

Prep Work:

Considerations in accepting mental health court applicants pre-adjudication or post-adjudication

- a. On your own, review the steps of the criminal justice process in the figure on the following page.** *If you are unfamiliar with the specific steps in a criminal case, see Introduction to Criminal Justice or consult with a member of your mental health court team who can explain these steps as they occur in your own jurisdiction.*

After an arrest, an individual may be referred to a mental health court during many points as his/her case proceeds to trial and beyond. Because the criminal procedure laws of each state vary, there are many different procedural configurations for mental health courts around the country. The discussion here is kept general to introduce the concepts of pre- and post-adjudication and case status as a consideration in determining who fits within a mental health court's target population.

An individual may be referred to a mental health court during the pre-adjudication stage, or the time prior to a final disposition of his/her case (e.g., at arraignment, in a hearing, or during pretrial proceedings). Some mental health courts that provide case plans with treatment and terms of supervision before adjudication are considered pretrial release programs; where the charges are filed but suspended, these programs are called deferred prosecution programs.

A participant may also be referred to mental health court after his/her case has gone to trial, during the post-adjudication stage. There are a number of ways that this can happen. Participation in a mental health court may be a condition of a plea agreement. It may also be an opportunity that occurs before sentencing or before a sentence is imposed (if the sentence is suspended). Participation in a mental health court program may also be part of a sentence.

In the figure below, the lighter shaded area represents the pre-adjudication stage, and the darker shaded area represents the post-adjudication stage.



b. On your own, read the grid on the following page, which explains the differences between mental health courts that take cases that are pre-adjudication and those that take post-adjudication cases.

As discussed above, some mental health courts take individuals whose cases are at pre-adjudication stages of the criminal justice process; others take post-adjudication cases, and still others take cases with both statuses.

There are a number of legal and other considerations in deciding which case status (or statuses) your mental health court will accept. The table on the following page summarizes two major considerations:

1. How mental health court participation can impact a criminal case that is pre-adjudication and one that is post-adjudication
2. How different stakeholders have generally reacted to mental health court participation for pre- and post-adjudication cases

Some of the concepts introduced in this table draw from constitutional and criminal law. Team members should consider discussing these materials as a group so that the mental health court judge and attorneys can explain specific, local legal issues in more detail. Similarly, local behavioral health care providers and case managers will be able to explain to other team members about how case status impacts access to treatment services and supports.

Module 4

Impact on Criminal Case

Pre-Adjudication

(no guilty plea or verdict required)

An individual participates in the mental health court program during pretrial diversion or deferred prosecution. If s/he is successful in the program, the charges are dropped. If s/he is unsuccessful in the program, s/he returns to court for trial.

The individual is not required to admit guilt in the matter.

The individual still has the right to a trial if s/he does not satisfy the program's requirements.

Every criminal defendant has a right to a speedy trial. If an individual participates in a mental health court program before the case is adjudicated, each day of mental health court participation is a day that the trial becomes less "speedy" and the pretrial period is lengthened.

Post-Adjudication

(plea in place)

An individual participates in the mental health court program during the pre-sentencing stage, with a suspended sentence, or as a condition of probation. If s/he is successful in the program, his/her sentence is not imposed or is reduced. If unsuccessful in the program, s/he returns to court for sentencing, has the sentence imposed, or continues on probation.

Like all plea agreements, the individual waives his/her right to trial, including the right to plead "not guilty" and defend him/herself against the charges.

Common Stakeholder Concerns

Pre-Adjudication

(no guilty plea or verdict required)

Stakeholders are often concerned that pre-adjudication programs do not have the same impact on participant behavior because the potential costs of noncompliance are less severe than those post-adjudication. Existing research does not support these concerns.

Because an individual may participate in a pre-adjudication mental health court for a significant period of time, prosecutors may face difficulty gathering witnesses and facts for trial if the case returns to the normal criminal justice system.

However, some prosecutors are willing to allow defendants to "stipulate to (i.e., agree on) the facts" so that the prosecutor does not need to worry about preserving evidence or finding witnesses later if the case returns to trial.

Many court administrators, prosecutors, and defense attorneys are concerned that a pre-adjudication program will add to criminal justice system costs because it does not guarantee that trial costs are eliminated.

Post-Adjudication

(plea in place)

Defendants may believe that they can only access treatment through program participation and may feel compelled to plead guilty to obtain needed behavioral health treatment.

If an individual is either found guilty or pleads guilty, s/he then has a recorded criminal conviction. Certain housing, benefits, and employment opportunities exclude individuals with criminal convictions (or with felony convictions). Limited access to housing, benefits, and other opportunities are called collateral consequences of a criminal conviction.

However, many jurisdictions have found options within the criminal code to alleviate collateral consequences. Other programs guarantee that successful participants will have their convictions vacated and records expunged. However, this may be a time-consuming process, and state law may limit a program's ability to offer this option.