

Findings and Recommendations of the National Judicial Task Force to Examine State Courts' Response to Mental Illness

FINDINGS

1. An estimated 70% of individuals involved in the criminal justice system have a behavioral health disorder, making state courts a significant referral source to community behavioral health treatment, and often making jails the largest behavioral health facilities in the jurisdiction.
2. The coordination between the behavioral health and justice systems in states and communities is often lacking and ineffective in providing care that reduces recidivism and improves public safety and treatment outcomes.
3. The funding and availability of effective behavioral health treatment accessible to individuals with behavioral health disorders is inadequate in many communities, including insufficient programs, services, and alternatives other than the criminal justice system. All too often the criminal system is a path of first instead of last resort to access care.
4. Large numbers of defendants, including many who are charged with misdemeanors or non-violent felonies, spend excessive time in jail awaiting mental health evaluations and competency restoration, often staying longer in custody than they would have if they had been convicted of the crime, creating unnecessary cost that could be reinvested in community treatment.
5. Caseflow management practices often are not designed to address the behavioral health needs of individuals, and therefore increase recidivism and system costs.
6. Information sharing within and across systems utilized by courts and behavioral health agencies is inadequate, undermining opportunities to identify issues, target resources, and improve system responses.
7. There is a lack of education and training for state court judges and court professionals necessary to equip them with the knowledge, data, research, and resources they need to improve the state courts' response to court-involved individuals with mental illness.
8. Individuals with mental illness and substance use disorders are more likely to have histories of trauma than those without the disorders. Judges are not sufficiently trained and prepared to effectively engage and respond to individuals with trauma, and, in fact, the court process alone can be traumatizing.
9. Mental health and substance use disorders that co-occur worsen if both are not treated timely and in the appropriate sequence by addressing responsiveness needs first. Co-occurrence also negatively impacts justice outcomes.
10. People who are leaving institutional treatment settings and incarceration face a significantly higher risk of relapse, overdose, and exacerbation of their mental health condition.
11. Sixty-three percent of judges have at least one symptom of secondary or vicarious trauma and 50% of court child protection staff experience high or very high levels of compassion fatigue. Daily interactions with individuals, children, and families who are reliving trauma takes an emotional toll on justice system practitioners and places them at high risk for experiencing secondary trauma.

RECOMMENDATIONS

LEAD

Create and support a state-level, interbranch mental health task force and encourage and support local judges and courts in the creation of local or regional mental health task forces. Appoint a behavioral health director/administrator and a team within the Administrative Office of the Courts to develop and implement improved court responses for court-involved individuals with mental illness.

1. State-Level Commissions, Task Forces, and Work Groups provide a solid foundation for systemic change and improving responses to individuals with behavioral health needs. CCJ and COSCA should lead the establishment of state-level, three branch, multidisciplinary task forces to promote systemic changes necessary to improve the court and community responses to mental illness. All state-level task forces created by executive or legislative branch officials should include representatives of the judicial branch, selected, or recommended by the state's chief justice.
2. CCJ and COSCA members should appoint a statewide behavioral health administrator and a team within the Administrative Office of the Courts to develop and lead improved responses to children, youth, and adults with behavioral health disorders.
3. CCJ and COSCA members should utilize the [Leading Change Guide for State Court Leaders](#) that outlines the steps that each state court should take, community by community, to develop the systemic changes necessary to improve justice system responses to children, youth, and adults with behavioral health disorders.
4. CCJ and COSCA should encourage and provide leadership in the creation of local or regional mental health task forces. Local courts should be provided the [Leading Change Guide for Trial Court Leaders](#) that outlines the steps that each local community should take to develop a task force and create systemic changes to improve responses to children, youth, and adults with behavioral health disorders.

EXAMINE

Utilizing the recommended models and best practice and policy recommendations of the Task Force, undertake an assessment of the court system including state laws, court rules, policies, practices, and procedures across all case types involving individuals with mental illness. Recommend and encourage judges to exercise their “power to convene” and support courts and communities in the use of the Leading Change Guides and Sequential Intercept Model to map resources, opportunities and gaps, and develop plans to improve court and community responses to mental illness.

1. System Evaluation and Leading Change

Courts should use the [Leading Change Guides](#), [Sequential Intercept Model](#) framework, and other Task Force resources to examine and evaluate the court system to identify opportunities to improve the court and community response to children, youth, and adults with behavioral health needs, including diversion opportunities at the earliest possible point.

