

Competency and Mental Health Court Developments During the Pandemic

The [Mental Health Initiative](#) at the [National Center for State Courts](#) facilitated a virtual meeting on April 14th, 2020 with seven trial judges across the country on competency challenges and solutions during the pandemic (Judge James Bianco from Los Angeles County, California; Judge Jonathan Shamis from Lake County, Colorado; Judge Nan Waller from Multnomah County, Oregon; Judge Michael Hintze from Phoenix, Arizona; Judge Mark Stoner from Marion County, Indiana; Judge George Lipman (Ret.) from Baltimore City, Maryland; and Judge Matthew D’Emic from Brooklyn, New York).ⁱ The group discussed solutions that mental health courts are implementing due to challenges associated with COVID-19. Below are the key observations discussed during the virtual meeting.

Key Observations:

1. *Competency evaluations are often being conducted remotely (telephonically or through videoconferencing) or through no-contact jail visits.*
 - Community mental health organizations are working hard to get people placed, providing remote competency training, and going to the shelters where people are placed to check in on how they are managing through the pandemic.
 - Some jurisdiction’s jails do not have any video-conferencing capacity; however, evaluators can conduct a non-contact evaluation and turn around the evaluations at a fast rate.
 - Additionally, some jurisdictions have evaluators conducting remote/video evaluations with people who have been released to the community.
 - Others are only conducting evaluations with people currently in-custody and continuing evaluations for those who are out-of-custody.
2. *More careful consideration is taken by system stakeholders on who should be arrested or remain in jail.*
 - There has been an increased willingness amongst stakeholders to not keep people in custody if they do not pose a high public safety risk.
 - Tracking the outcomes of those who are released from incarceration during the pandemic may provide evidence to support reforms to release people from jails who are low-risk post-pandemic.
 - Although data to support these changes would be ideal, anecdotal evidence and situational exposure should not be discounted as important factors in change-making through shifts in the opinions and attitudes of stakeholders.
 - Many people charged with misdemeanors who were found incompetent and awaiting an available bed for treatment in the community are increasingly being released from custody.
 - In Los Angeles, the Office of Diversion and Reentry received funding from the county and created 100s of treatment beds in the community within a week. People with misdemeanors received priority for the beds.

- There is a push to get people released as quickly as possible for in-custody matters where the result is going to be a resolution of the case or release of the person.
 - The bar for arrests has been raised.
 - Many states are seeing a decrease in the number of arrests.
 - In some jurisdictions, there is a strong presumption by justice system stakeholders to not take into custody people who do not need to be processed. There is a concern that there are people with risk and responsivity needs who are simply getting released with little to no supervision.
3. *People experiencing mental and behavioral health disorders are more significantly impacted by COVID-19.*
- It has become clear that those who have more financial access and privilege can manage through a crisis better. Those with serious mental illness often lack access to technology, shelter, and other services.
 - Those who are facing social or economic disadvantages are suffering the impact of COVID-19 far worse than those with resources.
 - Post-pandemic, this should be an impetus to begin looking into the availability of supportive services in communities to better assist people in managing their court cases, through a crisis, and generally through their lives.
 - The disparity between people who need a little help to stay in the community versus those who need a lot of help is evident now more than ever.
 - The digital divide has been emphasized by the increase in the use of remote technology.
 - Individuals with mental illness in the court system are less likely to have access to devices or the internet and/or knowledge of how to properly connect with others via video/remote conferencing.
 - Creating tutorials or guidance on how to access and use technology that the court provides may be useful for court users.
 - Additionally, providing access to technology – by offering smartphones or other devices to court users – can be an essential element to ensuring that those released to communities can stay connected to courts and needed services to be successful in the community.¹
4. *There are not many community resources available for people being released.*
- Although there has been an increase in the release rates for people with mental and behavioral health disorders charged with misdemeanors and low-level felonies, there are often insufficient resources available in the community.
 - There has been an uptick in the number of people experiencing homelessness.
 - Many people on the streets are “familiar faces” to behavioral health service providers.

¹ Torous, J. & Keshavan, M. (2020). COVID-19, mobile health and serious mental illness. *Schizophrenia Research*. Retrieved from cloudfront.net

- Judges are seeing an increase in the number of people being released without places to go. Many shelters are overflowing, and the jails are releasing as much as possible.
- Some community providers are reluctant to take new referrals because they may need to quarantine them if their COVID-19 status is not available.
 - As testing for COVID-19 ramps up, the mental health population that is justice-impacted should be in the top priority of getting tested to allow for a continuum of care. Providers will be more willing to take in this population if they test negative. This will allow for less use of more restrictive alternatives.
 - Participants in problem-solving courts could be moving to better housing services or wraparound services if there were some assurance to those providers that they were not taking on a client with coronavirus.

5. *Increases in the use of remote technology to provide services to the justice-involved population with mental and behavioral health disorders.*

- The ability to respond effectively depends on a court's ability to adapt to technology – a court operations issue, rather than a competency issue.
- The increase in the use of technology may lead to people becoming more comfortable with providing more services remotely, such as telehealth and remote court hearings.
- Colorado has started a program “Cop Car Court” to create a mechanism to assess the needs of people without requiring them to come into a courthouse or be sent to jail to await access to services.
 - Officers use a tablet, smartphone, or other electronic devices to hold this virtual court 24/7 to connect people to needed services.
 - Many mental health services are being held remotely through teletherapy – so people are only able to get connected to services this way while in-person services are unavailable.
- It is evident that courts can do more remotely than originally believed to support the justice-impacted population with mental and behavioral health disorders.
 - The logistics can be trickier for those with mental illness because of the need for extra supportive services.
 - Large bureaucracies such as Department of Corrections, health and hospital systems, Mayors' offices, Departments of Health and Human Services, mental health systems, and the court system are working together for the common good and doing it virtually.
 - States are continuing to move forward to increase and assess which operations will be available virtually.

6. *Many mental health courts have continued remote operations as much as possible.*

- Staff for and judges presiding over mental health courts that have continued operations are pleased that they have been able to use technology to remain connected with participants and reinforce positive experiences from the program for those in the community.

- Additionally, mental health court participants are appreciative that the court is taking the time and making the effort to contact them – in contrast to normal operations where participants are required to initiate the contact and physical be at the courthouse.
- Staff and judges presiding over mental health courts are learning as they go and continuing to try different approaches to conduct court from a distance.
 - Court appearances, treatment, and supervision have all been done by videoconferencing or phone.

i Patti Tobias and Richard Schwermer facilitated the virtual meeting and Jackie Gilbreath prepared this summary.