


Improving Case Processing and Outcomes for People with Behavioral Health Needs

February 2021



Ensuring that each criminal case progresses efficiently promotes not only the effective use of limited resources, but also the well-being of defendants. When people spend hours going to and from court appearances that do not help move their case toward resolution, and then must wait weeks for their next appearance, their sense of **procedural justice** suffers. For people with behavioral health needs, case processing delays also mean disruptions to routine with each additional court appearance and prolonged separation from community-based treatments and supports.

Minimizing the number of cases involving people with behavioral health needs through prevention and early diversion is an important first step to reducing the impact of case processing delays. For criminal cases that do arise among this group, this brief presents opportunities to improve **caseflow management** as well as outcomes for individuals. These strategies are based on a virtual learning collaborative hosted by The Council of State Governments Justice Center, along with the National Center for State Courts, that brought together nine interdisciplinary teams¹ from across the country to explore how to improve case processing and individual outcomes for people with behavioral health needs. Judges, attorneys, court administrators, and court employees are all critical to advancing these opportunities, but many of the strategies suggested here also require effective partnerships among the courts, other justice and health stakeholders, and community agencies.

Key Terms

Procedural justice refers to the sense of fairness and equity that defendants feel about the criminal justice and court systems.² Research shows that procedural justice leads to better compliance with court orders and reduces recidivism,³ including for individuals with behavioral health needs.⁴

Caseflow management is the utilization of systems, information, and other resources to help cases move efficiently through the court system.⁵

Opportunities for Improvement at Each Stage of Caseflow Management

1



Jail

Ensure that all defendants are screened using a validated questionnaire for behavioral health needs and receive appropriate assessments by a clinician when indicated.

- Communicate screening/assessment results to defense counsel and other relevant partners in accordance with information-sharing protocols to inform decision-making.
- Develop an interdisciplinary committee to consistently review the jurisdiction's jail census and identify defendants who are potentially eligible for diversion.

2



Arraignment (first court appearance)

Screen all previously unscreened defendants for behavioral health needs prior to arraignment (at jail or at courthouse).

- Bring assessment capacity to the courthouse through a co-located clinician at arraignments or a drop-in assessment center by the courthouse.
- Refer defendants to a court liaison who can help them navigate court processes and connect them to treatment and support services if appropriate.
- Check that pretrial release policies do not lead to detention based on mental health status.

3



Appointment of counsel (defense attorney assigned to defendant)

Appoint counsel prior to defendants' first appearance or arraignment.

- Assign specialized prosecution and defense counsel experienced with defendants who have behavioral health needs, if possible.

4



Evaluation for problem-solving court or specialized behavioral health docket

Refer potentially eligible defendants to a problem-solving court or specialized docket immediately after arraignment so any assessments and treatment referrals can be completed by treatment court staff/clinicians as soon as possible.

- Develop written, objective eligibility criteria for all problem-solving courts, communicate those criteria to potential referral sources, and do collaborative eligibility assessments across different programs to streamline the referral/acceptance process.

5



Charging process

(prosecutors' decision of what criminal charges to file, including citations, tickets, complaints, indictments)

- Encourage prosecutors and judges to consider diversions from the criminal justice system, especially pretrial diversion options in lieu of bail/remand.
- Continue using court liaisons to help defendants understand the legal process and identify appropriate treatment and supports.
 - Prioritize communication and partnerships among all court stakeholders when making charging and diversion decisions.

Using Technology in Court Processing for Defendants with Behavioral Health Needs

CONSIDERATIONS

Defendants should have access to technology, sufficient internet speed, and an understanding of how to use technology or a support person to help.

- Video court appearances can reduce transportation time for defendants and may even reduce failures to appear and the need for warrants.

- Some stakeholders report that virtual appearances can be less adversarial than in-person ones.

The extent to which defendants with behavioral health needs can engage with the court virtually varies. Some report that technology can limit engagement and comprehension, while others say that virtual appearances are less stressful, more effective, and easier to understand.

- While some fear that virtual hearings reduce the impact of sanctions and rewards, others report creative ways to encourage positive behavior virtually.⁶

6



Court proceedings

Ensure that each court event contributes to the progress of the case.

