

RESPONDING TO THE NEED FOR ACCOUNTABILITY IN MENTAL HEALTH COURTS

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Mental health courts (MHCs) are a growing part of the problem-solving court movement. MHCs must provide performance data to track just how well they are performing their function.

A fairly recent trend in the court community is an increase in dockets dedicated to resolving recurring appearances of individuals with a common social problem. While this trend is undoubtedly on the rise, there are numerous questions that remain unanswered regarding the best direction for such courts to take. This article will explore how mental health courts (MHCs), as a component of this growing area of problem-solving courts, can best administer their programs and respond to the demands of their constituents and funding agencies in this ever-changing landscape.

Based on the anecdotal successes of early drug courts, states have expanded the therapeutic problem-solving court model by developing specialized courts or court dockets to address a number of social problems. In addition to drug courts, the label “problem-solving courts” has been applied to dockets or programs involving quality-of-life offenses (i.e., community courts), domestic violence, juvenile/status offenses (e.g., teen, girls’, truancy courts), veterans issues, reentry, gambling, homelessness, and mental health issues (including co-occurring disorders). As this list continues to grow, more research is desperately needed to sift through the diverse array of problem-solving approaches and, before the cart gets too far ahead of the horse, help refine current knowledge and understanding of which programs work, for whom, and why.

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A national map of problem-solving court infrastructure is lacking.¹ In fact, the research community does not know the exact number of problem-solving courts and is unable to track centralized documentation on participant and program characteristics. What is known about problem-solving courts is limited to evaluations or outcome analyses of *specific* court programs (see e.g., Wales, Hiday, and Ray, 2010). Despite the widespread trend to expand the use of problem-solving courts, existing research reveals little at this time about the effectiveness of specific programs, the populations for whom this therapeutic approach works, and how to sustain the programs that work.

The paucity of formal national-scope investigative research stems, in part, from the fact that many problem-solving court programs are relatively new and have limited resources for evaluation. Although ad hoc sources offer funds for program implementation and development, these dry up quickly, leaving problem-solving courts to rely on state or local funds to sustain regular court operations. However, states have been hit hard by the economic downturn, and courts remain uncertain of their fate as more courts face consolidation and institute mandatory furlough days as cost-cutting strategies. In addition to cost-cutting measures that threaten problem-solving courts’ ability to operate, courts often lack the financial resources necessary for the type of data-collection efforts that would demonstrate their own capacity for positive change. Ironically, without such empirical evidence or assessment of performance, these programs are ill-equipped to campaign for the sustained or expanded state and local support necessary for continued operations. Thus, despite perceived or anecdotal successes, funding shortages will force some problem-solving courts to close their doors.

To produce evidence-based conclusions about the efficacy of problem-solving courts, an understanding of these programs and the many faces of their clients is needed. A comprehensive, standardized research program will help focus assessment efforts and answer lingering questions about which problem-solving court programs achieve their stated missions, and for whom they are most effective. Ultimately, this effort will facilitate a better understanding of what does and does not work with problem-solving courts, guiding funding agencies, legislators, policy makers, and courts toward more informed decisions about these programs. To address this need, however, the first fundamental step is for MHCs to gather empirical data on their performance.

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Some critics of problem-solving courts suggest that the expansion and specialization of so many types of problem-solving courts is detrimental to their sustainability. If specialization becomes too granulated, courts will eventually reconsider the value of each docket as a separate entity as opposed to working within the administrative structure and culture of the court as a whole. For example, how are MHCs organized in relation to drug courts (e.g., co-occurring dockets)? How are MHCs operating in conjunction with veterans courts (e.g., addressing post-traumatic stress disorder, depression)?

These critiques and questions call on courts to demonstrate high-quality performance to justify the need for the program. Are participants reoffending? Are participants held accountable for court-ordered treatment? Are participants efficiently progressing through the program? Is the collaboration with other agencies effective? Are participants receiving the appropriate levels of treatment and supervision? Are participants exiting the program with the tools necessary for successful transition away from court supervision?

Performance measurements provide courts with answers to these questions. Performance measurement is considered an essential activity in many government and nonprofit agencies because:

[A]gencies have a greater probability of achieving their goals and objectives if they use performance measures to monitor their progress along these lines and then take follow-up actions as necessary to ensure success (Poister, 2003).

