



# Municipal Courts:

An Effective Tool for Diverting  
People with Mental and  
Substance Use Disorders from  
the Criminal Justice System







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**Introduction**

(Cornell, 2012). There are many types of limited jurisdiction courts, including courts addressing minor criminal charges, courts that impose limited fines for different violations of municipal codes, and courts such as mental health and drug courts that focus their docket on a particular type of case or defendant.

It is estimated that there are 14,000–16,000 courts of limited jurisdiction in the United States, and that in 2009 such courts handled approximately 70 million (or 66 percent) of the 106 million cases that were handled by state trial courts (Cornell, 2012).

At the same time, according to the Bureau of Justice Statistics at the United States Department of Justice, the number of limited jurisdiction courts declined from 1980 to 2011, in part because of the consolidation of different types of courts. In 2011, California, Illinois, Iowa, Minnesota, and the District of Columbia had no limited jurisdiction courts (Malega & Cohen, 2013). Sixty-one percent of all judges continue to sit in courts of limited jurisdiction.

The National Center for State Courts defines a municipal court as a “stand-alone trial court of limited jurisdiction that may or may not provide jurg3

## **Municipal Courts as a Venue for Diversion of People with Mental and Substance Use Disorders**

Municipal courts make a good potential vehicle for diverting people with mental and substance use disorders for several reasons, including volume of cases; high prevalence of mental and substance use disorders among those appearing before municipal courts; the risk of increased jail time for arrestees with mental illness, most with co-occurring substance use disorders; and perceptions of community risk based on offense type.

Municipal courts handle thousands of cases each year.

In Boston alone, the municipal court handled approximately

35,000 criminal cases in 2010 (Massachusetts Judicial

Branch, n.d.). While the sheer number (thousandBDC Tfeer number 0 gs/Ttr/C2\_0.11 k23600 0 0550048 0560048 051 057DC

dangerousness, perceived risk by the community may be low, and many communities welcome efforts to address the needs of individuals whose behaviors, while not necessarily dangerous, may be thought to detract from the quality of community life.

## **Challenges to the Use of Municipal Courts for Diversion**

Several issues may pose challenges to the use of municipal courts as points of diversion. They include the volume of cases, the lack of leverage over the individual, the brief amount of time available to address what may be complex individual needs, and issues arising from the very nature of municipal courts.

As noted above, the fact that municipal courts are the primary venue for handling legal matters in the United States makes them an attractive site for diversion.

Case volume can be a detriment; if a court's caseload is heavy, it may be difficult to consider an intervention that requires spending more time on individual cases. However, not all courts have unmanageable caseloads. As the example of Missouri, noted above, illustrates, municipal courts fall into various tiers when it comes to size of caseloads, and there are courts where the caseload permits consideration of a special docket.

More pressing and common issues may be the lack of leverage over the individual created in part by the less serious nature of charges handled by municipal courts and the limited amount of time the individual is under the court's jurisdiction.

Treatment courts rely on various forms of leverage, such as status hearings, the threat or use of jail, and other sanctions, as tools to induce adherence to treatment and other conditions. In addition, avoiding lengthy jail time in exchange for participating in a treatment court may be an incentive for the individual to choose to participate. However, many of these forms of leverage and incentives may not exist in a municipal court setting where the individual is charged with a minor offense, faces brief jail time at most, and may not be under the court's jurisdiction for an appreciable time period unless he or she chooses to enter a treatment court. As a result, many individuals, if adequately informed about their options, may simply

choose the less intrusive resolution of a plea. However, interventions that rely upon a proportional response (i.e., the treatment requirement is no longer than the maximum possible incarcerative sentence) have been implemented with success in many jurisdictions. The three programs described in detail below offer examples of how limited interventions can be effective in reducing recidivism and engaging people in behavioral health services. Some programs operate without any leverage, as the person's placement into the program results in a dismissal of the criminal charges, while pre-trial supervised release and misdemeanor treatment courts may not adjudicate the



other constraints on the ability of a municipal court to adopt diversion as a strategy.

## What Are the Essential Elements for Effective Diversion?

To understand what pieces must be in place for a municipal court to achieve effective diversion, it is useful to review explicitly what we mean by diversion.

SAMHSA's GAINS Center (2007) defines diversion as the avoidance or radical reduction in jail time achieved by linkage to community-based services. Christie, Clark, Frei, & Ryerson (2012) point out that in many cases, where charges are minor and sanctions are quite limited, people may be linked to community-based services without a "radical reduction" in jail time or even any reduction in jail time. On the other hand, some defenders are not open to presenting any information regarding mental health and substance use needs to the court prior to arraignment. Defenders may fear that such information could result in delayed release due to bias about defendants with mental illness and co-occurring substance use disorders or could even inadvertently prejudice the outcome of the case.

