

Improving Outcomes for People with Behavioral Health Needs: Diversion and Case Processing Considerations During a Pandemic

A Pandemic Resource for Courts

Developed in collaboration with the National Judicial Task Force to Examine State Courts' Response to Mental Illness

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The purpose of this brief is to acquaint court leaders with opportunities to influence change in their courts and communities during these difficult times and to implement practices that will result in better outcomes for those with behavioral health needs. The National Center for State Courts (NCSC) joined the Council of State Governments (CSG) Justice Center in leading a virtual peer learning collaborative consisting of three sessions on how to improve criminal case processing for defendants with behavioral health needs as part of the Justice and Mental Health Collaboration Program. Nine jurisdictions participated in the learning collaborative.¹ Each jurisdiction participated through a team including (at least) a judge, court administrator, jail or correctional staff member, prosecutor, defense attorney, and behavioral health provider. The peer learning collaborative included topics such as caseload management principles; procedural justice; discussions regarding specific programs such as court liaisons, centralized functions, and sanctions and incentives. Teams participated in discussions and shared innovations and challenges. The CSG Justice Center and NCSC have drafted a brief, [“Improving Case Processing and Outcomes for People with Behavioral Health Needs”](#) which includes strategies for improving case processing that emerged during the peer learning collaborative. This brief, developed by NCSC as part of its Pandemic Resources series, builds on that brief and highlights strategies for diversion and case processing during and after the pandemic.

During the pandemic, resolution of criminal cases has slowed, and oftentimes only urgent matters are efficiently progressing through the system. Resources used by the criminal justice system to help resolve cases, such as behavioral health agencies, have gone virtual and stopped taking clients. Therefore, it is taking longer to resolve cases of persons with behavioral health needs who already struggle to have their cases move efficiently through the system; they are spending more time in jail and are seeing increased delays due to the pandemic. These case processing delays cause disruption to routine, separation from community-based treatment, and supports which can exacerbate behavioral health issues.

The use of diversion, caseload management, and procedural justice to ensure that criminal cases progress through the system are more critical now than ever to ensure the well-being of persons with behavioral health needs. Diversion from the criminal justice system to the behavioral health system should be the first step in reducing the number of persons with behavioral health needs in the criminal justice system. Caseload management must next be

utilized to identify persons with behavioral health needs and monitor their efficient progress. This brief presents opportunities to improve outcomes for persons with behavioral health needs through the utilization of diversion and caseflow management. Coordination and collaboration of the criminal justice and behavioral health systems, as well as establishing partnerships with community agencies, are critical to advancing these opportunities.

Understanding the basic principles of caseflow management will enable you to better manage cases. Caseflow management is the coordination of court processes and resources so that court cases progress in a timely fashion from filing to disposition. Judges and administrators can enhance justice when a court supervises case progress from the time of filing, sets meaningful events and deadlines throughout the life of a case, and provides credible trial dates. Proven practices in caseflow management include:

- Case disposition time standards,
- Early court intervention and continuous court control of case progress,
- Use of differentiated case management,
- Meaningful pretrial events and schedules,
- Limiting of continuances,
- Effective calendaring and docketing practices,
- Use of information systems to monitor age and status of cases, and
- Control of post disposition case events.^{II}

New principles are also needed to address today's challenges including the behavioral health crisis, pandemic challenges and opportunities, and racial injustice. These challenges call for additional principles on topics such as:

- Court Organization
- Human Resources
- Technology
- Community Support
- Collaboration and Innovation
- Accountability
- Problem-Solving Approaches
- Procedural Fairness

Key Terms

Diversion provides alternatives to incarceration that connect eligible people to community-based treatments and supports.^{III} Justice diversion programs provide the critical strategy of limiting the involvement of persons with behavioral health needs in the criminal justice system and shift focus to improving behavioral health.^{IV} Diversion can occur prior to or after arrest.

Caseflow Management is the utilization of systems, information, and other resources to help cases move efficiently through the court system.^{V,VI}

Procedural Justice refers to the sense of fairness and equity that defendants feel about the criminal justice and court systems.^{VII} Research shows that implementing procedural justice techniques leads to better compliance with court orders and reduces recidivism,^{VIII,IX} including for individuals with behavioral health needs.