- **Judges as Convenors** – Judges should maximize their roles as conveners and leaders to bring together justice, behavioral health, community stakeholders, and persons with lived experience to collaborate and ensure that persons with mental health conditions receive the services they need.
- **Cross- Sector Approaches** – Courts should ensure a cross-sector and community-based approach when it comes to leading meaningful change to improve the court and community response to behavioral health conditions.
- **Collaborative Relationships** – Building collaborative relationships with local, state, and national organizations and workgroups is essential to leading change. Courts should proactively seek participation within existing initiatives or assume the role as conveners.
- **Memoranda of Understanding** – Courts should develop memoranda of understanding to institutionalize effective processes and establish consistent protocols and expectations among stakeholders.

2. Data, Information Sharing, and Program Evaluation

Courts should lead and support the identification of appropriate data, as well as data collection and information-sharing opportunities across the community, behavioral health, and justice systems as a critical part of developing a comprehensive and collaborative continuum of behavioral health services.

- **Governance Policies** – Courts should develop strong data governance policies and practices to ensure ready access to accurate and timely data that are necessary for promoting public trust and confidence in the judiciary while preserving individual rights.
- **Data** – Courts should review data about the prevalence of people in the United States living with Serious Mental Illness (SMI) and substance use disorders (SUD) and ensure that comparable state and local prevalence data is being compiled. Courts should also collect data specified in the Behavioral Health Data Guides and Task Force resources.

- **Data Sharing** – Courts should assess the current state of data sharing between the court, jails, other justice partners, and community providers to identify gaps in needed data and assess whether there is a place to capture these data in the current court case management systems.
- **Data-Driven Decision-Making** – Courts should use data-driven decision-making approaches and establish robust data collection and quality assurance practices to collect and use data to objectively improve management and system issues and assess performance across all case types. Courts should adopt standards or best practices for all aspects of diversion and mental health-related court operations and monitor fidelity to standards and practices.

3. Behavioral Health and Equity

Courts should develop a Behavioral Health and Equity statement as it relates to children, youth, and adults with behavioral health conditions and identify and implement evidence-based practices to ensure diversity, equity, and inclusion across all programs and processes.

- **Disproportionate Impact** – Courts should examine the disproportionate impact of behavioral health conditions and associated demographics such as race on the overrepresentation of individuals who enter the justice system and ensure that interventions, diversions, specialized dockets, and other programming are equitably applied.
- **Equity Data Analysis** – Courts should actively collect and review race and ethnicity data in order to identify inequitable practices and to monitor progress in achieving equity. This analysis should extend to diversion to treatment placements.
- **Explicit and Implicit Bias** – Courts should identify, measure, and actively address issues of explicit and implicit bias, disproportionate access to resources and programs, and systemic inequities.

4. Deflection and Diversion

Courts should examine the continuum of behavioral health deflection and diversion options available in each community and examine the Task Force [National Diversion Landscape](#) and other resources to promote deflection and diversion to treatment options at the earliest point possible.

- **Court Leadership** – Judges should exercise leadership to expand and improve responses to individuals with mental illness across the continuum of behavioral health diversion.
- **Continuum of Behavioral Health Diversion** – States and communities provide different types of behavioral health resources and services, and the complete range of programs is referred to as the continuum of care. Importance is placed on having a robust set of services and deflection and diversion opportunities that meet the needs of individuals with behavioral health disorders whether through the behavioral health system, the behavioral health crisis system, pre-arrest deflection and diversion, pre-adjudication diversion or post-adjudication diversion.
- **Over-Representation of Individuals with Mental Illnesses in the Justice System** – Courts, behavioral health, and justice partners must collaborate to reduce unnecessary involvement in the justice system by considering each respective state and community, and the best way to build structures and systems that respond effectively to individuals with mental illness.

5. Collaborative Caseflow Management

Courts should establish case management best practices regarding cases with persons with behavioral health issues, including the effective triage of cases. Courts should examine the [New Model for Collaborative Court and Community Caseflow Management](#), which explores person-centered justice for individuals with behavioral health needs. This new collaborative approach is necessary to ensure public safety, control costs, and create fair and effective criminal justice and case management systems, tasks made more urgent by the pandemic and the resulting case backlogs.