Early screening and prompt engagement at arraignment is key to minimizing penetration into the justice system, even to avoid a relatively short jail stay. Even short jail stays can be very disruptive to people with mental illness. Incarceration can interrupt contact with providers and access to medication and other services and result in loss of housing or employment.

As noted above, the following procedural and structural barriers can impede diversion in municipal courts:

- Case volume;
- Time constraints;
- Leverage; and
- Nature of municipal courts.

In spite of these barriers, strategies and programs have emerged that enable diversion at arraignment and enhance post-arraignment diversion in municipal courts. Essential elements of municipal court diversion

can be extrapolated from these programs. The essential elements, below, have been extracted from reviews of municipal court program evaluations or program descriptions and from observations of the SAMHSA's GAINS Center when consulting on diversion programs across the country. The focus of these elements is to promptly identify, screen, and assess people with co-occurring disorders and link them to appropriate treatment and recovery services.

### Identification and Screening

As justice and mental health collaborators improve data matching and sharing technology, opportunities for identification and screening are being enhanced. Pima County, Arizona, and the states of Illinois and Maryland have implemented criminal justice–behavioral health information-sharing systems to

provide routine identification and assist with placement into treatment (Petrila & Fader-Towe, 2010).

In addition, the VA is piloting the Veterans Referral Support Service, which links justice databases to the Department of

Defense Database, to identify people who have served in the military.

Identification and screening for co-occurring disorders in early diversion programs is challenging due to the high number of cases processed in municipal courts and the short time between arrest and arraignment. Even in communities with police Crisis Intervention Teams, behavioral health information obtained at arrest is not reliably passed along to the courts. High volumes of cases, inadequate staffing, and space limitations inhibit staff at initial detention from screening for mental illness and co-occurring substance use disorders and eligibility for diversion. Many communities merely identify potential candidates for referral to specialty courts or appropriate community-based treatment at arraignment and lack capacity to divert individuals with co-occurring disorders at arraignment.

To initiate prompt and timely diversion, resources must be devoted to identification and screening as early as possible following arrest. The following



lack of an address. Consequently, likelihood of incarceration for people with mental illness is high at arraignment.

Pre-Trial Services is uniquely positioned to be a partner in early diversion programs. Adding a screening instrument (e.g., the Brief Jail Mental Health Screen) to the bail assessment will help to identify potential candidates for early diversion. In addition, Pre-Trial Services often provides a pre-trial supervision component. This added supervision component can allay concerns of the court and prosecutors by providing reliable monitoring and feedback to the court. To be effective in this role, Pre-Trial Services needs established linkages to community-based services.

Defense counsel is the next strategic entity to interview the defendant. By incorporating a behavioral health screening into the initial interview, diversion candidates can be identified by attorneys, and the merits of diversion versus usual case processing can be discussed. Many public defender offices employ social work staff to provide clinical assessment and diversion coordination for defendants; for example, the New York City Legal Aid Society (MAP Program), Shelby County (TN) Public Defender, and Travis County (TX) Mental Health Public Defender. Focusing the efforts of clinical staff at arraignment allows for identification and referral to diversion services and enhances prompt referral to post-arraignment diversion programs.

When clinicians are present in court, there is added capacity for screening for diversion opportunities. Court-based clinicians may be employed by the court, local behavioral health departments, or contracted providers. Court-based clinicians face challenges regarding interview space, case volume, and time. Larger municipal courts often operate seven days per week from morning to evening, and providing

clinical coverage for all hours of court operation may not be feasible.

The U.S. Department of Veterans Affairs (VA) initiated a Veterans Justice Outreach (VJO) initiative in 2009. VJO specialists are tasked with providing diversion alternatives for justice-involved veterans eligible for VA services. VJO specialists may not have the capacity to service all municipal courts in their region, but where available, VJO specialists are effective in screening and identifying veterans for diversion programs, offer consultation regarding the most effective strategies for screening veterans, and provide access to VA services (Christie et al., 2012).

Even without clinical training, municipal court judges and their court staff are in a great position to identify defendants who seem to be struggling in the courtroom. Particularly in smaller jurisdictions, judges are familiar with repeat defendants and their families and have a sense about an individual's behavioral

## **A Municipal Court Achieving Effective Diversion: Midtown Community Court— New York, NY<sup>2</sup>**

misdemeanor offenses, such as prostitution, illegal vending, graffiti, and possession of marijuana.



