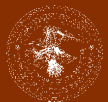




Improving Responses to People with Mental Illnesses

The Essential Elements of a
Mental Health Court



BJA Bureau of Justice Assistance

JUSTICE★CENTER
THE COUNCIL OF STATE GOVERNMENTS

Improving Responses to People with Mental Illnesses

The Essential Elements of a Mental Health Court

A report prepared by the
Council of State Governments Justice Center
Criminal Justice/Mental Health Consensus Project

for the

Bureau of Justice Assistance
Office of Justice Programs
U.S. Department of Justice

Michael Thompson
Dr. Fred Osher
Denise Tomasini-Joshi



This report was prepared by the Council of State Governments Justice Center, which coordinates the Criminal Justice/Mental Health Consensus Project. It was completed under cooperative agreement 2005-MU-BX-K007 awarded by the Bureau of Justice Assistance (BJA), Office of Justice Programs, U.S. Department of Justice. The opinions and findings in this document do not necessarily represent the official position or policies of the U.S. Department of Justice or the members of the Council of State Governments. While every effort was made to reach consensus and represent advisory group members' and other reviewers' recommendations, individual opinions may differ from the statements made in the document.

The Bureau of Justice Assistance reserves the right to reproduce, publish, translate, or otherwise use and to authorize others to publish and use all or any part of the copyrighted material contained in this publication.

Council of State Governments Justice Center, New York 10005
© 2007 by the Council of State Governments Justice Center
All rights reserved. Published 2007.

Cover design by Nancy Kapp & Company. Interior design by David Williams.

Contents

Acknowledgments	v
Introduction	vii
<i>Ten Essential Elements</i>	
1 Planning and Administration	1
2 Target Population	2
3 Timely Participant Identification and Linkage to Services	3
4 Terms of Participation	4
5 Informed Choice	5
6 Treatment Supports and Services	6
7 Confidentiality	7
8 Court Team	8
9 Monitoring Adherence to Court Requirements	9
10 Sustainability	10
Conclusion	11

Acknowledgments

Many thanks are due to all those at the Bureau of Justice Assistance (BJA), a component of the Office of Justice Programs, U.S. Department of Justice, who supported the development of this publication, particularly Domingo S. Herraiz, Director; A. Elizabeth Griffith, Deputy Director for Planning; Robert Hendricks, former Acting Senior Policy Advisor for Mental Health; Michael Guerriere, former Senior Policy Advisor for Substance Abuse and Mental Health; Ruby Qazilbash, Senior Policy Advisor for Substance Abuse and Mental Health; and Rebecca Rose, Policy Advisor for Substance Abuse and Mental Health.

Special thanks must also be given to the National Drug Court Institute (NDCI), particularly Karen Freeman-Wilson, West Huddleston, and Carson Fox, for their guidance on how this publication could benefit from, and integrate, their experiences developing the seminal publication *Defining Drug Courts: The Key Components*.

Representatives of the sites awarded grants under BJA's Mental Health Court Grant Program spent considerable time at a national conference in Cincinnati in 2004 providing valuable feedback to a draft of *Essential Elements*. The Council of State

Governments Justice Center thanks them, as well as a group of leading mental health court experts who spent a full day at BJA's conference *Mental Health Courts and Beyond* in 2005 in Los Angeles to provide extensive comments on a subsequent draft of the document. In addition, representatives of BJA's Mental Health Court Learning Sites added important information throughout the review process.

A number of current and former Justice Center staff members were key contributors to the document, including director of communications Martha Plotkin, research associate Lauren Almquist, and project coordinator Daniel Souweine. The project also benefited greatly from the advice of Justice Center consultants Barry Mahoney, President Emeritus of the Justice Management Institute, D. Alan Henry, Director Emeritus of the Pretrial Justice Institute, and Timothy Murray, Executive Director of the Pretrial Justice Institute.

Finally, Justice Center staff express their gratitude to the hundreds of contributors who reviewed online drafts. Through a web forum, these respondents provided valuable comments and offered insights and suggestions that made *Essential Elements* a stronger, more practical resource.

