

FREQUENTLY ASKED QUESTIONS:

A Look into **Court-Based** Behavioral Health Diversion Interventions

MAY 2020



Justice Center
THE COUNCIL OF STATE GOVERNMENTS

Recognizing that people with behavioral health needs are overrepresented in the criminal justice system,¹ many communities have developed alternatives to incarceration that connect eligible people to community-based treatment and supports. While efforts around preventing people from entering the criminal justice system and developing law enforcement diversion interventions are critical to connecting people to treatment community wide, this brief focuses on diversion **efforts led by those working in courts, such as judges, prosecutors, defense attorneys, and court administrators.** For information on other diversion opportunities, see [Behavioral Health Diversion Interventions: Moving from Individual Programs to a Systems-Wide Strategy](#), and other associated resources.

Why set up court-based behavioral health diversion interventions?

Court-based behavioral health diversion interventions focus on connecting people with needed community-based care, usually after someone with mental illnesses,² substance use disorders, or both,³ is booked into jail. These connections, which may be provided at a person's initial court appearance or at subsequent court appearances,⁴ can be done through programs operating in a court or prosecutor's office or as a pre-plea component of an existing problem-solving court (e.g., drug courts,⁵ mental health courts,⁶ opioids courts). While the diversity of diversion programs across the U.S. makes conclusive statements about outcomes difficult, research has shown that court-based diversion can shorten average length of jail stays and increase connections to treatment and supports without additional risk to public safety. Some programs have also been shown to reduce future criminal justice involvement. There are also studies showing how diversion programs can potentially save the criminal justice and behavioral health systems money.⁷

Who can implement them?⁸

Leadership of court-based diversion usually stems from judges and prosecutors, who drive the development of diversion policies and bring partners together. But they cannot do it alone. Other critical stakeholders in the court system include:

- Pretrial services staff to identify potential candidates for diversion by adding behavioral health screening and assessments to pretrial intake processes;⁹ they may also play an important role in providing consistent monitoring and feedback to the court while people are on community supervision, which can help alleviate judges' and prosecutors' public safety concerns.¹⁰
- Defense counsel, including public defenders, who can partner with social workers or clinicians to screen and assess potentially eligible defendants,¹¹ advocate that eligible clients be referred to a court-based diversion intervention, and assist social workers in developing a case plan that features service linkage recommendations.
- Behavioral health providers, who can make recommendations for services and facilitate connections to community-based organizations that link people to housing, substance use disorder treatment, and access to employment services, among others.¹²
- Prosecutors to determine who might be eligible for behavioral health diversion programs and connect people to the most appropriate services; these decisions can be made by individual prosecutors or on a larger scale by the elected prosecutor.¹³ Prosecutors, like defense attorneys, may also partner with social workers on their diversion efforts.
- Judges, in addition to their potential role as system leaders, to recognize when a defendant is displaying signs of potential behavioral health needs¹⁴ and should be assessed and diverted from standard criminal court proceedings. Judges may also order a diversion, receive reports on progress, and oversee the dismissal of charges or resumption of a criminal case based on the participant's completion of the program.
- Court administrators to operationalize diversion programs by developing policies and procedures, assigning calendars, facilitating accessibility for participants and program partners, and potentially ensuring ongoing training and program sustainability.

“The overrepresentation of people with behavioral health disorders in the criminal justice system is a problem that cannot be ignored and should not be tolerated. As a judge, I have been uniquely positioned to bring criminal justice and clinical professionals together with community partners to develop and implement behavioral health diversion programs that offer hope and recovery to people whose lives have been devastated by addiction and mental illness. At the same time, these efforts promote public safety by dramatically reducing the likelihood that they will reoffend. The public safety and quality of life benefits of these programs to the individuals, their families, and the community can't be overstated.”

– Judge Janet Holmgren,
17th Circuit Court, Illinois

- Court-based clinicians or court liaisons to screen for eligible diversion program candidates,¹⁵ determine service needs, make referrals, and enroll people in diversion programs.¹⁶
- Jail-based staff to share information from screening and assessments that take place at booking or to identify people who might be eligible for services and then pass this information along to the court-based diversion lead.
- Outreach specialists (also sometimes known as navigators, liaisons, or discharge planners) to identify relevant resources for veterans, individuals experiencing homelessness, and other sub-populations who may be diversion program participants.