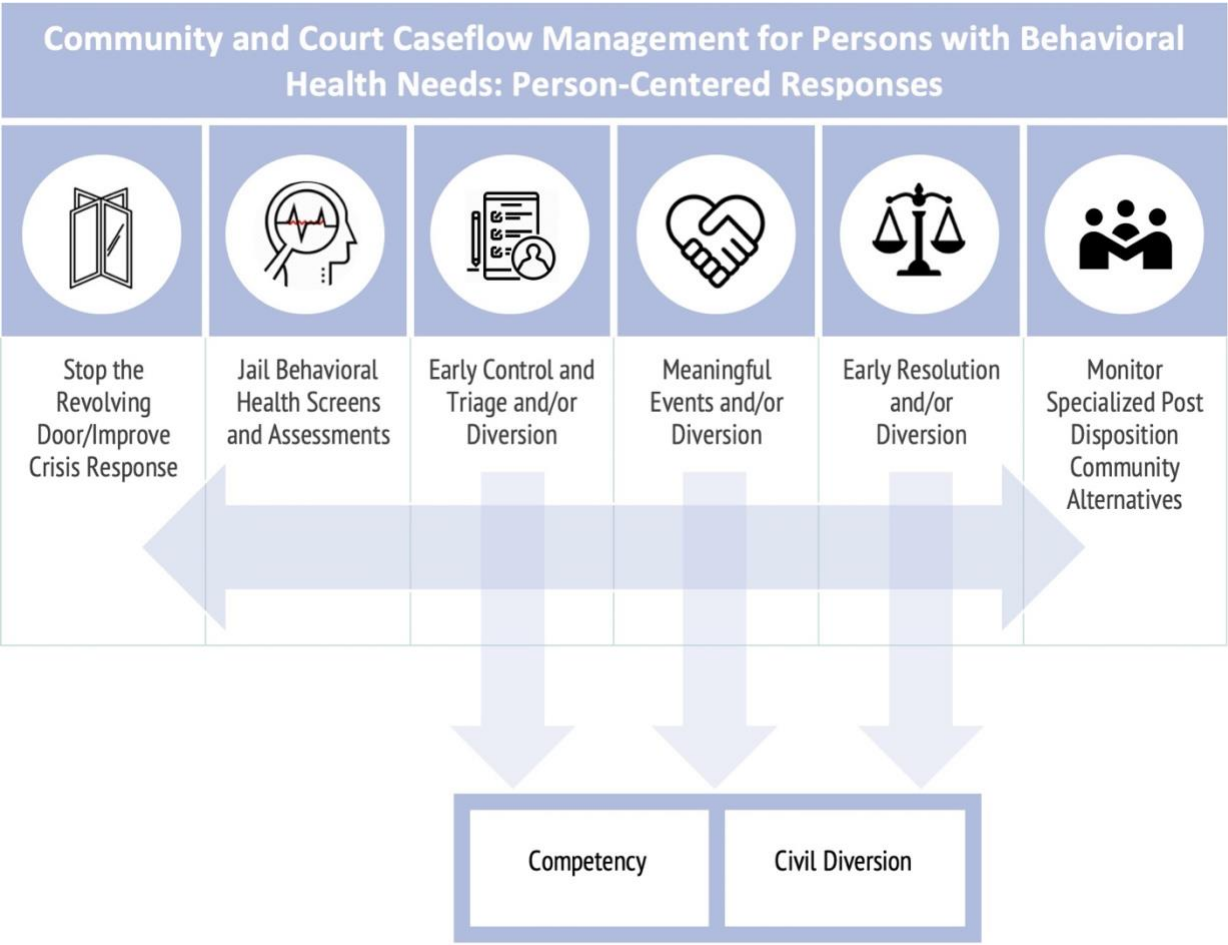


Differentiated Case Management (DCM) is a technique courts can use to tailor the case management process to the requirements of individual cases. DCM provides a mechanism for processing each case in accordance with the timeframe and judicial system resources required. Thus, each case can move as expeditiously as possible toward disposition, rather than waiting in line.^x

Caseflow management also needs to be considered by the court through person-centered responses that provide opportunities to:

- improve behavioral health responses,
- appropriately identify persons with behavioral health needs, and
- divert persons from the criminal justice system.

The diagram below identifies effective person-centered responses and diversion opportunities.



Specific Considerations for Diversion and Caseflow Management During a Pandemic

Persons with behavioral health needs often have case delays that have been lengthened during the pandemic and only aggravate the person's needs and symptoms. Principles of effective caseflow management are especially important for persons with behavioral health needs, especially during a pandemic; ensure that each case is given individual attention, cases are treated proportionately, procedural justice is demonstrated, and judicial control of the legal process is exercised. The following are additional approaches that the peer learning collaborative identified as effective practices prior to and during the pandemic.

