

Council of State Treatment Court Coordinators

Guiding Principles for an Inclusive Treatment Court Model for State Implementation

October 2022

INTRODUCTION

Since 1989, treatment courts continued to grow in the number of courts, generational impacts, and federal and state funding levels. Research demonstrates that fidelity to the model can result in better lives and better outcomes for justice involved offenders and increases in public safety in communities impacted by substance use disorders and unmet behavioral health needs.

Research on the treatment court model showed that high-risk/high-need offenders respond well to drug court programs. Treatment Courts followed the research and targeted only high-risk, high-need individuals. However, with the opiate epidemic and the increasing numbers of overdoses, particularly since the start of the Covid-19 pandemic, impacting people at all risk levels, research on treatment courts shows that matching interventions to all risk and need levels through the use of defined tracks within treatment courts is effective for the lower risk populations with substance use disorders. Nationwide, states have engaged in justice system analyses designed to engage interagency stakeholders in identifying more opportunities to divert individuals from further justice system involvement and improve responses to behavioral health issues at different justice system entry points. Utilization of the Risk-Need-Responsivity (RNR) model across each justice intercept point can identify individuals with behavioral health needs at all risk levels. The treatment court model can provide an evidence-based foundation for justice reform efforts. To ensure equal justice, treatment courts must work with community partners across the justice continuum to reduce racial disparities and ensure equitable access to treatment and recovery supports for justice-involved individuals.

The following guiding principles were created in support of a resolution adopted by the Council of State Treatment Court Coordinators. The resolution outlines ways in which states can implement these principles, reasonably and responsibly, maintain fidelity to the treatment court model and secure the necessary funding to improve outcomes of justice-involved individuals with behavioral health needs.

1. ESTABLISH AN INCLUSIVE AND DEDICATED SYSTEM OF TREATMENT COURTS THAT IS EXPANDED TO INCREASE ACCESS TO JUSTICE FOR ALL RISK AND NEED LEVELS WITH EVIDENCE-BASED AGE, RACE, GENDER, CULTURAL, AND DEVELOPMENTALLY APPROPRIATE INTERVENTIONS TO MEET IDENTIFIED NEEDS

Overview

Comprehensive screening refers to the universal implementation of a short, easy to administer set of questions and criteria to quickly identify individuals who are potentially at heightened risk of recidivism and clinical need. Screening instruments cast a wide net and must be followed by a comprehensive risk and needs assessment to confirm eligibility for diversionary opportunities. The Risk-Need-Responsivity (RNR) model is an evidence-based structure incorporated into validated assessment and service planning to match the level of supervision, resources, and services to the justice involved person's risk of recidivism and clinical need. The risk principle seeks to match the level of service to the individual's risk of reoffending. The need principle serves to assesses dynamic criminogenic needs that increase the risk of recidivism. The responsivity principle seeks to tailor risk management strategies and services to an individual's specific abilities, motivations, and strengths. The RNR model is widely recognized as an evidence-based assessment framework for promoting positive public safety and treatment outcomes.

Evidence-based clinical determinations of medically required level and modalities of care have become widely utilized in treatment courts and are often based on the American Society of Addiction Medicine patient placement criteria. However, legal eligibility determinations for admissibility to participate in treatment alternative to incarceration programs are often not conducted uniformly with partner justice agencies. Multiple justice professionals such as judges, prosecutors, public defenders, law enforcement, probation officers, court administrators, and pretrial services staff, are often involved in legal eligibility screening. Components of legal screening include current charge, criminal history, circumstances of the offense, state legislation and federal guidelines on legal eligibility. Review by the defense attorney of the complaint and discovery materials, the need for treatment, legal ramifications of participation, and the individual's desire to seek treatment, guide the defense determinations for considering application for treatment court. In most treatment courts, the judge and prosecutor provide the final review of program eligibility.