Effectively designed and implemented performance measurement systems provide tools for managers to exercise and maintain control over their organizations, as well as act as a mechanism for governing bodies and funding agencies to hold organizations accountable for producing the intended program results.

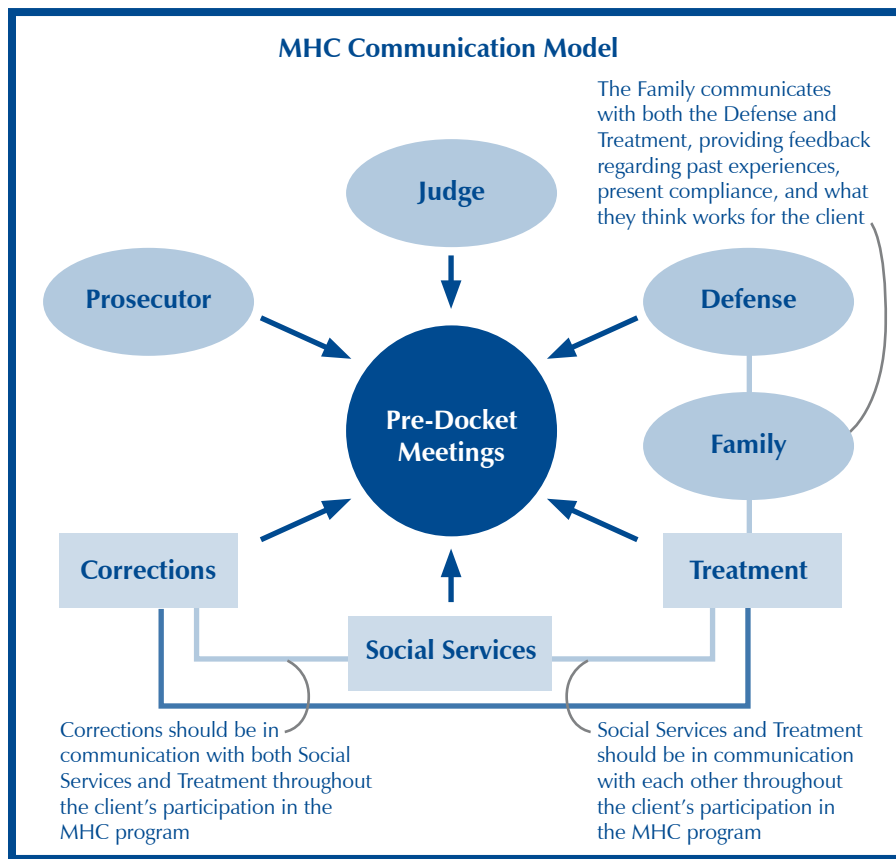
In response to these needs, the NCSC developed performance measures designed specifically for MHCs.² This effort was informed by the High Performance Court Framework (Ostrom and Hanson, 2010). This Framework provides balanced perspectives regarding customers, internal operations, innovations, and social value. This work was also informed by field work in which the performance measures were tested by four courts over a six-month pilot project (Waters et al., 2010). At the conclusion of the pilot period, a focus group of key data specialists from the courts discussed challenging experiences and notable improvements made in the courts that were a result of the data collection efforts. From this discussion it became obvious that the diversity of MHCs required the NCSC to develop measures that are broadly applicable to programs across the country, and practical for implementation.

To help MHCs to be accountable to their funding sources and stakeholders, the NCSCs performance measures incorporate three key perspectives: (1) MHCs must be efficient in serving the participants and coordinating interagency interactions (e.g., monitoring compliance reporting between participants and the MHC team, timeliness, and thoroughness of docket hearings); (2) Participants are expected to improve social functioning with a mental illness, establish a productive life in the community, reduce recidivism, and establish a network of support; and (3) MHCs should be evaluated as procedurally just (Tyler and Lind, 1988) from both the public’s and the participant’s perspectives.