- **Strengthen Community Responses and Minimize Criminal Justice System Involvement** – Courts and communities must collaboratively create and support [comprehensive behavioral health crisis systems](#), [deflection by law enforcement](#) when appropriate, [stopping the “revolving door,”](#) and [prosecution alternatives](#).
- **Promote Early Intervention and Effective Management of Court Cases** – Courts and communities must promote effective case management practices including [screening and assessment](#), [behavioral health triage](#), [jail](#) and [court practices](#), [prosecution](#) and [defense practices](#), and [effective caseflow management](#).
- **Institutionalize Alternative Pathways to Treatment and Recovery** – Courts and communities must establish and utilize [diversion pathways](#), [civil responses](#), [competency dockets](#), [specialized behavioral health dockets](#), [courtroom practices](#), [treatment courts](#), and [other pathways and strategies that lead to treatment and recovery](#).
- **Manage Post-Adjudication Events and Transitions Effectively** – Courts and communities must provide the resources and services for individuals with behavioral health needs as they transition back into the community through [community supervision](#), [transition and aftercare plans](#), and [reentry practices](#).
- **Telehealth and Remote Technologies** – Courts should maximize the appropriate use of telehealth and remote technologies and encourage that mental health proceedings be conducted remotely, where appropriate.
- **Services and Supports** – Courts and communities should explore the co-location of behavioral health and other services and resources. Courts should collaborate with community supportive housing providers to ensure they meet relevant needs of individuals with behavioral health needs involved in the court system.

6. Competence to Stand Trial Systems

Courts should examine [Leading Reform: Competence to Stand Trial Systems](#) and other resources developed by the Task Force to gain a clear understanding of current system gaps, strengths, and weaknesses as measured against these recommendations.

- **Courts as Convenors** – Courts should convene individuals and agencies involved in the competency evaluation and restoration processes and identify gaps and opportunities to improve the processes and maximize diversion. This should include prosecutors, defense counsel, case managers, liaisons, behavioral health providers, jail administrators, pre-trial service officers, evaluators, restoration services providers, forensic evaluators, and others.

- **Limit the use of the Competency System** – Courts should reserve the competency process, including evaluation of competence to stand trial, for defendants who are charged with serious crimes. Others, especially individuals charged with misdemeanors and assessed as low risk to recidivate, and whose clinical conditions are not likely to substantially improve (e.g., individuals with dementia) should be diverted to treatment.
- **Competency Dockets** – Courts should consider the creation of competency dockets that facilitate access to appropriate diversion and outpatient restoration resources for cases involving competency. Courts should actively manage the progress of a competency case to avoid an individual languishing in jail and decompensating. Hearings should be scheduled and held without delay at every juncture.
- **Data Dashboards** – Courts should maintain and share data about each stage of competency proceedings and develop dashboards to monitor the status of competency to stand trial system cases.
- **Restoration** – Courts should ensure restoration processes and practices that
 - Encourage development of restoration sites other than institutional settings such as state hospitals and jails.
 - Create and promote a presumption of outpatient restoration.
 - Encourage video evaluations when appropriate.
 - Implement specialized competency dockets.
 - Ensure timely commencement of restoration services.
 - Actively monitor restoration progress, with appropriate timelines.
 - Discourage jail restoration.
 - Promote treatment and, if appropriate, medication rather than legal education as the focus of restoration efforts.
 - Create dedicated case management resources.
- **Statutory Review** – Courts should support statutory changes that restrict referral of cases such as misdemeanors and non-violent felonies that are otherwise referred for competency evaluations and divert them from prosecution.

7. Children and Families

Courts should examine Upstream and other Task Force resources to ensure a continuum of behavioral health practices and improve outcomes for children and families with behavioral health needs.

- **Court Leadership** – Courts should lead efforts to strengthen children and families through prevention and intervention strategies using court and community-based approaches.
- **Upstream** – State and local courts should utilize Upstream as a framework to coordinate and align state and local efforts across the child welfare system to promote safe and healthy families and communities and map community resources and opportunities.

- **Mental Health Conditions** – Courts should view mental health conditions holistically, including consideration of the party and family strengths, how they are impacted by the mental health condition, and their efforts to address any impacts the condition may have on their children or parenting.
- **Social Determinants of Health** – Courts should understand that economic stability, education access and quality, healthcare access and quality, neighborhood and built environment, and social and community context all impact children and families' opportunities to thrive.