Introduction

Mental health courts are a recent and rapidly expanding phenomenon. In the late 1990s only a few such courts were accepting cases. Since then, more than 150 others have been established, and dozens more are being planned. Although early commentary on these courts emphasized their differences—and their diversity is undeniable—the similarities across mental health courts are becoming increasingly apparent. In fact, the vast majority of mental health courts share the following characteristics:

- A specialized court docket, which employs a problem-solving approach to court processing in lieu of more traditional court procedures for certain defendants with mental illnesses
- Judicially supervised, community-based treatment plans for each defendant participating in the court, which a team of court staff and mental health professionals design and implement
- Regular status hearings at which treatment plans and other conditions are periodically reviewed for appropriateness, incentives are offered to reward adherence to court conditions, and sanctions are imposed on participants who do not adhere to the conditions of participation
- Criteria defining a participant's completion of (sometimes called graduation from) the program

The reasons communities give for establishing mental health courts are also remarkably consistent: to increase public safety, facilitate participation in effective mental health and substance abuse treatment, improve the quality of life for people

with mental illnesses charged with crimes, and make more effective use of limited criminal justice and mental health resources.

As the commonalities among mental health courts begin to emerge, practitioners, policymakers, researchers, and others have become interested in developing consensus not only on what a mental health court *is*, but on what a mental health court *should be*. The purpose of this document is to articulate such consensus in the form of 10 essential elements.

About the Elements

This publication identifies 10 essential elements of mental health court design and implementation.¹ Each element contains a short statement describing criteria mental health courts should meet, followed by several paragraphs explaining why the element is important and how courts can adhere to it. Ultimately, benchmarks will be added, enabling courts to better assess their fidelity to each element.

Although both adult and juvenile mental health courts have emerged in recent years, this publication pertains only to adult mental health courts. There are two primary reasons for this focus. First, as of this writing, there are only a handful of mental health courts targeting juveniles. Second, the significant differences between the provision of mental health and criminal justice services for juveniles and that for adults makes it difficult to develop a document that encompasses both populations.

Just as the success of local drug courts prompted the development of many mental health

1. *Essential Elements* was developed as part of a technical assistance program provided by the Council of State Governments (CSG) Justice Center through the Bureau of Justice Assistance (BJA) Mental Health Courts Program. The BJA Mental Health Courts Program, which was authorized by America's Law Enforcement and Mental Health Project (Public Law 106-515), provided grants to support the

development of mental health courts in 23 jurisdictions in FY 2002 and 14 jurisdictions in FY 2003. The Justice Center currently provides technical assistance to the grantees of BJA's Justice and Mental Health Collaboration Program, the successor to the Mental Health Courts Program.

courts, *Defining Drug Courts: The Key Components*, a 1997 publication of the U.S. Department of Justice, inspired this document. Although there are significant differences between drug courts and mental health courts, the *Key Components* document provided the foundation in format and content for *Essential Elements*.

Two key principles underlie the 10 essential elements. First, at the heart of each element is collaboration among the criminal justice, mental health, substance abuse treatment, and related systems. True cross-system collaboration is necessary to realize any of these elements and, for that matter, to successfully operate a mental health court. It is generally accepted that achieving this type of collaboration is difficult, particularly in regard to breaking down institutional barriers and eschewing the adversarial process. Second, the elements make clear, both explicitly and implicitly, that mental health courts are not a panacea. Reversing the overrepresentation of people with mental illnesses in the criminal justice system requires a comprehensive strategy of which mental health courts should be just one piece.

Though these elements are drawn in large part from the experience of existing courts, they are not research-based. Only a few studies have been completed, though more are underway, to better understand the operation and impact of mental health courts. Proponents of mental health courts hope that these investigations will substantiate the relative importance of different elements for court functioning and client outcomes. In the meantime, these elements should prove useful for communities interested in developing a mental health court or reviewing the organization and functions of an existing court program.