National guidelines for treatment courts, supported by the U.S. Department of Justice, on best practices for legal eligibility review include: objective written criteria for legal and clinical eligibility, conducting eligibility review in a timely manner to ensure immediate access to treatment, the individual's supervision, and recovery support services. These guidelines encourage the use of objective legal eligibility, and uniform exclusionary criteria, to determine applicant admissibility to a treatment court. Court practitioner and treatment provider subjective impressions of the justice involved offender's motivation for change or readiness for treatment have been found to have no impact on program graduation rates or recidivism. However, state and federal criminal history disqualifications are often misunderstood, misapplied, or based on misconceptions of individual attributes that predict successful program outcomes. The numerous interagency partners in the criminal justice system can result in misunderstanding of eligibility criteria and missed opportunities to assess and address individual needs throughout the legal process. Additionally, misinterpretation of constitutional and confidentiality protections may limit interagency communications and result in reduced opportunities for individuals to learn about the benefits of treatment courts.

Comprehensive screening and assessment, utilizing agreed upon clinical and legal eligibility criteria can serve to address an exceedingly large population of justice-involved individuals who could benefit from treatment, supervision and recovery supportive services, resulting in improved community safety and wellness. Interagency partnerships between justice, treatment and recovery support service professionals can ensure that justice-involved persons get access to needed supervision, treatment and recovery support services to meet the profound risks and needs presented by this population.

The Council of State Treatment Court Coordinators seeks to promote the enhancement of relationships across systems to ensure access to diversion for every individual risk and need level in the court system, and at every intercept point along the justice, treatment and community continuum. The Sequential Intercept Model (SIM) (<https://www.samhsa.gov/criminal-juvenile-justice/sim-overview>) (<https://www.samhsa.gov/criminal-juvenile-justice/sim-overview>) details how individuals with mental and substance use disorders come into contact with and move through the criminal justice system. The SIM helps communities identify resources and gaps in services at each intercept and encourages interagency partners to work together to serve justice-involved individuals recognizing their unique risk and need profiles. The NADCP Annals of Research and Knowledge (ARK) (<https://ark.nadcp.org/>) (<https://ark.nadcp.org/>) should be examined for incorporation into local and state intervention strategies. The ARK model suggests a viable example for treatment and supervision structures that are designed for specific justice intercepts at pre-arrest, pre-trial, community corrections(post-trial), incarceration, and reentry based on an individual's risk need profile.

Proposed Actions

- Promote immediate identification, comprehensive screening, and prompt referral to an inclusive treatment court system for all eligible justice involved individuals with substance use, mental health, and co-occurring disorders.
- Utilize screening and assessment tools that have transparent methods for assigning risk and need and that have been validated for the subpopulations being served.
- Utilize state arrest, eligibility, enrollment, and completion data to determine the level of disproportionate participation in and completion of treatment courts by race/ethnicity to identify potential disparate decision-making or processes and opportunities/needs for closing those gaps.
- Encourage local courts to conduct regular reviews of treatment court populations in comparison to technically eligible arrestees to identify barriers to entry, including universal screening approaches, education and engagement strategies, re-examining legal eligibility and exclusion criteria, modifying program length and completion requirements, and encouraging referrals from other courts, system actors, and the community.
- Define legal and clinical eligibility criteria specific to each type of treatment court. Develop systematic identification protocols for determining eligibility and adopt a universal identification process that assess all individuals for program eligibility upon entry into the criminal justice system.
- Evaluate and revise screening and admission processes to ensure program suitability and admission determinations are free of subjective decision-making and arbitrary restrictions to program entry.
- Ensure that individuals with substance use, mental health, and co-occurring disorders benefit from expedited engagement to receive prompt treatment, supervision, and recovery support services.
- Develop protocols for early identification and assessment of substance use, mental health, and co-occurring disorders. Implement a universal screening process early in the court process to identify all

people facing criminal charges who screen positive for a behavioral health need and who should be referred for a full clinical assessment.