## A Municipal Court Achieving Effective Diversion: Misdemeanor Arraignment Diversion Project—New York, NY<sup>3</sup>

of the case. The licensed clinical social worker is responsible for identification and assessment of  
is also responsible for organizing collateral contacts with family, significant others, and community

While the seriousness of charges and criminal sanctions varies in municipal courts, usually the charges are for quality of life crimes, small quantity drug possession, minor thefts, and nonviolent crimes where criminal sanction may be limited. In some communities, incarceration for misdemeanors is reserved only for chronic misdemeanants or where there is an element of violence. Consequently, there is limited court leverage for an individual to participate

in a program with extended court monitoring. A proportional response must be no greater than the maximum possible incarcerative sentence. In general, the maximum possible incarcerative sentence for a misdemeanor is 12 months minus time served in pre-trial detention. There must be a proportionality of response for diversion, or there may be little incentive for a defendant to participate. For example, a defendant may not be willing to submit to 6 months or even a year of court monitoring when jail sanctions are

## Misdemeanor Arraignment Court Diversion Project





- Fisher, W. H., Roy-Bujnowski, K. M., Grudzinskas, A. J., Clayfield, J. C., Banks, S. M., & Wolff, N. (2006). Patterns and prevalence of arrest in a statewide cohort of mental health care consumers. *Psychiatric Services*, 57, 11, 1623-1628. <http://ps.psychiatryonline.org/doi/abs/10.1176/ps.2006.57.11.1623>
- Foley, G., & Ruppel, E. (2008). *The EXIT program: Engaging diverted individuals through voluntary services*. Delmar, NY: SAMHSA's GAINS Center.
- Glasheen, C., Hedden, S."L., Kroutil, L."A., Pemberton, M."R., & Goldstrom, I. (November, 2012). Past year arrest among adults in the United States: Characteristics of and association with mental illness and substance use. *Center for Behavioral Health Statistics and Quality Data Review*. Rockville, MD: Substance Abuse and Mental Health Services Administration. Retrieved July 5, 2014, from <http://www.samhsa.gov/data/2k12/DataReview/DR008/CBHSQ-datareview-008-arrests-2012.htm>
- Karberg, J. C., and James, D. J. (2005.) *Substance dependence, abuse, and treatment of jail inmates, 2002*. Washington, DC: U.S. Department of Justice, Office of Justice Programs. Retrieved from <http://www.csdp.org/research/sdatji02.pdf>
- Malega, R., & Cohen, T."H. (2013). *State court organization, 2011*. Washington, DC: Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice. Retrieved July 5, 2014, from <http://www.bjs.gov/content/pub/pdf/sco11.pdf>
- Massachusetts Judicial Branch. (n.d.). *Boston municipal court department: Fiscal year 2010*. Boston, MA: Commonwealth of Massachusetts. Retrieved from <http://www.mass.gov/courts/docs/courts-and-judges/courts/boston-municipal-court/2010caseloadstats.pdf>
- Munetz, M."R., & Griffin, P."A. (2006). Use of the Sequential Intercept Model as an approach to decriminalization of people with serious mental illness. *Psychiatric Services*, 57(4), 544–549.
- Myers, L."G. (2004). Judicial independence in the municipal court: Preliminary observations from Missouri. *Court Review*, 26 (Summer), 26–31.
- National Center for State Courts (n.d.). *Municipal courts resource guide*. Retrieved July 5, 2014, from <http://www.ncsc.org/Topics/Special-Jurisdiction/Municipal-Courts/Resource-Guide.aspx>.
- Petrila, J., & Fader-Towe, H. (2010). *Information sharing in criminal justice-mental health collaborations: Working with HIPAA and other privacy laws*. New York: Council of State Governments Justice Center. [https://www.bja.gov/Publications/CSG\\_CJMH\\_Info\\_Sharing.pdf](https://www.bja.gov/Publications/CSG_CJMH_Info_Sharing.pdf)
- Policy Research Associates. (2012). *Successfully engaging misdemeanor defendants with mental illness in jail diversion: The CASES Transitional Case Management Program*. Delmar, NY: Author.
- Policy Research Associates. (2013). *Creating an indigent defense diversion team: The Manhattan arraignment diversion project*. Delmar, NY: Author.
- Randall, M., & Ligon, K. (August 6, 2014). *From recidivism to recovery: The case of peer support in Texas correctional facilities*. Austin, TX: Center for Public Policy Priorities.
- SAMHSA's GAINS Center. (2007). *Practical advice on jail diversion: Ten years of learnings on jail diversion from the CMHS National GAINS Center*. Delmar, NY: Author.
- Skeem, J. L., & Manchak, S. (2008). Back to the future: From Klockars' model of effective supervision to evidence-based practice in probation. *Journal of Offender Rehabilitation*, 47, 220–247.
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