8. Juvenile Justice

Courts should lead efforts to divert youth with mental health needs from juvenile justice involvement, when appropriate. Most youth with mental health disorders who come to the attention of the justice system could be better served outside of the system.

- **Mental Health Diversion** – Courts should support opportunities for youth with mental health diagnoses to be diverted away from deeper involvement with the justice system at multiple points of contact, such as at school when contacted by law enforcement, referral, pre-petition, detention, and pre-adjudication.
- **Collaboration** – Courts should commit to integrated approaches and cross-system collaboration, as well as a continuum of evidence-based treatment and practices.
- **Screening and Assessments** – Courts should use standardized mental health screening and assessment tools. Courts should maximize diversion and alternatives to detention and minimize court-oversight and similar interventions for youth with low risk to re-offend.
- **Justice and School Partnerships** – Courts should encourage justice and school partnerships to support high quality mental health care for students and their families within the schools to minimize court involvement.

9. Domestic Relations

Courts should promote the well-being of families, including implementation of trauma-responsiveness for families, throughout the life of their case and the primary desired outcome, and examine the Understanding Series and other Task Force resources.

- **Understanding Well-Being** – Judges should be provided with a comprehensive understanding of the various elements that impact the well-being of individuals and families to be most effective dealing with divorce, dissolution, or child custody cases.
- **Trauma and its Impacts** – Courts should understand trauma, how to create a trauma-responsive court, and attempt to mitigate the risk of children's adverse experiences related to court proceedings during and following divorce.
- **Mental Health Conditions** – Courts should understand the spectrum of mental health conditions and the impact of those conditions on parenting capacity.

10. Civil Responses

Courts should develop and provide multiple civil court options that are easily accessible by individuals, families, and behavioral health systems. Courts have a central role in ensuring that these responses appropriately balance individual autonomy and choice in compelled treatment with the state's *parens patriae* interest and public safety.

- **Early Intervention** – Courts should lead efforts to permit earlier intervention in the course of a person's mental illness. The standard for ordering involuntary treatment must recognize the need for and value of intervening when an individual lacks the capacity to recognize the need for treatment and is refusing needed treatment.
- **Outpatient Treatment** – Courts should recognize that most hospital stays for mental illness are short and do not provide the time or support to promote recovery. Most mental health care is appropriately provided in the community and therefore courts should order that involuntary treatment be provided in an outpatient setting unless outpatient treatment will not provide reasonable assurances for the safety of the individual or others or would not meet the person's treatment needs.
- **Emergency Psychiatric Assessment and Intervention** – Courts should examine streamlined court and non-court pathways to emergency psychiatric assessment and intervention. The initial detention for emergency assessment should be as brief as possible and oriented as a treatment intervention as opposed to a criminal justice intervention.
- **Psychiatric Advance Directives** – Courts should encourage the use of psychiatric advance directives (PAD) and incorporate the provisions of an individual's PAD into relevant court orders. Provisions of a PAD may be considered presumptive consent to specific interventions but should not override appropriate emergency interventions or clear psychiatric and medical best practices.
- **Court Orders** – Involuntary treatment orders should be as specific as possible and should contain information including, if appropriate, how adherence to the medication will be monitored, and the degree to which modifications to the medications can be made without returning to court.
- **Assisted Outpatient Treatment** – Courts should support the use of Assisted Outpatient Treatment (AOT) as a process of involuntary mental health treatment in an outpatient setting, with varying degrees of judicial involvement and oversight.

11. Trauma and Trauma-Informed Responses

Courts should examine [Trauma and Trauma-Informed Responses](#) and other Task Force resources to become trauma-informed, to expect the presence of trauma across all case types, to take care not to exacerbate it, and to understand how trauma may affect court participants, as well as their success in treatment. Understanding trauma and applying trauma-informed responses help judges to engage court participants and increase their likelihood for success more effectively.

- **Court Leadership** – Courts should provide leadership for the creation and enhancement of trauma-informed justice systems. Courts should assess current courtroom practices and environments, apply a trauma-informed lens, look for environmental triggers, and identify processes that are confusing or difficult for court participants to navigate.