All courts, whether employing specialized dockets or not, must address the first perspective—timeliness and efficiency of operations in assessing performance.³ In MHCs, processing delays are an end product of the involvement of multiple agencies. Simple coordination and communication can be rife with logistical and structural complexity. Thus, the MHC performance measures assess interactions both with external agencies and, internally, between the MHC team and the participant.

The MHC is a team of individuals, each representing a key interest. A diagram of each of the networked interests is depicted in the figure below (Waters, Strickland, and Gibson, 2009). The judge, prosecutor, and defense attorney compose the traditional criminal-court “team.” In the MHC, as in most problem-solving courts, representatives from treatment providers, social services, and corrections are also integrated as part of the team (see figure below).

Information is exchanged across agencies, so understanding the culture, role, and perspective of each agency represented in the MHC will advance the level of communication and the effectiveness of the interactions among team members.



Due to the multiple perspectives and possible conflicting priorities that are inherent in team interactions, a successful MHC program balances the need for input from all team members. Performance measures that assess the effectiveness of this collaboration provide valuable feedback to the court manager or administrator and ultimately affect the ability of the court to operate at peak levels.

In an MHC, improving a client's social functioning is equally as important as reducing recidivism, as captured by the second perspective in developing performance measures. In fact, a premise of MHCs is that improved social functioning is the key to reducing recidivism. MHC participants should thus be expected to establish reliable and stable relationships and network with appropriate supportive agencies. As such, performance measures for MHCs assess whether participants receive on-target treatment services during the program. Moreover, to sustain social functioning, performance measures capture whether participants graduate with a plan for continued aftercare treatment. Clients should engage in behavior that establishes productivity within and contribution to their community (e.g., volunteer work, educational opportunities, employment). Most important, participants should be able to sustain adequate housing.

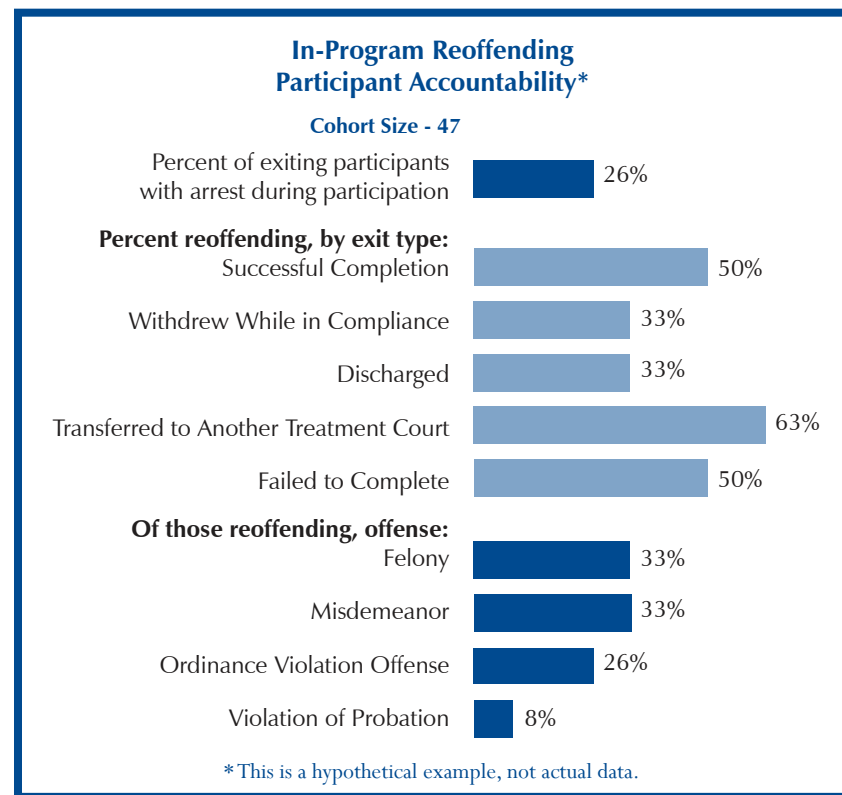
The perception that the process of decision making and the procedures are fair encompasses the concept of procedural justice. As it applies to MHCs, the court must gain the public's trust and confidence that the program is not just a loophole for defendants facing jail time. Similarly, the participant's perspective is important to ensure that admittance and participation in the program is fair and just. In other words, years of judicially supervised treatment is not seen as more punitive than the conventional punishment (e.g., jail time). Measuring participants' views of fair treatment is valuable in MHCs and has been linked to program outcomes in drug courts (Gottfredson et al., 2007).

