

experience of court participants is another aspect of ensuring voluntariness, and may help improve the success of court participants.

## 6. PARTICIPANT IDENTIFICATION

The prompt identification of potential participants and quick determination of their eligibility for the court is essential. Efficient and effective participant identification requires the development of processes for:

- Receiving referrals
- Screening referrals for eligibility
- Gathering further information about those who screen positive
- Making final eligibility determinations

Each court accomplishes these tasks differently, based on the organization of its criminal justice system and its staffing complement. The guide describes these four processes as separate events in order to highlight the various components of

## screening defined

In this section, the term screening refers to the process by which a mental health court determines whether a defendant is eligible for the program according to the legal and clinical criteria established. A positive screen does not mean that the defendant will ultimately be admitted into the program, just that they fit within the target population, and that more information should be gathered to determine their appropriateness for the mental health court.

The term screening has a distinct meaning in correctional institutions. In general, screening in jails and prisons is divided into two segments.<sup>51</sup>

- **Receiving Mental Health Screening.** Mental health information and observations, particularly risk of suicide, gathered about every

new inmate or detainee when they arrive at an institution, usually based on a standard screening form.

- **Intake Mental Health Screening.** A more comprehensive screening performed within 14 days of arrival at an institution, which usually includes a review of the receiving screening, behavior observations, and an inquiry into mental health treatment history.

Inmates who screen positive at either juncture are usually referred for a more comprehensive mental health assessment.

participant identification. However, some mental health courts accomplish multiple tasks simultaneously (e.g., screening and gathering further information).

## Referrals

Information that an arrestee may have a mental illness can come from a number of different sources, including police, jail staff, probation officers, judicial officers, drug court programs, pretrial services staff, prosecutors, defense attorneys, mental health or substance abuse treatment providers, family, friends, or defendants themselves. Almost all mental health courts accept referrals from a combination of these sources, helping to ensure the identification of appropriate participants. But casting a wide net carries with it complications: ultimately many people are found to be ineligible, either because of their legal charges, their diagnoses, or their decision not to participate. These negative screenings mean that significant court staff time is devoted to people who will not participate in the program.\*

For this reason, court planners should consider identifying primary and secondary referring agents (e.g., the public defender's office, the jail) from which they receive most of their referrals.<sup>52</sup> A recent study of seven mental health courts revealed that four of the courts received more than 40 percent of their referrals from one office or program (e.g., the public defender's office).<sup>53</sup> Pretrial services programs, which interview people shortly after arrest to gather information to be used by the court at a bail-setting hearing, are particularly well-positioned to identify and refer people to the mental health court.

### EXAMPLE: Hamilton County Pretrial Services Program (Ohio)

In Hamilton County, the pretrial services program added questions to its standard interview to identify mental health issues. When issues are discovered, pretrial staff immediately schedule an assessment by an in-house psychiatrist. As a result, at the defendant's first appearance, the pretrial report contains information related to defendants' mental health status and, where appropriate, a recommendation from the court psychiatrist as to appropriate conditions of release. The report may also suggest a referral to the mental health court for eligible defendants.

Courts should also consider educating potential referral sources about the mental health court's eligibility criteria to reduce time spent processing improper referrals.

### EXAMPLE: Allegheny County Mental Health Court (Pennsylvania)

Allegheny County Mental Health Court staff distribute referral forms to any member of the community upon request. To improve the quality and reliability of referrals, the court conducts training for staff from systems likely to supply referrals, including law enforcement officers, judges, public defenders, prosecutors, service providers, and consumer advocates. Initially, court staff

“Negative” screenings for mental health courts represent an opportunity that mental health court staff should not neglect. People who have mental health problems but are not legally eligible for the mental health court can and should be referred to community mental health services.

used trainings to provide an overview of mental illness and mental health court policy and procedure. After identifying a high rate of inappropriate referrals, court staff decided to focus training on eligibility requirements. Since this change in emphasis, the rate of accepted referrals has increased. (A copy of the referral form used in Allegheny County is in Appendix C.)

### Screening for eligibility

Once referrals are received, mental health courts need to screen them for legal and clinical eligibility for the program. Across mental health courts, screening mechanisms differ substantially as does the person responsible for this task. Most commonly, courts identify a single staff member, usually one with a mental health background, to manage this function. This helps ensure consistency in applying screening instruments and in analyzing eligibility criteria. In some courts, this screener makes recommendations to the court regarding eligibility of the defendants and may even propose a treatment plan. In other courts, screened participants undergo a more comprehensive assessment before a treatment plan is developed.