Centralized Interdisciplinary Approaches

Persons with behavioral health needs often touch multiple systems. To most effectively and efficiently address their needs and symptoms, collaboration and coordination must occur, which ultimately leverages scarce resources, allows for diversion opportunities, coordinates services, and improves outcomes. Examples include:

- **Mobile Crisis Teams** – Mental health professionals are available to respond to calls, either on the scene or as a follow-up, at the request of law enforcement officers. These professionals can then begin the assessment process, provide acute onsite crisis stabilization, and facilitate connections to needed care and services. Some teams may also respond to requests directly from community members. [Examples and online resources.](#)
- **Co-Responder Teams** – Working as a co-responder team, a specially trained officer and a mental health crisis worker respond together to mental health calls for service. By drawing upon the combined expertise of the officer and mental health professional, the team can link people with mental illnesses to appropriate services or provide other effective and efficient responses. The most common approach is for the officer and crisis worker to ride together in the same vehicle for an entire shift, while in other agencies the crisis worker meets officers at the scene, and they handle the call together. Co-responder teams can respond throughout the entire jurisdiction, or they work in areas with the greatest number of mental health calls. [Examples and online resources.](#)
- **Multidisciplinary Teams for Pretrial Release Decisions** – Decisions regarding persons with behavioral health needs should happen as early in the criminal justice process as possible. The first appearance in court is an opportunity to route defendants with mental health needs away from the traditional criminal justice process. In this practice, screening and assessments occur prior to arraignment, which then inform pretrial release decisions. Multidisciplinary teams composed of different criminal justice and behavioral health stakeholders meet to discuss release options and conditions. Innovative strategies such as warm handoffs to treatment and finding appropriate housing increase the chance of success.
- **Competency Team** – COVID-19 concerns are impacting the movement of defendants throughout the criminal justice and behavioral health systems. Nowhere is that more evident than in the competency evaluation and restoration process. Jails are booking fewer arrestees, but also releasing them more hesitantly, and the resources to which they can be

released are fewer. A team of criminal justice and behavioral health stakeholders working together can ensure that evaluations are conducted quickly and recommendations regarding restoration options are executed. The development of and increased use of outpatient fitness restoration is an important option.

Embedding Behavioral Health Throughout the Criminal Justice System

Including behavioral health practitioners in the criminal justice system helps facilitate communication between criminal justice and behavioral health systems, provides connections to services, provides a continuity of care and increases the likelihood of diversion. Examples include:

- **Court Liaisons** – Criminal justice liaisons provide a continuity of care for individuals who have been incarcerated or are at risk of incarceration. Goals include providing early identification of individuals with mental illness within the county jails; diversionary options and/or resources; consultation with law enforcement, county personnel, and court officials; training and education; and discharge planning. Using a behavioral health court liaison can improve access time to services.
- **Forensic Navigators** – Forensic navigators help guide, support, and advocate for their clients as they undergo competency evaluations, competency restoration treatment, and transitions to the community. Forensic navigators serve as officers of the courts, interim case managers, and community liaisons who assist clients while they are involved with the criminal justice system. The goal is to divert forensically involved criminal defendants out of jails and inpatient treatment settings into community-based treatment settings. Forensic navigators are assigned clients who receive court orders for competency evaluations.

Their support starts with visits and initial connections to resources while clients are in jail. If clients are deemed competent, forensic navigator services end. For those who are determined not competent to stand trial and are ordered into outpatient competency restoration, forensic navigators continue until they provide warm handoffs to community resources. In general, forensic navigators work with clients to ensure that they comply with their conditions of release, attend outpatient competency restoration classes, and adhere to prescribed medications. Navigators also connect clients to additional supportive services in the community, such as housing, mental health and substance use treatment, supported employment services, and community-based case management services.

Screening and Assessment Best Practices

Screening for behavioral health disorders should be a priority throughout points of contact within a community, and include pediatricians, teachers, and emergency room practitioners. Early identification of mental health issues and trauma can help individuals more effectively manage their mental health issues and create appropriate treatment plans. Criminal justice-related screening and assessment are also critical once an individual has contact with the justice system to ensure the system's treatment and supervision responses are tailored to the individual's criminogenic risks and needs. All individuals coming into jail should be screened for mental health and substance use disorders using an evidence-based tool validated for the population that is screened. Then, if indicated by the screening instrument, an appropriate assessment should follow.

An overview of criminal justice related behavioral health screening and assessment tools can be found under the [behavioral health screening and assessment tab](#) of the NCSC Behavioral Health Resources Hub [website](#). A comprehensive overview of behavioral health screening and assessment best practices and instruments also appears in [SAMHSA's Screening and Assessment of Co-Occurring Disorders in the Justice System](#).