What are some common best practices?

Every community is different, but court-based professionals can look to other jurisdictions that have demonstrated success for guidance when designing and refining their diversion interventions. Many jurisdictions will also adapt or expand upon what is already working in their drug courts, mental health courts, or other problem-solving dockets for a pre-plea context. Some best practices include:

- Developing **formalized, written cooperative agreements** between the key diversion program stakeholders to ensure collaboration, program continuity, and consistency.¹⁷
- **Adjusting traditional criminal justice proceedings** to facilitate court-based diversion. This may take the form of a decision by a prosecutor to delay filing charges or suspend prosecution or a court order diverting the case.
- Developing **clear specifications** for how “success” or “failure” is determined and how the results translate to a case proceeding or being dismissed.
- Administering **screening and assessments as early as possible in criminal justice proceedings**; screening is the first step to ensuring that all people with behavioral health needs are identified and assessed to determine whether they are eligible candidates for diversion.
- Establishing **information-sharing protocols**¹⁸ to ensure that decision-makers have access to needed health information while protecting individual privacy in compliance with federal (including both the Health Insurance Portability and Protection Act and 42 C.F.R. Part 2) and state privacy law. This may include obtaining authorizations to share information and determining what information can be kept out of public court files and open court hearings.
- Determining appropriate adaptations to court operations, such as **designated calendars** for diversion cases.
- Initiating relationships with behavioral health treatment providers and support services in the community to **establish processes** for referrals to quality care and supports and for reporting appropriate information back to the court on participant progress.
- Developing **engaging relationships with diversion participants** in the courtroom that are based on transparency and accountability.¹⁹ Attention should also be paid to developing a role for people interested and trained in the impacts of mental illnesses and trauma and people with lived experience as trainers, peer resource specialists, or court navigators.²⁰
- **Tailoring supervision and services** to the specific person’s needs for supervision and treatment; this should also include matching people with gender and culturally appropriate services, as well as minimizing any barriers to accessing these services (e.g., ability to pay, transportation, and child care).

Kalamazoo, Michigan’s Mental Health Recovery Court (MHRC), an FY2008 Justice and Mental Health Collaboration Program grantee, focuses its efforts on people who frequently encounter both the mental health and criminal justice systems. Referrals to MHRC come from judges, the prosecuting attorney’s office, defense attorneys, jail staff, treatment agencies providing integrated recovery services, and the Kalamazoo Community Mental Health and Substance Abuse Services staff. From October 2008 to February 2014, 275 people agreed to participate in the MHRC. Those who successfully completed the program went from an average of 10 days in jail in the year prior to participation to 6 days in the year; they also experienced fewer and shorter psychiatric hospitalizations and ER visits.²¹

Where and what can people be diverted to?²²

The exact treatment services provided once someone has been diverted will vary based on individually assessed needs and each community's resources. However, once eligible people are identified through screening and assessment, they should be connected to a clinically appropriate level of care, needed supports (such as education and housing), and case management.²³ Some examples include:

- Community-based behavioral health treatment centers that offer case management, peer services, group therapy, and/or individualized services
- Recovery community and outreach centers
- Holistic interventions to address whole health, which involve multi-disciplinary teams in health care settings such as Federally Qualified Health Centers, connections to health homes, Assertive Community Treatment (ACT) teams and Forensic ACT teams²⁴, and Forensic Intensive Case Management²⁵
- Supportive housing that offers affordable housing with wraparound services
- In-patient or residential treatment or partial hospitalization
- Community corrections centers operated by probation and/or parole agencies—an emerging model meant to couple community supervision with services and programs that help ensure people are sufficiently supported during their transition to the community