#### **EXAMPLE: San Bernardino Mental Health Court (California)**

In San Bernardino County, prospective mental health court participants are screened by the district attorney, public defender, and mental health staff, each of whom have veto power over admission. Before a clinical assessment is preformed, the district attorney and the public defender assigned to the mental health court review the defendants' legal histories and current charges. The district attorney essentially sets the upper limit or "legal ceiling" for potential participants: defendants with histories of violence or crimes of a sexual nature are disqualified. The public defender sets the lower limit or "legal floor" for acceptable charges, usually vetoing admission for defendants with limited criminal histories and low level misdemeanor charges. If both the district attorney and public defender agree to recommend a defendant for participation, a licensed clinician assesses the defendant for mental health history and current mental status. Individuals with serious and persistent mental disorders who meet the legal criteria are recommended for admission to the court.

Because of the high frequency of co-occurring disorders among the target population, mental health court screening protocols should include information on both mental health and substance abuse needs.

### 48 | Gathering information

After the initial screening, more comprehensive information about potential participants is required, both to confirm the initial positive screen and to develop a treatment plan which will be presented to the participant and the court team. As with

the screening, the information gathering process is usually centralized in the hands of one or two staff members, who work with staff representing the different components of the criminal justice and mental health systems to gather the necessary background information.

Information about potential participants must be drawn from a variety of sources. Most offenders with mental illnesses have had multiple contacts with the mental health and criminal justice systems, and these agencies can provide information relevant to eligibility and treatment needs. Accessing pre-existing information controls costs by keeping new evaluations to a minimum and also ensures continuity of care. Furthermore, mental health and criminal justice agencies may be able to contribute relevant facts that the defendant is unable or unwilling to provide, such as past offenses, employment history, family contacts, medical insurance and benefits information. As discussed previously, information sharing must comply with all privacy laws and regulations; obtaining a defendant's written consent to release information is the surest way to adhere to these regulations.

**EXAMPLE: Muscogee County Mental Health Court (Georgia)**

The Muscogee County Mental Health Court operates two separate dockets: state court for misdemeanors and superior court for felonies. Referrals for both dockets are sent to the mental health court program director or the case manager, both employees of New Horizons, a community-based mental health treatment agency. The New Horizon employees visit prospective participants individually in the jail clinic (if they are still being detained) or at the New Horizons office (if they have been bonded out) to discuss mental health court programs and to have interested people sign a HIPAA-compliant release of information form. Prospective participants consult with

## mental health assessments

Many mental health courts have a full mental health assessment for each defendant completed prior to making a final determination of eligibility. An assessment (which may also be called an evaluation) requires a mental health professional to examine health records, observe behavior, and administer mental status exams. Proper assessment also requires careful attention and adequate time to rule out medical conditions or substance use that could account for abnormal mood, behavior, or thinking. Often, multiple assessments are needed to sort out diagnoses, duration,

and disability. For this reason, some mental health practitioners argue that an assessment is not a discrete event but rather a continuous process of evaluating a consumer's illness and progress. In some courts, the assessment is completed by a clinician employed by the court, and in others the task is assigned to an outside mental health provider. The timing for assessments also varies: some courts require a completed assessment before eligibility is determined, while some wait until after the participant has volunteered for and been granted entry into the program.

defense counsel either prior to meeting the New Horizon employees or soon thereafter. Some prospective participants are met several times before the information release form is signed to ensure that consent is fully informed. Once the release form is signed, the New Horizon employees compile any past treatment history with the agency, speak with family members, and then prepare a treatment plan. The plan is presented to the court team at the case staffing before the next mental health court session, at which point final eligibility is determined by the prosecutor and the judge.

### Final eligibility decision

Once defendants are screened, legal and clinical eligibility is reviewed, and information is gathered about the participant, a final decision must be made to accept or reject a defendant for participation in the mental health court. Court planners should ensure that all team members have input into this decision. While it is not uncommon for the prosecutor and or the judge to have veto power over all potential participants, efforts to maximize the collaborative nature of the final eligibility decision will serve the team well in the long run.

As noted in the sidebar on assessments (previous page), some courts make a final decision about eligibility and accept a defendant into the court before a full mental health assessment has been completed and before a treatment plan is developed. In these cases, a subsequent hearing may be held to determine the precise treatment and other conditions to which the participant will adhere.