The elements described in this document will not be present in every mental health court. When

the elements are present, they will manifest differently across jurisdictions. In addition, some mental health court practitioners may disagree with some of the statements below, identify elements that may be missing, or argue that some of these elements are unrealistic. This debate will drive stronger efforts in the field and maximize the effectiveness of America's mental health courts.

Because mental health courts will continue to mature and new research will become available, changes to this publication are inevitable. *Essential Elements* will periodically be updated to reflect innovative thinking from the field and to include the benchmarks that mental health court administrators can use to assess their progress in implementing the essential elements in their courts.

Methodology

The essential elements are culled from a variety of sources, including interviews with former BJA Mental Health Courts Program (MHCP) grantees, on-site visits to grantee and non-grantee mental health courts, and a review of the scholarly literature.² An original draft of the elements document was prepared for the 2004 BJA MHCP conference. Comments from the conference attendees were incorporated into a second draft, which served as source material for the *Guide to Mental Health Court Design and Implementation*, a BJA-sponsored publication.

This latest version was informed by comments from the field transmitted through a well-publicized web-based discussion forum. A group of practitioners and experts reviewed and discussed these comments and suggested revisions to the draft. This version incorporates those suggestions.

2. The first major investigation of mental health courts was "Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload: Mental Health Courts in Fort Lauderdale, Seattle, San Bernardino, and Anchorage," by John Goldkamp and Cheryl Irons-Guynn, April 2000. Since then, several studies about mental health courts have been published, including the BJA-sponsored report entitled *Guide*

to Mental Health Court Design and Implementation, July 2005, and the Rand study *Justice, Treatment, and Cost: An Evaluation of the Fiscal Impact of Allegheny County Mental Health Court*, March 2007. Readers interested in these and other resources related to mental health courts should visit www.consensusproject.org/mhcourts.

Ten Essential Elements

1

PLANNING AND ADMINISTRATION

A broad-based group of stakeholders representing the criminal justice, mental health, substance abuse treatment, and related systems and the community guides the planning and administration of the court.

Mental health courts are situated at the intersection of the criminal justice, mental health, substance abuse treatment, and other social service systems. Their planning and administration should reflect extensive collaboration among practitioners and policymakers from those systems, as well as community members. To that end, a multidisciplinary “planning committee” should be charged with designing the mental health court. Along with determining eligibility criteria, monitoring mechanisms, and other court processes, this committee should articulate clear, specific, and realizable goals that reflect agreement on the court’s purposes and provide a foundation for measuring the court’s impact (see Element 10: Sustainability).

Ideally, the development of a mental health court should take place in the context of broader efforts to improve the response to people with mental illnesses involved with, or at risk of involvement with, law enforcement, the courts, and corrections. Such discussions should include police and sheriffs’ officials, judges, prosecutors, defense counsel, court administrators, pretrial services staff, and corrections officials; mental health, substance abuse treatment, housing, and other service providers; and mental health advocates, crime victims, consumers, and family and community members.

The planning committee should identify agency leaders and policymakers to serve on an “advisory group” (in some jurisdictions members of the advisory group will also make up the planning committee), responsible for monitoring the court’s adherence to its mission and its coordination with relevant activities across the criminal justice and mental health systems. The advisory group should suggest revisions to court policies and procedures when appropriate, and should be the public face of the mental health court in advocating for its support. The planning committee should address ongoing issues of policy implementation and practice that the court’s operation raises. Committee members should also keep high-level policymakers, including those on the advisory group, informed of the court’s successes and failures in promoting positive change and long-term sustainability (see Element 10). Additionally, by facilitating ongoing training and education opportunities, the planning committee should complement and support the small team of professionals who administer the court on a daily basis, the “court team” (see Element 8).

In many jurisdictions, the judiciary will ultimately drive the design and administration of the mental health court. Accordingly, it should be well represented on and take a visible role in leading both the planning committee and advisory group.

2

TARGET POPULATION

Eligibility criteria address public safety and consider a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses. Eligibility criteria also take into account the relationship between mental illness and a defendant's offenses, while allowing the individual circumstances of each case to be considered.

Because mental health courts are, by definition, specialized interventions that can serve only a portion of defendants with mental illness, careful attention should be paid to determining their target populations.