- Establish multidisciplinary teams at both state and local levels that are responsible for overseeing coordinated intervention strategies that emphasize early intervention and prioritizes rapid placement in appropriate treatment and placement in treatment court programs.
 - Develop a continuum of care that places individuals in treatment and recovery supportive services at levels appropriate to their clinical diagnosis needs and provides step-down and step-up services as needed.
 - Address environmental factors, including providing assistance for obtaining and maintaining employment, meeting basic needs including housing, food, medical care, and furthering educational levels to address long-term stability and economic mobility.
 - Encourage each state to develop and implement individual state plans to expand the treatment court model to all risk and need levels.
 - Effectively reduce criminogenic risks by adopting a structured decision-making approach that places individuals of all risk and need levels in appropriate treatment and interventions.
 - Develop structures that base decision-making on a range of options that meet individuals where they are at.
 - Incorporate policies that ensure each participant receives individualized case plans and interventions that respond to different risk and need levels, learning styles, motivation levels, and individual abilities and strengths.
 - Ensure that all individuals have equal access to and retention in treatment court programs, including equal access to appropriate and responsive treatment and recovery services.
 - Utilize evidence-based practices that have been validated to prove effectiveness across demographic backgrounds and behavioral health needs.
 - Consider adopting best-practices and community-defined practices that further respond to the unique needs of individuals and communities served through local treatment courts.
 - Engage with community providers to ensure evidence-based age, gender, cultural and developmentally appropriate treatment interventions and recovery supports are established and evaluated for effectiveness.
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2. EQUAL ACCESS TO TREATMENT COURT SERVICES AND SUPPORTS SHOULD BE FOUNDED ON THE CONCEPTS OF RACIAL AND ETHNIC EQUITY TO ENSURE JUSTICE FOR ALL

Overview

There are many points along the justice continuum where a wide range of discretionary decision-making can differentially impact those with substance use and mental health diagnoses. The July 2022 Centers for Disease Control report on the increase in overdose deaths among people of color highlights the need for treatment to be more accessible to underserved groups. There remains a pressing need for culturally relevant and responsive evidence-based practices, treatment modalities, and services for people of color with mental health and substance use disorders.

Treatment courts seek to incorporate the National Association of Drug Court Professionals (NADCP) Ten Key Components and the NADCP Adult Best Practice Standards for Equity and Inclusion. The Adult Best Practice Standards Standard I, on Target Population, and Standard II on Equity and Inclusion, state that eligibility and exclusion criteria must be predicated on empirical evidence using evidence-based assessment tools and that the target is a high risk/high need population.

Studies have found that the admissions process in many treatment courts include informal or subjective selection criteria, multiple gatekeepers, and numerous opportunities for candidates to be rejected from the programs. Prior criminal record or the nature of the current referral charge for non-Hispanic Black individuals' impact eligibility or a perceived increased threat to community safety. In contrast, non-Hispanic White individuals are more likely denied entry into the drug court because of general exclusion criteria such as a low risk/need score, an open criminal case in another county, or they accepted another criminal justice intervention. Actuarial risk assessments employ a mathematical formula, or algorithm, to estimate the probability of a defendant incurring a new arrest or failing to appear in court. Weighting of risk categories for criminal history and criminogenic needs may group defendants from communities of color into higher risk categories, disproportionately impacting their eligibility for diversion. Disparities in sentencing and policing practices may make it more likely for Black individuals to acquire disqualifying criminal history, leading to higher rates of drug-court exclusion. Subjective eligibility restrictions regarding perceptions of motivation or potential for program completion also impact access to diversion and cost-effectiveness of treatment courts by artificially skewing the target population.

Program termination due to receiving new criminal charges can be a consequence of broader disparities in policing and supervision. The criminal justice system tends to operate based on personal responsibility and accountability, however environmental factors can impact the recovery process, exacerbating relapse and recidivism risk factors posed by family, neighborhoods, and peers in crime-ridden and high-poverty urban areas with reduced access to safe housing.

Justice reform has impacted legal leverage to participate in alternative to incarceration programs and participation rates in treatment courts have been reduced at a time when overdose deaths are at historic levels. The COVID-19 pandemic and bail reform initiatives have changed pretrial detention and limited conditions of release, reducing the capacity of the courts to screen and refer individuals in a timely manner. Communication barriers across justice entities limit sharing of information to support individuals in need of services who are not successfully diverted at earlier justice intercepts.

The CSTCC identifies equitable access to and successful completion of treatment courts as a priority. The CSTCC encourages treatment court practitioners to conduct rigorous evaluation using a racial equity lens with a focus on exploring barriers to entry and obstacles to program completion. The CSTCC encourages practitioners to assess policies and practices that drive decisions related to eligibility and termination, in an effort to resolve barriers, improve access, and to increase the capacity of treatment courts to effectively serve all legally and clinically eligible individuals.