#### **EXAMPLE: Anchorage Court Coordinated Research Project (Alaska)**

Participation in the Anchorage CCRP is determined during an initial opt-in hearing and a second, formal opt-in hearing. At the initial opt-in hearing, which occurs about a week after the individual is screened, defendants sign a waiver of their speedy trial rights and an information release form, after which they are released to the supervision of a mental health case coordinator. The case coordinator develops the treatment plan in conjunction with the defendant, and subsequently shares the plan with the defense attorney. If the defendant and his or her attorney approve the plan, it is shared with the prosecutor and the judge. Upon agreeing to the plan, the defendant returns for a formal opt-in hearing, which occurs, on average, one month after the initial opt-in hearing. Along with ensuring speedy release to the community for potential participants, this process helps to ensure the confidentiality of mental health information, as the defendant, with advice of counsel, has the opportunity to review the plan before it is shared with the prosecution or judge.

As mental health court teams develop systems for identifying and accepting participants, benchmarks for the speed with which defendants will be processed

through these systems should be established. Time limits are especially important for misdemeanor cases, in which defendants could spend more time in jail waiting for a treatment plan to be developed than they might otherwise serve if their cases were processed through the regular court. In such situations, one of the core goals of most mental health courts—reducing jail time for program participants—could be compromised. On the other hand, identifying appropriate treatment resources is difficult, especially for defendants with more significant needs and more serious charges. The need to balance the goals of timeliness, appropriate treatment, and public safety leads to wide variety in processing time across court programs: some mental health courts screen, gather information, and determine eligibility in less than one week, while others take months.

**EXAMPLE: Tempe Municipal Mental Health Court (Arizona)**

Because the Tempe Municipal Mental Health Court targets only people who have an existing case manager with the local mental health system, the court is able to identify most participants and confirm their participation within less than a week of their arrest. Most participants are identified by the prosecutor at pretrial conference, at which they are offered the opportunity to participate in the court program. Interested defendants sign a preliminary contract and release of information form, after which the mental health court liaison works with their case manager to identify the problems that led to their criminal justice involvement and to develop a revised treatment plan. Defendants then appear at the next weekly mental health court hearing, at which point they can decide (with the advice of defense counsel) either to participate or to return to regular court. Even after they have agreed to participate, defendants can opt out of the program at any time with no negative repercussions for their case. Defendants who remain in the court program generally report for status hearings on a monthly basis.

**EXAMPLE: Bronx Mental Health Court (New York)**

The Bronx Mental Health Court targets defendants with mental illnesses who are charged with felony offenses or persistent misdemeanors. A majority of the defendants who are accepted also have co-occurring substance use, trauma histories, and personality disorders. One-third of the participants accepted for diversion are residing in the community following their initial hearing, and are facing jail and prison incarceration; two-thirds of participants, who are typically facing a minimum of two years in prison, are evaluated for diversion while detained in jail. Due to their serious charges, significant service needs, supervision requirements, and lack of community ties, this group stays in jail an average of three months awaiting placement. The Bronx Mental Health Court addresses service gaps by supplementing community resources with intensive direct clinical case management, psychiatric consultation liaison services to the community providers, and with court monitoring.

Either way, ambitious but realistic targets will help the court reduce the time spent in jail for people with mental illnesses who can be supervised safely and effectively in the community.

## 7. INTEGRATION OF TREATMENT AND COMMUNITY SUPPORTS

A mental health court's success is predicated on its participants receiving comprehensive treatment in the community. Unfortunately, this is not as simple as assessing a participant, making a diagnosis, and setting up an appointment for services. People with serious mental illnesses, particularly those who become involved in the criminal justice system, have extensive and complicated needs. Typically, they have co-occurring substance abuse disorders and complicating medical conditions. They are more likely than the general population to be homeless and may lack resources to pay for treatment and other basic needs.

A mental health court that has effectively defined its goals, established a target population, assured voluntariness and confidentiality, developed terms of participation, and identified eligible participants—in other words, a court that has addressed all of the elements discussed thus far—has achieved only the precursors to program success; it has yet to actually apply the intervention designed to produce positive outcomes. This section provides guidance on integrating treatment and related supports into the court process, including identifying the treatment needs of court participants, developing treatment plans, contending with the high prevalence of co-occurring disorders, and planning for the transition of participants out of the mental health court program.

To address these issues, court practitioners will need to understand basic information about mental illnesses and their treatment, subjects which are beyond the scope of this guide. For this reason, CSG has published *Navigating the Mental Health Maze: A Guide for Court Practitioners* as a companion to this document. *Navigating the Mental Health Maze* provides detailed information about the mental health service system, the types of mental illnesses that court participants have, how those illnesses are diagnosed, and the kinds of treatment and supports that participants require.

52 | Representatives of criminal justice agencies participating in mental health court programs are strongly encouraged to consult that guide.