Mental health courts should be conceptualized as part of a comprehensive strategy to provide law enforcement, court, and corrections systems with options, other than arrest and detention, for responding to people with mental illnesses. Such options include specialized police-based responses and pretrial services programs. For those individuals who are not diverted from arrest or pretrial detention, mental health courts can provide appropriately identified defendants with court-ordered, community-based supervision and services. Mental health courts should be closely coordinated with other specialty or problem-solving court-based interventions,

including drug courts and community courts, as target populations are likely to overlap.

Clinical eligibility criteria should be well defined and should be developed with an understanding of treatment capacity in the community. Mental health court personnel should explore ways to improve the accessibility of community-based care when treatment capacity is limited and should explore ways to improve quality of care when services appear ineffective (see Element 6: Treatment Supports and Services).

Mental health courts should also focus on defendants whose mental illness is related to their current offenses. To that end, the planning committee should develop a process or a mechanism, informed by mental health professionals, to enable staff charged with identifying mental health court participants to make this determination.

3

TIMELY PARTICIPANT IDENTIFICATION AND LINKAGE TO SERVICES

Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.

Providing safe and effective treatment and supervision to eligible defendants in the community, as opposed to in jail or prison, is one of the principal purposes of mental health courts. Prompt identification of participants accelerates their return to the community and decreases the burden on the criminal justice system for incarceration and treatment.

Mental health courts should identify potential participants early in the criminal justice process by welcoming referrals from an array of sources such as law enforcement officers, jail and pretrial services staff, defense counsel, judges, and family members. To ensure accurate referrals, mental health courts must advertise eligibility criteria and actively educate these potential sources. In addition to creating a broad network for identifying possible participants, mental health courts should select one or two agencies to be primary referral sources that are especially well versed in the procedures and criteria.

The prosecutor, defense counsel, and a licensed clinician should quickly review referrals for eligibility. When competency determination is

necessary, it should be expedited, especially for defendants charged with misdemeanors. The time required to accept someone into the program should not exceed the length of the sentence that the defendant would have received had he or she pursued the traditional court process. Final determination of eligibility should be a team decision (see Element 8: Court Team).

The time needed to identify appropriate services, the availability of which may be beyond the court's control, may constrain efforts to identify participants rapidly (see Element 6: Treatment Supports and Services). This is likely to be an issue especially in felony cases, when the court may seek services of a particular intensity to maximize public safety. Accordingly, along with connecting mental health court participants to existing treatment, officials in criminal justice, mental health, and substance abuse treatment should work together to improve the quality and expand the quantity of available services.

4

TERMS OF PARTICIPATION

Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualized to correspond to the level of risk that the defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.

Mental health courts need general program parameters for plea agreements, program duration, supervision conditions, and the impact of program completion. Within these parameters, the terms of participation should be individualized to each defendant and should be put in writing prior to his or her decision to enter the program. The terms of participation will likely require adherence to a treatment plan that will be developed after engagement with the mental health court program, and defendants should be made aware of the consequences of noncompliance with this plan.

Whenever plea agreements are offered to people invited to participate in a mental health court, the potential effects of a criminal conviction should be explained. Collateral consequences of a criminal conviction may include limited housing options, opportunities for employment, and accessibility to some treatment programs. It is especially important that the defendant be made aware of these consequences when the only charge he or she is facing is a misdemeanor, ordinance offense, or other non-violent crime.

The length of mental health court participation should not extend beyond the maximum period of incarceration or probation a defendant could have received if found guilty in a more traditional court

process. In addition, program duration should vary depending on a defendant's program progress. Program completion should be tied to adherence to the participant's court-ordered conditions and the strength of his or her connection to community treatment.

Least restrictive supervision conditions should be considered for all participants, especially those charged with misdemeanors. Highly restrictive conditions increase the likelihood that minor violations will occur, which can intensify the involvement of participants in the criminal justice system.