As jail and treatment resources are limited during the pandemic, allocating those scarce resources to those most in need of them is even more important, and therefore, screening and assessment is especially critical to ensure that those with acute and severe treatment needs receive services.

Additional Practices Identified by the Peer Learning Collaborative

- When screening and assessing for behavioral health needs also look to identify why the person is not complying with treatment or conditions of court orders, if relevant.
- Ensure that procedural justice principles are being followed as the person is more likely to comply.
- Identify behaviors that are proximal versus distal^{XI}.
- Respond quickly and consistently to any behavior while looking at criminogenic risk.
- Consider non jail sanctions such as electronic monitoring and develop a list of low and moderate level sanctions.
- Incentives should be prioritized, as they are more effective at changing behavior than sanctions.
- Make expectations reasonable.
- Meet people where they are and ensure that their needs are met.
- Use motivational interviewing to help motivate people to change their behavior.
- View behavior through a trauma-informed lens.
- Ensure there are options for diversion which can be utilized at every point in the system.

Other Considerations

- Utilize Medicaid to fully access services.
- Use remote hearings and court appearances, when possible.
- Engage people in a meaningful way, using procedural justice techniques.
- Convene small interdisciplinary teams to discuss clients and foster coordinated responses.
- Provide phones to clients for access to probation, treatment, and court, and to more easily provide case management.

The discussions of the peer learning collaborative remind all who work with persons with behavioral health needs that we are not in this struggle alone. We can learn from others and utilize innovations and practices that have been implemented in other jurisdictions.

Additional work is also underway with the National Judicial Task Force to Examine State Courts' Response to Mental Illness (Task Force) to identify and develop recommendations for improving the court and community response to persons with behavioral health needs. [Sign up](#) to receive [Behavioral Health Alerts](#), a semimonthly roundup of research and resources from the Task Force to stay abreast of developments. As court leaders, take the opportunity to implement these considerations to ensure that persons with behavioral health needs are treated effectively and efficiently.

Endnotes

^I Jurisdictions which participated in the virtual learning collaborative: Pima County AZ, Lake County, CO, Douglas County, KS, Cumberland County, ME, Multiple sites in NM coordinated through the Administrative Office of the Courts, Lockport, NY (municipal court), Beaverton, OR (municipal court), Marion County, OR, and Tarrant County, TX

^{II} Caseflow Management Resource Guide, National Center for State Courts, <https://www.ncsc.org/topics/court-management/caseflow-management/resource-guide>.

^{III} <https://csgjusticecenter.org/publications/behavioral-health-diversion-interventions-moving-from-individual-programs-to-a-systems-wide-strategy/>.

^{IV} Mental Health Criminal Justice Diversion, Psychiatric Services, <https://ps.psychiatryonline.org/editorschoice/mental-health-criminal-justice-diversion>.

^V "Caseflow Management Resource Guide," National Center for State Courts, accessed September 28, 2020, <https://www.ncsc.org/topics/court-management/caseflow-management/resource-guide>.

^{VI} The Effective Criminal Case Management Project (ECCM) is a national initiative designed to discover and document effective practices that drive high performance in handling felony and misdemeanor cases in the state courts. ECCM created and implemented a rigorous national data collection effort to assemble the largest case-level data set of felony and misdemeanor cases ever created—1.2 million cases from 136 state courts in 21 states. The results of the extensive data collection, analysis, and policy recommendations that flow from that analysis are published in several reports. These reports, along with tools for court management, a cost-of-delay calculator, and an interactive data dashboard, are accessible here. <https://www.ncsc.org/services-and-experts/areas-of-expertise/caseflow-and-workflow-management/effective-criminal-case-management>.

^{VII} Emily Gold LaGratta, *Procedural Justice: Practical Tips for Courts* (New York: The Center for Court Innovation, 2015), https://www.courtinnovation.org/sites/default/files/documents/P_J_Practical_Tips.pdf.

^{VIII} 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: Center for Court Innovations, 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.

^{IX} Heathcote W. Wales, Virginia Aldige 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.

^X Differentiated Case Management Fact Sheet, Bureau of Justice Assistance, <https://www.ncjrs.gov/pdffiles/dcm.pdf>.

^{XI} Proximal goals are behaviors that persons are already capable of performing and are necessary for long-term objectives to be achieved. Distal goals are the behaviors that are ultimately desired but will take some time for participants to accomplish. <https://www.ndci.org/wp-content/uploads/BehaviorModification101forDrugCourts.pdf>.