- **Trauma Screening and Referral** – System partners should implement a trauma screening and referral process to screen appropriate individuals for exposure to trauma. Screening tools should be selected for the population(s) served by the court. Courts should partner with mental health professionals to implement a protocol for referring individuals for further assessment when the need is identified on the screening tool.
- **Case Processing** – Judges should pay special attention to cases in which a participant has a mental health condition or has experienced trauma or abuse. Systematic screening, or triage, should be used to expedite processing pathways, if possible, identifying individuals that require early judicial intervention. Case triage should include indicators of mental health conditions, trauma, or abuse.
- **Collect Data** – Courts should collect and review data on trauma-informed practices and the perceptions of court participants, monitoring the efficiency and effectiveness of court processes.

12. Peers in the Courts

Courts should examine [Peers in Courts](#) and other Task Force resources. Courts should encourage the integration of trained peers at all appropriate points in the treatment, case management, and justice processes including hiring trained peers in their programs, services, and operations to improve the responses for individuals with behavioral health needs. Courts should promote and support the certification and education of peers.

13. Voice of People with Lived Experience and Families

Courts should create opportunities to listen to and gather input from individuals with lived experience, and their families, in all efforts to improve court and community responses.

14. Mental Health and Well-Being for Judges and Court Personnel

Courts should examine Task Force resources on the well-being of judges and court personnel that provide guidance, best practices, tips, and support for mental health.

- **Organizational Assessment** – Courts should engage in an organizational assessment to gauge the strengths and gaps across areas of workplace mental health including leadership, access, culture, and awareness.
- **Best Practices** – Courts should promote best practices in the workplace including communicating effectively about employee assistance programs (EAP), lawyer assistance programs (LAP), and educational resources.
- **[Secondary Trauma and the Courts](#)** – Courts should implement secondary trauma prevention and intervention strategies including adopting policies that promote self-care, ensuring a safe work environment, providing secondary trauma education, establishing peer mentoring programs, offering supportive services, and setting manageable work and caseload expectations.

EDUCATE

Provide and support opportunities for the education and training of judges and court professionals on all aspects of mental illness and effective court responses. Distribute and make available the tools, resources, and recommendations developed by the Task Force to all state and local judges and court professionals.

1. Judges, court personnel, and justice system partners should be provided collaborative ongoing training and education across all case types utilizing [Task Force Education](#) resources, including the [Behavioral Health Resource Hub](#), [Behavioral Health Alerts](#), and trainings. Topics should include:
 - Mental illness, substance use disorders, co-occurring disorders, trauma, secondary trauma, and adverse childhood experiences;
 - Implementation of effective crisis strategies, including 988;
 - Opportunities for deflection from law enforcement engagement and diversion from the justice system;
 - Effective practices for interacting with individuals with behavioral health needs in the courtroom;
 - Effective court case management for individuals with behavioral health needs;
 - Procedural fairness and procedural justice;
 - Improved responses and programs for individuals with behavioral health needs;
 - Behavioral health and equity;
 - System change and effective implementation strategies; and
 - Recent developments and innovations.

ADVOCATE

Support state and community efforts to utilize a public health model rather than a criminal justice approach to guide behavioral health policies, practices, and funding, including efforts to, when appropriate, deflect or divert cases involving individuals with mental illness from the court system and into treatment. Advocate for funding and resources needed to implement a continuum of diversion programs, treatment, and related services to improve public safety as a more humane and cost-effective approach.

1. Courts should encourage community stakeholders to implement a full continuum of effective behavioral health crisis system responses through changes in practices, reallocation of resources, changes in court rules, and statutory revisions.
2. Courts should promote and support a continuum of deflection and diversion options and access to treatment and recovery in every jurisdiction to increase public safety, to use resources more efficiently, provide more effective services, and achieve the best outcomes for individuals with behavioral health needs.
3. Courts should engage and establish partnerships with Certified Community Behavioral Health Centers (CCBHC) for timely access to screening, evaluation, care coordination, and connections to treatment consistent with the federal CCBHC mandate.
4. Courts should partner with state Medicaid agencies, state behavioral health authorities, developmental disabilities authorities, community-based providers, and community health centers, to identify collaboration opportunities and advance systems improvements.
5. Courts should support the availability of a full continuum of behavioral health treatment and supervision options to ensure treatment duration and dosage is matched to an assessed level of clinical need, and the intensity of supervision correlates to the assessed criminogenic needs of the individual.
6. Courts should advocate for a robust behavioral health workforce to meet the needs of individuals with behavioral health disorders.
7. Courts should actively seek external funding support to allow courts to expand existing programs and create new projects to better serve justice-involved individuals with mental health and co-occurring disorders.