When a mental health court participant completes the terms of his or her participation in the program, there should be some positive legal outcome. When the court operates on a pre-plea model, a significant reduction or dismissal of charges can be considered. When the court operates in a post-plea model, a number of outcomes are possible such as early terminations of supervision, vacated pleas, and lifted fines and fees. Mental health court participants, when in compliance with the terms of their participation, should have the option to withdraw from the program at any point without having their prior participation and subsequent withdrawal from the mental health court reflect negatively on their criminal case.

5

INFORMED CHOICE

Defendants fully understand the program requirements before agreeing to participate in a mental health court. They are provided legal counsel to inform this decision and subsequent decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant's competency whenever they arise.

Defendants' participation in mental health courts is voluntary. But ensuring that participants' choices are informed, both before and during the program, requires more than simply offering the mental health court as an option to certain defendants.

Mental health court administrators should be confident that prospective participants are competent to participate. Typically, competency determination procedures can be lengthy, which raises challenges for timely participant identification. This is especially important for courts that focus on defendants charged with misdemeanors (see Element 3: Timely Participant Identification and Linkage to Services). For these reasons, as part of the planning process, courts should develop guidelines for the identification and expeditious resolution of competency concerns.

Even when competency is not an issue, mental health court staff must ensure that defendants fully understand the terms of participation, including the legal repercussions of not adhering to program conditions. The specific terms that apply to each

defendant should be spelled out in writing. Defendants should have the opportunity to review these terms, with the advice of counsel, before opting into the court.

Defense attorneys play an integral role in helping to ensure that defendants' choices are informed throughout their involvement in the mental health court. Admittedly, the availability of defense counsel varies from one jurisdiction to another. In some communities, defendants' access to counsel depends on the crime with which they were charged or the purpose of the hearing. Recognizing these constraints, courts should strive to make defense counsel available to advise defendants about their decision to enter the court and have counsel be present at status hearings. It is particularly important to ensure the presence of counsel when there is a risk of sanctions or dismissal from the mental health court. Defense counsel participating in mental health courts—like all other criminal justice staff assigned to the court—should receive special training in mental health issues (see Element 8: Court Team).

6

TREATMENT SUPPORTS AND SERVICES

Mental health courts connect participants to comprehensive and individualized treatment supports and services in the community. They strive to use—and increase the availability of—treatment and services that are evidence-based.

Mental health court participants require an array of services and supports, which can include medications, counseling, substance abuse treatment, benefits, housing, crisis interventions services, peer supports, and case management. Mental health courts should anticipate the treatment needs of their target population and work with providers to ensure that services will be made available to court participants.

When a participant is identified and linked to a service provider, the mental health court team should design a treatment plan that takes into account the results of a complete mental health and substance abuse assessment, individual consumer needs, and public safety concerns. Participants should also have input into their treatment plans.

A large proportion of mental health court participants have co-occurring substance abuse disorders. The most effective programs provide coordinated treatment for both mental illnesses and substance abuse problems. Thus, mental health courts should connect participants with co-occurring disorders to integrated treatment whenever possible and advocate for the expanded availability of integrated treatment and other evidence-based practices.³ Mental health court teams should also pay special attention to the needs of women and ethnic minorities and make gender-sensitive and culturally competent services available.

Treatment providers should remain in regular communication with court staff concerning the appropriateness of the treatment plan and should suggest adjustments to the plan when appropriate. At the same time, court staff should check with community-based treatment providers periodically to determine the extent to which they are encountering challenges stemming from the court's supervision of the participant.

Case management is essential to connect participants to services and monitor their compliance with court conditions.⁴ Case managers—whether they are employees of the court, treatment providers, or community corrections officers—should have caseloads that are sufficiently manageable to perform core functions and monitor the overall conditions of participation. They should serve as the conduits of information for the court about the status of treatment and support services.

Case managers also help participants prepare for their transition out of the court program by ensuring that needed treatment and services will remain available and accessible after their court supervision concludes. The mental health court may also provide post-program assistance, such as graduate support groups, to prevent participants' relapses.