NCSC's Mental Health Court Performance Measures

Integrating the previous perspectives, the NCSC developed 14 performance measures for MHCs that cover key measurement domains, but are few in number and relatively simple to implement. A list of the performance measures and the *Implementation and User's Guide* can be found online (Waters et al., 2010). In an effort to simplify the implementation, the NCSC developed templates designed to

automatically calculate the measures and display the results as a graph (see figure below). As MHCs begin to routinely monitor performance, baselines and standards will become evident. Then courts can develop goals for achieving a desired level of performance.

Generally speaking, the purpose of an MHC is to divert offenders with mental illness from incarceration into judicially supervised and appropriate individualized treatment. This goal balances the importance of public safety to the community and personal responsibility for criminal activities with the recognition that the current criminal justice system has repeatedly failed to deter or reform these individuals. The extent to which MHCs offer an effective problem-solving alternative to the criminal justice system is currently unanswerable without additional research.



However, performance measures designed specifically for MHCs provide valuable and necessary empirical data to respond to the need for MHCs to be accountable and sustainable.

Next Steps

All courts are challenged to find and implement creative solutions to manage caseload and administer programs such as MHCs. One way to provide courts with the tools and feedback necessary to improve these programs is to implement and incorporate performance-measurement-data collection among regular court management practices.

It should be noted, however, that performance measures are but a first step in understanding and improving MHCs. Performance measures focus on *outcomes*, which are the measures of the stated objectives of the program. Performance measurement involves: (1) planning and meeting established operating goals for intended outcomes; (2) detecting deviations from planned levels of performance; and (3) restoring performance to the planned levels of performance. Determining *impact* or studying program *effectiveness* is much more difficult and requires quasi-experimental studies. These studies require estimates of attribution, i.e., the benefits that would not have occurred had the program not existed (Lipsey, 2004).

Studying the effectiveness of MHCs presents a number of challenges in regards to the design and implementation of appropriate measures. Wolff and Pogorzelski (2005) argue that to test an intervention like MHCs properly, other factors need to be held constant so that the change can more confidently be attributed to participation in MHC. With the complex nature of the court and pressures exerted by both internal and external factors, it becomes nearly impossible to control all the potential influences.

The way in which program effectiveness measures such as recidivism and treatment compliance are measured can drastically influence whether there is a perceived positive effect from the MHC (Wolff and Pogorzelski, 2005). For example, noncompliance or reoffending may be higher for participants due to the increased monitoring that one receives through participation in the program. Thus, a program's effectiveness is best assessed by including a broad range of measurements.

It is important to expand the evaluation of the court's performance to a broader set of outcomes, including changes in quality of life for the individual and related family members, family burden, stable housing, involvement in education or vocational training, stable employment, and participation in civic activities (Wolff and Pogorzelski, 2005).

With the knowledge gained from a much-needed national survey of court, caseload, and participant characteristics of problem-solving courts, researchers will be better equipped to conduct a more systematic program analysis and establish optimal offender eligibility and selection criteria. Yet, first and foremost, courts must collect data that measures their performance.

ENDNOTES

¹ The National Center for State Courts (NCSC), with funding from the Bureau of Justice Statistics, is currently conducting a census of problem-solving courts (Grant #2010-BJ-CX-K075). The NCSC is partnering with the National Drug Court Institute, who has developed a map of drug courts across the nation (see www.nadcp.org/learn/find-drug-court).

² This NCSC project was funded by the Bureau of Justice Assistance (Grant 2007-DD-BX-K162).

³ See *Trial Court Performance Standards*, Measure 2.1.1 ("Time to Disposition"), which was adopted by the Conference of State Court Administrators, the Conference of Chief Justices, and the American Bar Association (www.ncsconline.org/D_Research/tcps/Measures/me_2.1.1.htm), and NCSC's *CourTools*, Measure 3 (www.ncsconline.org/D_Research/CourTools/Images/courtools_measure3.pdf).

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