- Keep adjournments and continuances (postponements of scheduled court proceedings) to a minimum and, if they are granted, tailor the amount of time to the specific reason for the continuance.

- Set firm timelines for each phase of proceedings.

- Consider alternatives to the criminal justice process, such as civil diversions.

- Consider scheduling a court “appointment” with each defendant for a specified time, rather than scheduling groups of defendants for large blocks of time.

7



Disposition (final case settlement or resolution)

Clearly communicate with the defendant to ensure that they understand what is happening and why and answer any questions as needed.

8



Sentencing (imposition of a penalty/punishment)

Use results of behavioral health assessment and risk and needs assessment completed prior to disposition to inform sentencing decisions.

- Consider opportunities for diversion to reduce collateral consequences of jail time (loss of benefits, disruption of medication regimen, disconnection from community behavioral health services and supports) and conviction.

9



Probation/ Parole

Create specialized probation/parole caseloads for people with behavioral health needs.

- Use jail sanctions only as a last resort to address violations and non-compliance.

- Arrange scheduling to accommodate the ability to provide quick responses to behavior.

Competency to stand trial,

or a person’s ability to assist in their own defense, may arise at numerous points in a criminal case.⁷

Improvements to the competency evaluation process include:

- **Reserve** the competency evaluation process for serious cases where there is a significant interest in restoring competency so that the defendant can face trial.

- **Evaluate** competency promptly once doubts about competency are raised.

- **Use** virtual or community-based evaluations; only use custodial settings for evaluations if clinically indicated or required for public safety.

- **Refer** individuals to competency restoration based on their clinical level of care needs and use the least restrictive approach possible (i.e., outpatient vs. inpatient).



Endnotes

1 Participating sites were Pima County, Arizona; Lake County, Colorado; Douglas County, Kansas; Cumberland County, Maine; multiple sites in New Mexico coordinated through the state Administrative Office of the Courts; Lockport, New York (municipal court); Beaverton, Oregon (municipal court); Marion County, Oregon; Tarrant County, Texas.

2 Emily Gold LaGratta, *Procedural Justice: Practical Tips for Courts* (New York: The Center for Court Innovation, 2015), <http://www.sconet.state.oh.us/JCS/specDockets/conference/2017/materials/Crawford/crawfordPracticalTips.pdf>.

3 See, e.g., T.R. Tyler, *Why People Obey the Law* (New Haven, CT: Yale University Press, 1990); M.S. Frazer, *The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center* (New York: The Center for Court Innovation, 2006); Andrew V. Papachristos, Tracey Meares, and Jeffrey Fagan, "Attention Felons: Evaluating Project Safe Neighborhoods in Chicago," *Journal of Empirical Legal Studies* 4, no. 2 (2007): 223–272.

4 Heathcote W. Wales, Virginia Aldigé Hiday, and Bradley Ray, "Procedural Justice and the Mental Health Court Judge's Role in Reducing Recidivism," *International Journal of Law and Psychiatry* 33, no. 4 (2010): 265.

5 "Caseflow Management Resource Guide," National Center for State Courts, accessed September 28, 2020, <https://www.ncsc.org/topics/court-management/caseflow-management/resource-guide>; Brian J. Ostrom et al., *Success in Criminal Caseflow Management* (Williamsburg, VA: National Center for State Courts, 2020), https://www.ncsc.org/_data/assets/pdf_file/0018/53217/Success-in-Criminal-Caseflow-Management-Lessons-from-the-Field.pdf. For more information, see "Effective Criminal Case Management Project," National Center for State Courts, accessed February 17, 2021, <https://www.ncsc.org/services-and-experts/areas-of-expertise/caseflow-and-workflow-management/effective-criminal-case-management>.

6 For more on this topic, see "Providing Court-Connected Behavioral Health Services During the Pandemic: Remote Technology Solutions," National Center for State Courts, accessed December 17, 2020, https://www.ncsc.org/_data/assets/pdf_file/0014/42314/Behavioral-Health-Resources.pdf.

7 For more information, see Hallie Fader-Towe and Ethan Kelly, *Just and Well: Rethinking How States Approach Competency to Stand Trial* (New York: The Council of State Governments Justice Center, 2020), <https://csgjusticecenter.org/publications/just-and-well-rethinking-how-states-approach-competency-to-stand-trial/>.