3. Evidence-based practices (EBPs) are mental health service interventions for which consistent scientific evidence demonstrates their ability to improve consumer outcomes. R. E. Drake, et al., "Implementing Evidence-Based Practices in Routine Mental Health Service Settings," *Psychiatric Services* 52 (2001): 179–182. Other EBPs include assertive community treatment, psychotropic medications, supported employment, family psychoeducation, and illness self-management.

4. The term "case management" has multiple definitions. Moreover, specific interventions such as assertive community treatment (ACT) and intensive case management (ICM) are themselves case management models. According to the Substance Abuse and Mental Health Services Administration (SAMHSA) "any definition of case management today is inevitably contextual, based on the needs of a particular organizational structure, environmental reality, and

prior training of the individuals who are implementing it, whether they are social workers, nurses, or case management specialists" (see SAMHSA's Treatment Improvement Protocol [TIP] #27, "Case Management for Substance Abuse Treatment"). The definition of a particular case management approach can be derived from its functions and objectives. Case management functions include assessing, planning, linking, coordinating, monitoring, and advocating. For example, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the U.S. Department of Justice in its publication *Drug Identification and Testing in the Juvenile Justice System*, defines case management as "an individualized plan for securing, coordinating, and monitoring the appropriate treatment interventions and ancillary services necessary to treat each offender successfully for optimal justice system outcomes."

7

CONFIDENTIALITY

Health and legal information should be shared in a way that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.

To identify and supervise participants, mental health courts require information about their mental illnesses and treatment plans. When sharing this information, treatment providers and representatives of the mental health court should consider the wishes of defendants. They must also adhere to federal and state laws that protect the confidentiality of medical, mental health, and substance abuse treatment records.

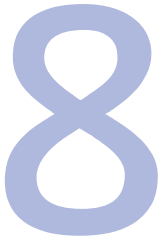
A well-designed procedure governing the release and exchange of information is essential to facilitating appropriate communication among members of the mental health court team and to protect confidentiality. Release forms should be part of this procedure. They should be developed in consultation with legal counsel, adhere to federal and state laws, and specify what information will be released and to whom.⁵ Potential participants should be allowed to review the form with the advice of defense counsel and treatment providers. Defendants should not be asked to sign release of information forms until competency issues have been resolved (see Element 5: Informed Choice).

When a defendant is being considered for the mental health court, there should not be any public

discussions about that person's mental illness, which can stigmatize the defendant. Even information concerning a defendant's referral to a mental health court should be closely guarded—particularly because many of these individuals may later choose not to participate in the mental health court. To minimize the likelihood that information about defendants' mental illnesses or their referral to the mental health court will negatively affect their criminal cases, courts whenever possible should maintain clinical documents separately from the criminal files and take other precautions to prevent medical information from becoming part of the public record.

Once a defendant is under the mental health court's supervision, steps should be taken to maintain the privacy of treatment information throughout his or her tenure in the program. Clinical information provided to mental health court staff members should be limited to whatever they need to make decisions. Furthermore, such exchanges should be conducted in closed staff meetings; discussion of clinical information in open court should be avoided.

5. For information on complying with the Health Insurance Portability and Accountability Act (HIPAA), please visit SAMHSA's Web site at www.hipaa.samhsa.gov/hipaa.html.



COURT TEAM

A team of criminal justice and mental health staff and service and treatment providers receives special, ongoing training and helps mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.

The mental health court team works collaboratively to help participants achieve treatment goals by bringing together staff from the agencies with a direct role in the participants' entrance into, and progress through, the court program. The court team functions include conducting screenings, assessments, and enrollments of referred defendants; defining terms of participation; partnering with community providers; monitoring participant adherence to terms; preparing for all court appearances; and developing transition plans following court supervision. Team members should work together on each participant's case and contribute to the court's administration to ensure its smooth functioning.

The composition of this court team differs across jurisdictions. These variations notwithstanding, it typically should comprise the following: a judicial officer; a treatment provider or case manager; a prosecutor; a defense attorney; and, in some cases, a court supervision agent such as a probation officer. Many courts also employ a court coordinator responsible for overall administration of the court, which can help promote communication, efficiency, and sustainability. Regardless of the composition of the team, the judge's role is central to the success of the mental health court team and the mental health court generally. He or she oversees the work of the mental health court team and encourages collaboration among its members, who must work together to inform the judge about whether participants are adhering to their terms of participation.