Endnotes

1. Henry J. Steadman et al., "Prevalence of Serious Mental Illness among Jail Inmates," *Psychiatric Services* 60, no. 6 (2009): 761–765.
2. Desmond Loong et al., "The Effectiveness of Mental Health Courts in Reducing Recidivism and Police Contact: A Systematic Review," *Community Mental Health Journal* no. 55 (2019): 1073-1098, <https://www.ncbi.nlm.nih.gov/pubmed/31175516>.
3. See, Roger Peters, et al., "Co-Occurring Disorders in Treatment-Based Courts: Results of a National Survey," *Behavioral Sciences & the Law*, no. 6 (2012): 800-820.
4. The Council of State Governments (CSG) Justice Center, *Behavioral Health Diversion Interventions: Moving From Individual Programs to a Systems-Wide Strategy* (New York: the CSG Justice Center, 2019).
5. The National Association of Drug Court Professionals (NADCP) offers a variety of resources related to treatment courts, see "Treatment Courts Work," NADCP, accessed March 31, 2020, <https://www.nadcp.org/>.
6. See, *Developing a Mental Health Court: An Interdisciplinary Curriculum* for further information related to translating current research on mental health courts into program design and operation; "About the Curriculum," the CSG Justice Center, accessed March 31, 2020, <https://csjusticecenter.org/projects/mental-health-courts/learning/about/>.
7. For an overview of diversion research, see "A Synopsis of Pertinent Research," The Center for Effective Public Policy, accessed March 31, 2020, <https://cepp.com/diversion-101-a-synopsis-of-pertinent-research/>. A number of studies have looked at the impact of **mental health courts**, including Virginia Hiday, B. Ray, and H. Wales, "Longer-Term Impacts of Mental Health Courts: Recidivism Two Years After Exit," *Psychiatric Services* no. 67 (2016): 378-383; Karli J. Keator, "The Impact of Treatment on the Public Safety Outcomes of Mental Health Court Participants," *American Behavioral Scientist* no. 57 (2013): 231–243, <https://doi.org/10.1177/0002764212465617>; Sheryl Kubiak et al., "Cost Analysis of Long-term Outcomes of an Urban Mental Health Court," *Evaluation and Program Planning* no. 52 (2015): 96-106, <https://doi.org/10.1016/j.evalprogplan.2015.04.002>; and Henry J. Steadman et al., "Effect of Mental Health Courts on Arrests and Jail Days," *Archives of General Psychiatry* no. 68 (2011): 167-172, <https://www.ncbi.nlm.nih.gov/pubmed/20921111>. For research summaries on **drug courts** in the context of people with co-occurring disorders, see Roger Peters, et al., "Co-Occurring Disorders in Treatment-Based Courts: Results of a National Survey," *Behavioral Sciences & the Law*, no. 6 (2012): 800-820. The initial "**proof of concept**" for behavioral health diversion, including both pre-booking and post-booking programs, is Henry J. Steadman and Michelle Naples, "Assessing the Effectiveness of Jail Diversion Programs for Persons with Serious Mental Illness and Co-Occurring Substance Use Disorders," *Behavioral Sciences & the Law* 23, no. 2 (2005): 163–70, <https://doi.org/10.1002/bsl.640>.
8. This section draws heavily from and expands upon the list developed in: Substance Abuse Mental Health Services Administration (SAMHSA), *Municipal Courts: An Effective Tool for Diverting People with Mental and Substance Use Disorders from the Criminal Justice System* (Rockville, MD: SAMHSA, 2015), <https://store.samhsa.gov/product/Municipal-Courts-An-Effective-Tool-for-Diverting-People-with-Mental-and-Substance-Use-Disorders-from-the-Criminal-Justice-System/SMA15-4929>.
9. Ibid. See also, The National Association of Pretrial Services Agencies (NAPSA), *Standards on Pretrial Diversion/Intervention* (Washington, DC: NAPSA, 2008), <https://drive.google.com/file/d/0B1YlojVNUF5MfYbW9COUHWZkk/view>.
10. For an example, see *District of Columbia Superior Court, District of Columbia Superior Court Mental Health Community Court (MHCC) Case Management Plan* (Washington, DC: District of Columbia Government), <https://www.dccourts.gov/sites/default/files/matters-docs/MentalHealthCommunityCourtCaseManagementPlan.pdf>.