Proposed Actions

- Engage with state and community-level representatives to identify and address gaps in criminal justice deflection and diversion that ensures equitable access to treatment as alternatives to incarceration.
- Conduct Sequential Intercept Model (SIM) mapping to ensure a continuum of care, supervision, and recovery supports across justice intercepts. Conduct community stakeholder meetings of community and justice actors to detect gaps in diversion and treatment interventions and to examine communication and coordination across intercepts for individuals who are not deflected/diverted in early justice contacts.
- Incorporate statewide, data-driven strategies that expand the capacity of treatment courts to ensure equal access based on standardized assessment tools.
- Utilize screening and assessment tools that have transparent methods for assigning risk and need and that have been validated for the subpopulations being served.
- Utilize state arrest, eligibility, enrollment, and completion data to: determine any level of disproportionate participation in and completion of treatment courts by race/ethnicity; identify potential disparate decision-making or processes; and discover opportunities/needs in closing those gaps.
- Encourage local courts to conduct regular reviews of treatment court populations in comparison to technically eligible arrestees to address barriers to entry, such as incorporating universal screening approaches, enhancing education and engagement strategies, re-examining legal eligibility and exclusion criteria, modifying program length and completion requirements, and encouraging referrals from other courts, system actors, and the community.
- Address lack of trust in court systems by integrating persons with lived experience and Peer Recovery Support Specialists (PRSS) into treatment court teams to improve engagement and education about the benefits of treatment courts. Utilize peers to support participant engagement and participation, and actively engage with the treatment court team in ongoing structural analysis of program elements to recognize and address barriers to participation and completion.
- Utilize the American University's Racial and Ethnic Disparities (RED) Program Assessment Tool and the NADCP Equity and Inclusion Equivalent Access Assessment and Toolkit to support equitable and inclusive practices for improving access and participation.
- Engage researchers to implement objective methods that continuously assess for racial and ethnic disparities in treatment court access and outcomes.
- Engage with community providers to ensure evidence-based age, gender, cultural and developmentally appropriate treatment interventions and recovery supports are established and evaluated for effectiveness.
- Conduct regular training on implicit bias and cultural humility for treatment court teams and community providers.

- Address environmental factors, including providing assistance for obtaining and maintaining employment, meeting basic needs including housing, food, medical care, and furthering educational levels to address long-term stability and economic mobility.
 - Re-examine the use of custody sanctions and encourage the use of alternative and creative sanctions as a response to noncompliance while reserving the use of custody sanctions in instances where high-level and/or repeated violations occur.
 - Avoid mandating all participants to the same types of support groups and systematically assess and incorporate natural supports when developing recovery plans. Natural supports for recovery can include faith based and individualized, culturally-informed interventions, health-related programs, advocacy activities, and educational/personal enrichment programs that may appear to be unrelated to alcohol and drug use.
 - Develop state policies and practices that reduce disparities and expand the capacity of treatment courts to serve justice-involved individuals equitably, thereby bringing equitable access to scale nationally.
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3. THIS TREATMENT COURT SYSTEM SHOULD BE AFFORDED THE APPROPRIATE RESOURCES TO REACH THEIR STATE’S CAPACITIES AT DIVERSION, PRETRIAL, PRE-SENTENCE, POST-SENTENCE, AND REENTRY

Overview

Treatment courts need sufficient resources to provide an adequate level of supervision, treatment and recovery supports to justice-involved persons with identified needs. There are many points along the justice continuum where a specific level of intervention and programming best suits justice-involved individual’s risk and need profile. The Sequential Intercept Model and the NADCP Annals of Research and Knowledge should be examined for incorporation into local and state intervention strategies. Treatment courts should have funding for training and quality assurance activities to ensure that they have inclusive, objective and non-biased eligibility and exclusion criteria are utilized to serve all the legally and clinically eligible populations that come before the court. Adequate funding is necessary for training and quality assurance of education and engagement strategies to identify potential candidates and to ensure equal access to diversion and alternative to incarceration.