Mental health court planners should carefully select team members who are willing to adapt to a nontraditional setting and rethink core aspects of their professional training. Planners should seek criminal justice personnel with expertise or interest in mental health issues and mental health staff with criminal justice experience. Planners should also work to ensure that the judge who will preside over the mental health court is comfortable with its goals and procedures.

Team members should take part in cross-training before the court is launched and during its operation. Mental health professionals must familiarize themselves with legal terminology and the workings of the criminal justice system, just as criminal justice personnel must learn about treatment practices and protocols. Team members should also be offered the opportunity to attend regional or national training sessions and view the operations of other mental health courts. New team members should go through a period of training and orientation before engaging fully with the court.

Periodic review and revision of court processes must be a core responsibility of the court team. Using data, participant feedback, observations of team members, and direction from the advisory group and planning committee (see Element 1), the court team should routinely make improvements to the court's operation.

9

MONITORING ADHERENCE TO COURT REQUIREMENTS

Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.

Whether a mental health court assigns responsibility for monitoring compliance with court conditions to a criminal justice agency, a mental health agency, or a combination of these organizations, collaboration and communication are essential. The court must have up-to-date information on whether participants are taking medications, attending treatment sessions, abstaining from drugs and alcohol, and adhering to other supervision conditions. This information will come from a variety of sources and must be integrated routinely into one coherent presentation or report to keep all court staff informed of participants' progress. Case staffing meetings provide such an opportunity to share information and determine responses to individuals' positive and negative behaviors. These meetings should happen regularly and involve key members of a team, including, when appropriate, representatives from the prosecution, defense, treatment providers, court supervision agency, and the judiciary.

Status hearings allow mental health courts publicly to reward adherence to conditions of participation, to sanction nonadherence, and to ensure ongoing interaction between the participant and the court team members. These hearings should be frequent at the outset of the program and should decrease as participants progress positively.

All responses to participants' behavior, whether positive or negative, should be individualized. Incentives, sanctions, and treatment modifications have clinical implications. They should be imposed with great care and with input from mental health professionals.

Relapse is a common aspect of recovery; nonadherence to conditions of participation in the court

is common. But nonadherence should never be ignored. The first response should be to review treatment plans, including medications, living situations, and other service needs. For minor violations the most appropriate response may be a modification of the treatment plan.

In some cases, sanctions are necessary. The manner in which a mental health court applies sanctions should be explained to participants prior to their admittance to the program. As a participant's commission of violations increases in frequency or severity, the court should use graduated sanctions that are individualized to maximize adherence to his or her conditions of release. Specific protocols should govern the use of jail as a consequence for serious noncompliance.

Mental health courts should use incentives to recognize good behavior and to encourage recovery through further behavior modification. Individual praise and rewards, such as coupons, certificates for completing phases of the program, and decreased frequency of court appearances, are helpful and important incentives. Systematic incentives that track the participants' progress through distinct phases of the court program are also critical. As participants complete these phases, they receive public recognition.

Courts should have at their disposal a menu of incentives that is at least as broad as the range of available sanctions; incentives for sustained adherence to court conditions, or for situations in which the participant exceeds the expectation of the court team, are particularly important.

10

SUSTAINABILITY

Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically (and procedures are modified accordingly), court processes are institutionalized, and support for the court in the community is cultivated and expanded.

Mental health courts must take steps early in the planning process and throughout their existence to ensure long-term sustainability. To this end, performance measures and outcome data will be essential. Data describing the court's impact on individuals and systems should be collected and analyzed. Such data should include the court's *outputs*, such as number of defendants screened and accepted into the mental health court, as well as its *outcomes*, such as the number of participants who are rearrested and reincarcerated. Setting output and outcome measures are a key function of the court's planning and ongoing administration (see Element 1).⁶ Quantitative data should be complemented with qualitative evaluations of the program from staff and participants.