11. Social workers or other mental health professionals can also be co-located in public defenders' offices to screen and assess clients, helping attorneys identify eligible defendants for behavioral health diversion programs. See, Texas Indigent Defense Commission, *Texas Mental Health Defenders Programs* (Austin, TX: Texas Indigent Defense Commission, 2018), http://www.tidc.texas.gov/media/58014/tidc_mhdefenders_2018.pdf.
12. Hallie Fader-Towe and Fred C. Osher, *Improving Responses to People with Mental Illnesses at the Pretrial Stage: Essential Elements*, (New York: the CSG Justice Center, 2015), <https://csjusticecenter.org/publications/improving-responses-to-people-with-mental-illnesses-at-the-pretrial-stage-essential-elements/>.
13. Michael Rempel et al., *NIJ's Multisite Evaluation of Prosecutor-Led Diversion Programs: Strategies, Impacts, and Cost-Effectiveness*, (New York: Center for Court Innovation, 2018), https://www.courtinnovation.org/sites/default/files/media/document/2017/Pretrial_Diversion_Overview_ProvRel.pdf. For more information on prosecutor-led diversion, see "Prosecutor-Led Diversion Toolkit," Association for Prosecuting Attorneys, accessed April 1, 2020, <https://www.diversiontoolkit.org/>.
14. For more information, see Judges and Psychiatrists Leadership Initiative, *Practical Considerations Related to Release and Sentencing for Defendants Who Have Behavioral Health Needs: A Judicial Bench Card* (New York: the CSG Justice Center, 2017), https://csjusticecenter.org/wp-content/uploads/2020/02/11.10.17_JC_BenchCard.pdf.
15. SAMHSA, *Municipal Courts: An Effective Tool for Diverting People with Mental and Substance Use Disorders from the Criminal Justice System* (Rockville, MD: SAMHSA, 2015), <https://store.samhsa.gov/product/Municipal-Courts-An-Effective-Tool-for-Diverting-People-with-Mental-and-Substance-Use-Disorders-from-the-Criminal-Justice-System/SMA15-4929>.
16. For an example of a behavioral health court liaison program that is being implemented statewide, see Colorado's *Statewide Behavioral Health Court Liaison Program 2018* SB 18-251, <https://leg.colorado.gov/bills/sb18-251>.
17. NAPSA, *Promising Practices in Pretrial Diversion* (Washington, DC: NAPSA, 2009), <https://netforumpro.com/public/temp/ClientImages/NAPSA/20b9d126-60bd-421a-bcbf-1d12da015947.pdf>.
18. John Petriala and Hallie Fader-Towe, *Information Sharing in Criminal Justice-Mental Health Collaborations: Working with HIPAA and other Privacy Laws* (New York: the CSG Justice Center, 2010), <https://csjusticecenter.org/publications/information-sharing-in-criminal-justice-mental-health-collaborations/>.
19. National Center for State Courts (NCSC), *Effective Court Responses to Persons with Mental Disorders* (Williamsburg, VA: NCSC, 2018), <https://www.ncsc.org/-/media/Files/PDF/Topics/Criminal/Effective-Court-Responses-Mental-Disorders.ashx>.
20. Fair and Just Prosecution, *Promoting justice through leadership and innovation* (United States: Fair and Just Prosecution, 2018), https://fairandjustprosecution.org/wp-content/uploads/2018/07/FJP_Brief_MentalHealth.pdf.
21. Dr. Catherine Kothari, *Evaluation Report For Kalamazoo Mental Health Recovery Court* (Kalamazoo, MI: Western Michigan University, 2014), <https://med.wmich.edu/sites/default/files/Kalamazoo%20Mental%20Health%20Recovery%20Court%20Evaluation%20Report.pdf>.
22. For more information, see also, National Alliance on Mental Illness, *Divert to What? Community Services That Enhance Diversion* (Washington, DC: Bureau of Justice Assistance, 2020).
23. See, "Collaborative Comprehensive Case Plans," the CSG Justice Center, accessed April 1, 2020, <https://csjusticecenter.org/publications/collaborative-comprehensive-case-plans/>.
24. SAMHSA, *Forensic Assertive Community Treatment (FACT): A Service Delivery Model For Individuals with Serious Mental Illness Involved with the Criminal Justice System* (Rockville, MD: SAMSHA, 2019), <https://store.samhsa.gov/product/Forensic-Assertive-Community-Treatment-FACT-A-Service-Delivery-Model-for-Individuals-With-Serious-Mental-Illness-Involved-With-the-Criminal-Justice-System/PEP19-FACT-BR>.
25. National Center for State Courts (NCSC), *Effective Court Responses to Persons with Mental Disorders* (Williamsburg, VA: NCSC, 2018), <https://www.ncsc.org/-/media/Files/PDF/Topics/Criminal/Effective-Court-Responses-Mental-Disorders.ashx>.