

6 KEY QUESTIONS about BEHAVIORAL HEALTH IN CRIMINAL CASES

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Behavioral Health in the Criminal Justice System

Millions of people in the United States are living with Serious Mental Illness (SMI), Substance Use Disorders (SUD), and Co-occurring Disorders (COD). At least one third of these people do not receive the treatment that they need,¹ and there are significant racial and ethnic disparities in access to treatment.²

Without access to mental and behavioral health services, the response to a mental health crisis is often law enforcement, leading to involvement in the criminal justice system. People living with behavioral health needs are overrepresented in the courts and in the incarcerated population. Involvement with the legal system can have broad-reaching and lasting implications in the lives of individuals with behavioral health needs and in their families and communities. This involvement can negatively affect mental health outcomes, housing stability, employment, and community integration. A concerted response on the part of the state courts is badly needed.

Data are a critical tool in the state courts' fight to address behavioral health needs in the legal system. At the level of individual cases, high-quality data are crucial for ensuring that defendants' cases move through the system as efficiently and justly as possible and that their behavioral health needs are being fully addressed.

The [Behavioral Health Data Elements Guide](#) provides a framework for data collection and data analysis by state courts. Collecting and using the data elements laid out in this guide alongside other agencies and stakeholders in the legal and behavioral health systems will enable court leaders to better meet the needs of defendants who are living with behavioral health conditions. These reforms will also reduce the strain that unmet behavioral health needs place on the court system's resources.

What Questions Can We Answer with Data?

Data allows the courts to answer six key questions about how people with behavioral health needs move through the criminal justice system. This short report outlines the key questions. The full [Behavioral Health Data Elements Guide](#) describes the data elements needed to answer each key question and provides more detailed guidance on measurement and analysis.

1. WHAT ARE THE KEY CHARACTERISTICS OF DEFENDANTS IN THE CRIMINAL JUSTICE SYSTEM?

Using data, the court can determine the important demographic characteristics of defendants in the criminal justice system, particularly defendants who have behavioral health needs. Key characteristics include important social identities, such as race, ethnicity, and gender. They can also include information about any barriers to accessing services, such as certain indicators of socioeconomic status, insurance status, disability, housing status, and English language proficiency. This information is critical for ensuring full access to diversion programming, delivering culturally responsive behavioral health services, and examining court processes and outcomes for disparities and disproportionality.

2. HOW MANY DEFENDANTS ARE BEING SUCCESSFULLY DEFLECTED OR DIVERTED TO SERVICES IN THE COMMUNITY?

Using data about the behavioral health needs of criminal defendants, courts can determine how many defendants have been screened for behavioral health and how many have been identified as having a behavioral health need. The court can also determine if the rate at which defendants are being deflected to community services or diverted to alternatives to prosecution is sufficient. Deflection and diversion opportunities might include crisis intervention techniques that divert people to services rather than jail, competency and restoration policies that limit the number and types of crimes for which people are evaluated for competency to stand trial, and diversion programs. This information is crucial for assessing any unmet opportunities for deflection and diversion, as well as for examining program capacity and budgetary needs. Finally, the court can examine whether there are disparities or disproportionality in deflection and diversion decisions based on demographic categories such as race, socioeconomic status, disability, limited English proficiency, and more.

3. HOW LONG DOES IT TAKE DEFENDANTS TO MOVE THROUGH THE COMPETENCY TO STAND TRIAL AND RESTORATION PROCESS? IS THE COMPETENCY AND RESTORATION PROCESS EQUITABLE?

Using core data about case processing, the court can determine how long it takes defendants to move from competency referral to evaluation, from evaluation to competency determination, from competency determination to restoration, and from restoration to adjudication. This information is critical for evaluating restoration timelines and ensuring defendants have timely access to behavioral health services. The court can also examine whether there are disparities or disproportionality in case competency and restoration processing based on demographic categories such as race, socioeconomic status, disability, limited English proficiency, and more.

4. HOW LONG ARE PEOPLE WITH BEHAVIORAL HEALTH NEEDS DETAINED? IS LENGTH OF STAY EQUITABLE?

Using these data elements, the court can determine how long it takes defendants with behavioral health needs to make bail and the length of their detention before trial. This information is critical for ensuring that defendants' length of stay doesn't exceed the potential sentence for their criminal charges. The court can also examine whether there are disparities or disproportionality in length of stay based on demographic categories such as race, socioeconomic status, disability, limited English proficiency, and more.

5. HOW LONG DOES IT TAKE DEFENDANTS WITH BEHAVIORAL HEALTH NEEDS TO COMPLETE DIVERSION OR PROBLEM-SOLVING COURT PROGRAMMING? IS DIVERSION PROGRAM PROCESSING EQUITABLE?

Using these data elements, the court can determine how long it takes defendants to exit from court programs. This information is critical for establishing sensible, evidence-based timelines for diversion programming and for examining program capacity and budgetary needs. The court can also examine whether there are disparities or disproportionality in access to diversion programming and in case processing based on demographic categories such as race, socioeconomic status, disability, limited English proficiency, and more.

6. WHAT ARE THE ATTENDANCE AND SUCCESS RATES FOR DIVERSION OR PROBLEM-SOLVING COURT PROGRAMS? ARE DIVERSION PROGRAM OUTCOMES EQUITABLE?

Using these data elements, the court can evaluate whether programs are meeting their goals, both in terms of attendance and graduation rates and in terms of improved outcomes and reduced recidivism. The court can also examine whether there are disparities or disproportionality in program outcomes based on demographic categories such as race, socioeconomic status, disability, limited English proficiency, and more.

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ENDNOTES

¹ Substance Abuse and Mental Health Services Administration (SAMHSA), [Key Substance Use and Mental Health Indicators in the United States: Results from the 2020 National Survey on Drug Use and Health](#).

² Compiled using data from Substance Abuse and Mental Health Services Administration (SAMHSA), [Public Online Data Analysis System \(PDAS\)](#), (accessed March 7, 2022).

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