Formalizing court policies and procedures is also an important component of maintaining mental health court operations. Compiling information about a court's history, goals, eligibility criteria, information-sharing protocols, referral and screening procedures, treatment resources, sanctions and incentives, and other program components helps ensure consistency and lessens the impact when key team members depart. Developing additional

plans for staff turnover helps safeguard the integrity of the court's operation.

Because sustaining a mental health court without funding is difficult, court planners should identify and cultivate long-term funding sources early on. Court staff should base requests for long-term funding on clear articulations of what the court plans to accomplish. Along with compiling empirical evidence of program successes, mental health court teams should invite key county officials, state legislators, foundation program officers, and other policymakers to witness the court in action.

Outreach to the community, the media, and key criminal justice and mental health officials also promotes sustainability. To that end, mental health court teams should make community members aware of the existence and impact of the mental health court and the progress it has made. More important, administrators should be prepared to respond to notable program failures, such as when a participant commits a serious crime. Ongoing guidance from, and reporting to, key criminal justice and mental health leaders also helps to maintain interest in, and support for, the mental health court.

6. The next edition of this document will include benchmarks that will help courts determine whether this is taking place in their jurisdictions. For guidance on collecting outcome data, please see Henry J. Steadman, *A Guide to Collecting Mental Health Court*

Outcome Data, May 2005, published by the CSG Justice Center and available at www.consensusproject.org/mhcourts/MHC-Outcome-Data.pdf.

Conclusion

In courtrooms across the country, judges, prosecutors, and defense attorneys are seeing increasing numbers of defendants who have serious untreated mental illnesses charged with committing low-level crimes. Traditional court processes do little to improve outcomes for many of these people. They cycle again and again through jail, courtrooms, and our city streets.

As an alternative to the status quo, court officials, working in partnership with leaders in the mental health system and local and state policymakers, have designed problem-solving mental health courts. These courts depart from the traditional model used in most criminal proceedings. Instead, as a team and under the judge's guidance, prosecutors, defense attorneys, and mental health service providers connect eligible defendants with community-based mental health treatment and, in lieu of incarceration, assign them to community-based supervision.

The number of mental health courts in the United States has grown significantly. These programs share much in common from one county to another. There are also aspects of each mental health court's design and operation that are unique,

as variation is the hallmark of this country's criminal justice system, and one of its strengths. At the same time, experts in criminal justice and mental health practice agree that there are essential elements to mental health courts, which enable them to span both the criminal justice and mental health systems effectively and to ensure that the rights of participants and community members are respected. This publication describes and explains these essential elements of a mental health court.

To design and implement a mental health court with attention to each of these elements is a challenge for those just starting a conversation about a possible mental health court, as well as for those who have operated a mental health court for years. Yet seasoned and new mental health court teams alike have demonstrated a willingness to address such complicated challenges. The essential elements described in this document are written for them and others following in their footsteps, all of whom work tirelessly to make communities healthier and safer, promote the efficient use of public resources and tax dollars, and improve outcomes for people with mental illnesses who are involved in the criminal justice system.

The Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, provides leadership training, technical assistance, and information to local criminal justice agencies to make America's communities safer. Read more at www.ojp.usdoj.gov/BJA/.

The Council of State Governments (CSG) Justice Center is a national nonprofit organization serving policymakers at the local, state, and federal levels from all branches of government. The CSG Justice Center provides practical, nonpartisan advice and consensus-driven strategies, informed by available evidence, to increase public safety and strengthen communities. Read more at www.justicecenter.csg.org.

The Criminal Justice/Mental Health Consensus Project is an unprecedented national effort coordinated by the CSG Justice Center to improve responses to people with mental illnesses who become involved in, or are at risk of involvement in, the criminal justice system. Read more at www.consensusproject.org.

**Council of State Governments
Justice Center**

100 Wall Street
20th Floor
New York, NY 10005
tel: 212 482 2320
fax: 212 482 2344

4630 Montgomery Avenue
Suite 650
Bethesda, MD 20814
tel: 301 760 2401
fax: 240 497 0568

www.justicecenter.csg.org