues to be addressed. 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. Courts should support the efforts of all justice partners and behavioral health providers to consider the specialized needs of those with behavioral health needs.

While prosecutors are encouraged to practice early intervention and consider diversion opportunities wherever possible. Individuals with behavioral health issues may have difficulty understanding legal matters and can benefit from the assistance of defense counsel.

## **6. Effective Defense Representation**

Defense counsel have an important role in understanding the behavioral health needs of clients and advocating effectively for their clients. Courts have an inherent responsibility to support defense counsel in this role. Early contact between defense counsel and the defendant is beneficial in identifying competency issues or other behavioral health indicators. The sooner that contact can be made, the more effective counsel can be in exploring diversion options, engaging family support systems, and marshalling other resources to support the client. Defense counsel also have 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. To the extent possible, these offices should strive to develop specialized units or training on mental health and/or involve social workers who work alongside the attorneys to connect clients to appropriate treatment.



# PILLAR III

## ESSENTIAL ELEMENTS

1. Diversion – A Pathways Approach
2. Civil Responses
3. Competency Dockets
4. Specialized Behavioral Health Dockets
5. Courtroom Practices
6. Treatment Courts
7. 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.

### 1. Diversion – A Pathways Approach

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 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.

## **2. Civil Responses**

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. Whenever possible, consent of the affected individual should be sought. Voluntary participation fosters a higher level of participation and can foster engagement by obviating the civil due process steps that must be taken to bring about a compulsory action. However, while voluntary is always better, court-ordered treatment has proven to be effective and should be used as necessary.

## **3. Competency Dockets**

Numerous recommendations have been adopted 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.

## **4. 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.

## **5. Courtroom Practices**

Judges and court personnel must be trained and educated on effective practices for interacting with individuals with behavioral health needs. All individuals should be treated in a dignified and compassionate manner. Bench cards have been produced by the Judges and Psychiatrists Leadership Initiative (JPLI) and others<sup>11</sup> 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.<sup>12</sup>



# PILLAR IV

## ESSENTIAL ELEMENTS

1. Community Supervision and Violations
2. Transition and Aftercare Plans
3. Reentry Practices

## Manage Post-Adjudication Events and Transitions Effectively

Providing the resources and services for individuals with behavioral health needs as they transition back into the community is necessary to ensure public safety. It is the essential fourth pillar upon which this model is able to stand. Proactive caseload management and community-based responses to promote positive behavioral health outcomes continue to be essential during this phase of collaborative caseload management. Essential elements of this stage include the development of effective practices regarding Community Supervision and Violations, Transition Plans and Aftercare, and Reentry. The Court's responsibility to manage the progress of the case and role in ensuring positive outcomes for the individual also remains paramount.



## **1. Community Supervision and Violations**

Community supervision must include effectively assessing persons under supervision for criminogenic risk and need and individual strengths; employ smart tailored supervision strategies; use incentives and graduated sanctions to respond promptly to behaviors; and ensure training and accountability of community supervision providers in using evidence-based practices which reduce recidivism. In determining a response to a violation, assessment of criminogenic risk, needs, and strengths should be considered, and smart, tailored supervision strategies should be employed towards the end of breaking the cycle of violating, or reoffending, that results in incarceration.

## **2. Transition and Aftercare Plans**

Transitions from programs, treatment levels of care, and between systems are often the point when relapse or setbacks in recovery occur. When an individual with behavioral health needs is making progress and having success, courts should take every effort to ensure continuity of treatment so that progress can continue. To ensure successful transitions, transition and aftercare plans which promote recovery need to be developed which are based on the individual's strengths and needs. Necessary services and supports must be in place and individuals should be actively involved in developing the

plan. In addition, the transition planning process should start as early as possible and at least several months in advance of a change to ensure a smooth transition. Discussions should occur with the individual to ensure that they are ready to leave a program or system and, if not, what will it take for them to be ready. The court should review the plan prior to any transition to make sure it is complete and includes the services and support necessary for continued success and recovery.