States should seek to fund strategies to incorporate Best Practice Standards for all diversionary and treatment alternatives to incarceration. The Adult Drug Court Best Practice Standards, the Juvenile Drug Treatment Court Guidelines, the Family Treatment Court Best Practice Standards, the Tribal Healing to Wellness Key Components, and emerging state standards for mental health courts, veteran treatment courts and human trafficking courts should be supported and subject to additional research to promote best practices in all treatment court models. Community based crisis, treatment and recovery supports, and their partner justice system actors should receive adequate funding for training and quality assurance to match treatment, supervision and recovery supportive services to empirical assessment of risk and need to avoid further penetration into justice systems. If a jurisdiction does not have sufficient funding to operate multiple evidence-based treatment courts, program eligibility criteria tends to be expanded to include more candidates with different risk and need profiles. If different risk and needs individuals are being engaged by a treatment court designed for a specific risk-need level, research results have shown a negative effect.

Adequate funding and research is necessary for the ongoing development of evidence-based treatment, supervision and recovery supportive services that are tailored to age, gender, cultural and developmental needs of the individuals being served. Evidence based practice training, capacity-building and implementation efforts must be shared by justice and community partners to ensure that best practices are utilized and coordinated for maximum effectiveness. States and federal funders should support ongoing role-specific training and skill building in evidence-based techniques like motivational interviewing, role modelling, teaching, problem solving and change facilitation to enhance staff and judicial practices. Training, capacity-building and implementation efforts should be addressed for all community and justice professionals to promote equal application of knowledge and skills across the justice and community continuum of care.

Proposed Actions

- Engage with state and community-level representatives to identify funding to address gaps in criminal justice deflection and diversion to promote equitable access to treatment alternatives to incarceration.
 - Conduct Sequential Intercept Mapping to ensure a continuum of care, supervision and recovery supports across justice intercepts. Conduct community stakeholder meetings of community and justice actors to detect gaps in diversion and treatment interventions and to examine communication and coordination across intercepts for individuals who are not diverted in early justice contacts.
 - Incorporate statewide, data-driven strategies to prioritize funding to meet the need and ensure that treatment courts reach capacity and to guarantee equal access based on standardized risk/need assessment tools.
 - Coordinate services and recovery supports that address environmental factors that impact stabilization, including providing assistance for obtaining and maintaining employment and meeting basic needs including housing, food, medical care, and furthering educational levels to address long-term stability and economic mobility.
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4. A TREATMENT COURT SYSTEM REQUIRES STATES TO ESTABLISH STANDARDS AND IMPLEMENT QUALITY ASSURANCE MEASURES THAT INCLUDE A FIDELITY REVIEW PROCESS, AND ADEQUATE FUNDING TO DEVELOP A TREATMENT COURT SYSTEM AND QUALITY ASSURANCE

Overview

State courts should develop best practice standards or guidelines and a fidelity review process for all treatment courts to ensure programs are operating with fidelity to the model and in accordance with best practices established through research to help ensure positive outcomes for participants served. State courts should:

- Establish a multi-disciplinary committee or workgroup to develop the state standards or guidelines and fidelity review process (e.g., certification program). The committee or workgroup would:
 - Include members from all treatment court disciplines (e.g., judges, coordinators, attorneys, treatment providers, law enforcement, and researchers).
 - Consider nationally recognized best practice standards and guidelines in the development of state standards and guidelines.
 - Consult with other state and national experts in the development and/or review of proposed standards and guidelines.
 - Develop standards or guidelines for each treatment court that are informed by the most current research in the treatment court field.
 - Develop a fidelity review process, such as a certification program and/or site visits, to monitor treatment court operations to ensure they are operating in accordance with state standards and guidelines.
 - Require client-level data collection by each treatment court and advocate for staff and funding resources to support these activities. Data collected and entered into an electronic database or management information system is necessary for managing cases, monitoring program activities and adherence to standards and guidelines, and for monitoring participant outcomes. State courts should consider implementation of a statewide case management system for uniform data collection and integrate it with other court management information systems, where feasible.
 - Provide or facilitate training and technical assistance to treatment court teams and court stakeholders to assist with implementation of state standards and guidelines.
 - Provide state-level staff to implementation of state standards and guidelines, fidelity review, and training and education to assist with implementation.
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