## **3. Reentry Practices**

People who are leaving incarceration face a significantly higher risk of relapse, overdose, or exacerbation of their mental health condition. Effective reentry practices are critical to improving public safety, reducing costs, and providing rapid access to pre and post release treatment. Those who provide supervision are trained and informed in evidenced-based practices. The challenges for individuals with behavioral health needs who are reentering the community can often have dangerous and life altering consequences. In addition to health and personal safety risks, there can also be public safety concerns as individuals without appropriate services are more likely to relapse and engage in criminal activity than those without behavior health challenges. Collaboration between the court and community partners is essential.

# FINAL THOUGHTS

Implementation of this model is more than a mechanical exercise. Knowing one's political environment and tailoring a communication strategy that suits the needs of the particular community is as important as understanding the model. The perspectives of internal and external constituencies must be understood, and any points of resistance should be addressed before proceeding. Please note the reference links throughout this document and the essential elements documents which can be used to support how adoption of this model leads to reductions in recidivism; longer periods of time between rearrest; and better outcomes for the affected individuals, their families, and the community at large.

Throughout the Covid-19 pandemic period many courts came to embrace innovative communication technologies, especially

videoconferencing platforms, to conduct routine hearings. These technologies provide an effective solution for managing cases; however, courts must make procedural fairness (also called procedural justice) for litigants the highest priority, regardless of where proceedings take place, as litigant perceptions of how they are treated have a greater impact on their acceptance of and compliance with court orders than the actual outcome of hearings. These issues take on additional importance when dealing with individuals experiencing behavioral health issues. A [bench guide](#) has been developed by the National Center for State Courts, which offers practical tips for adapting judicial techniques to ensure procedural fairness in remote hearings. We recommend its consideration.

**Conducting Fair and Just Remote Hearings:**  
A BENCH GUIDE FOR JUDGES

Many courts have embraced innovative communication technologies, especially videoconferencing platforms, to conduct routine hearings during the COVID-19 pandemic. Although these technologies provide an effective solution for managing cases until the pandemic abates, interpersonal communication in a remote platform differs considerably from the in-person experience. These differences can affect whether litigants and other hearing participants believe they have been treated fairly. Courts must make procedural fairness (also called procedural justice) for litigants the highest priority, regardless of where proceedings take place, as litigant perceptions of how they are treated have a greater impact on their acceptance of and compliance with court orders than the actual outcome of hearings. This bench guide offers practical tips for adapting judicial techniques to ensure procedural fairness in remote hearings.

**CORE ELEMENTS OF PROCEDURAL FAIRNESS**

- VOICE:** the ability of litigants to participate in the case by expressing their own viewpoints;
- NEUTRALITY:** the consistent application of legal principles by unbiased decision makers who are transparent about how decisions are made;
- RESPECT:** individuals are treated with courtesy and respect, including respect for people's rights;
- TRUST:** decision makers are perceived as sincere and caring, trying to do the right thing;
- HELPLESSNESS:** litigants perceive court actors as interested in their personal situation to the extent that the law allows.

**PREHEARING PREPARATION**

**Adjust calendaring practices to ensure sufficient time to give each case your full attention.**  
Preliminary reports suggest that remote hearings take longer than in-person hearings. Litigants who are unfamiliar with the technology platform or who have poor internet connectivity may need extra time to log on, present evidence, or make arguments. Litigant appearance rates also tend to be higher for hearings conducted remotely, eliminating the cushion of time that judges have come to expect by entering default judgments or orders to dismiss for failure to prosecute. "Zoom fatigue" is real; do not schedule more cases than you can realistically manage.

**Review case files before hearings.**  
Making direct eye contact shows litigants that you are attentive and engaged, but this is difficult to do this while simultaneously reviewing motions, briefs, and other documents during the hearing. Advance preparation should respect by demonstrating your familiarity with litigants' individual circumstances.

**Ensure that litigants have access to information and resources to participate effectively in the hearing.**  
Providing a link to the videoconferencing platform does not necessarily ensure that litigants can participate effectively. Hearing notifications should be written in plain language and include information not only about how to connect and participate on the platform, but also how to access additional information to prepare for the hearing (e.g., gathering documents to present as evidence, potential claims and defenses, etc.). The notification should also communicate the court's expectations about litigant preparation for the hearing (e.g., timeliness, formality of the hearing). Finally, some litigants may require a foreign language interpreter or an accommodation under the Americans with Disabilities Act to participate in a remote hearing. Ensure that the hearing notification includes information on how to request such assistance.

**Offer alternatives for litigants who lack devices or internet access to participate remotely.**  
Courts should suggest community resources (e.g., public schools, libraries, community centers) where litigants can use computers or get access to a stable internet connection, including, if possible, dedicated computer kiosks or Zoom pods at the courthouse.

**#COVIDandtheCourts**  
[nsc.org/pandemic](https://nsc.org/pandemic)

**FAIR AND EFFECTIVE USE OF VIDEOCONFERENCING PLATFORMS**

**Use a "technical help" table to help litigants log on and troubleshoot on technical problems.**  
The table should require litigants to indicate their full name, especially if using devices that do not have a name field. It should also require litigants to have called the court's technical help desk or another designated person for help before logging on. The table can also include a phone number for help. The table can also include a phone number for help. The table can also include a phone number for help.

**Pay close attention to videoconferencing disablers.**  
Some videoconferencing platforms require participants to have a microphone and camera. Also be alert for technical issues that may prevent litigants from logging on.

**Check in with litigants and check that they can hear and be heard.**  
Before starting the hearing, identify all participants to be heard. Ask everyone to present an identification card or other evidence of their identity. Provide instructions on how to log on and participate. Ask participants to confirm that they can hear and be heard. Ask participants to confirm that they can hear and be heard.

**Check that all participants are still present on a final call.**  
Check that all participants are still present on a final call before everything has started, and opportunity to express their viewpoint.

**Ask litigants about their location from which they are participating.**  
For all litigants, have a private, quiet place in which to participate in the hearing. If the litigant is participating in a public area, they should not have the conversation or other conversations or activities that could distract or disrupt the hearing. Litigants should be advised that they should not have conversations or activities that could distract or disrupt the hearing. Litigants should be advised that they should not have conversations or activities that could distract or disrupt the hearing.

**#COVIDandtheCourts**  
[nsc.org/pandemic](https://nsc.org/pandemic)

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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

- <sup>1</sup> 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.
- <sup>2</sup> <https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201200406>. See Criminal justice involvement and service system costs section.
- <sup>3</sup> <https://www.nami.org/Blogs/NAMI-Blog/March-2021/The-Cost-of-Criminalizing-Serious-Mental-Illness>
- <sup>4</sup> Miami-Dade County 11th Judicial Circuit Criminal Mental Health Project Criminal Justice/Mental Health Statistics and Project Outcomes, <https://perma.cc/BT65-A2GX>
- <sup>5</sup> 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](https://www.ncsc.org/_data/assets/pdf_file/0015/23721/01182006-in-support-of-the-judicial-criminal-justice-mental-health-leadership-initiative.pdf)
- <sup>6</sup> <https://wellbeingtrust.org/news/unifiedvision/>
- <sup>7</sup> <https://bjaojp.gov/program/pmhc>
- <sup>8</sup> <https://csgjusticecenter.org/publications/how-to-reduce-repeat-encounters/>
- <sup>9</sup> The Civil Justice Initiative: <https://www.ncsc.org/cji>
- <sup>10</sup> The Cady Initiative for Family Justice Reform: <https://www.ncsc.org/fji>
- <sup>11</sup> The American Psychiatric Association; The Council of State Governments Justice Center; The National Judicial College; Policy Research Associates
- <sup>12</sup> <http://www.amjudges.org/publications/courtrv/cr53-4/PJ-Bench-Card-Full-Final.pdf>

[www.ncsc.org/behavioralhealth](http://www.ncsc.org/behavioralhealth)

