THE NATIONAL CENTER FOR STATE COURTS

MENTAL HEALTH COURT CULTURE: LEAVING YOUR HAT AT THE DOOR

NICOLE L. WATERS, PROJECT DIRECTOR
SHAUNA M. STRICKLAND
SARAH A. GIBSON

NOVEMBER 2009

PARTICIPATING SITES

California

San Francisco's Behavioral Health Court
Santa Clara County's Court for the Individualized Treatment of Adolescents

Minnesota

Fourth Judicial District Criminal, Hennepin County Mental Health Court

Missouri

Jackson County Mental Health Courts
Kansas City Municipal Court
Kansas City Circuit Drug Court
Lee's Summit Municipal Court

Vermont

Chittenden County Mental Health Court

ADVISORY COUNCIL

Lauren Almquist
Policy Analyst
Council of State Governments

Margot Ballon
District Attorney's Office
Albequerque, NM

Pam Casey
Principal Court Research Consultant
National Center for State Courts

Tony Ingram
Chief Probation Officer
Akron Municipal Mental Health Court

Amy King
Associated Counsel for the Accused
King County District Court

Rebecca Rose
Policy Advisor
Bureau of Justice Assistance

Dawn Rubio
Principal Court Management Consultant
National Center for State Courts

Mary Sammon
Institute of Court Management
National Center for State Courts

Lois Smith
Program Manager
King County Mental Health Court

Mark Speiser
Circuit Court Judge
Broward County Circuit Court

ACKNOWLEDGEMENTS

The project staff would like to thank the Advisory Council for their valuable time, input, and guidance throughout this project.

We would also like to thank the staff from our participating MHC sites. In addition to the judges and court administrators, we interviewed prosecutors, defense attorneys, probation officers, boundary spanners, treatment providers, social workers, and education advocates. The perspectives of all MHC team members have been invaluable to our understanding of court communication models, and we appreciate the time given to us by each of the following:

Chittenden County, VT
- Hon. Geoffrey Crawford
- Scott Decatur
- Karen Gennette
- Theresa Georges
- Brooke Hadwen
- Sarah Kost
- Eric Leff
- Erica Smart
- Bob Wolford

Howard Center's Co-Occurring Disorders Treatment Program Staff

Hennepin County, MN
- Hon. Richard Hopper
- Tom Arneson
- Manette Chineth
- Annetta Cupek
- Sarah Hauble
- Lori Lonchareck
- Elizabeth Miller
- Rebecca Prust
- Bob Roeglin
- Lori Swenson
- Greg Webster

Jackson County, MO

Drug Court, MH track
- Commissioner David Fry
- Judy Chase
- Peter Gromowsky
- Pat Hodges
- Lisa Honn
- Mary Lopez
- Pat McGinnis
- Rick Rangel
- Roberta Safford
- Edward Walzer

Kansas City Municipal MHC
- Hon. Elena Franco
- Hon. John Williams
- Dale Byers
- Mary Corwin
- Quina Thomason
- Melanie Triplett
- T. Rae VanDyke

Lee's Summit Municipal MHC
- Hon. James Tobin
- Pam DeVault
- Elizabeth Heevner
- Vickie Thomas
- Brian Wilson

Jackson County Community MH Fund
- Theresa Cummings
- Bruce Eddy
- Mike Taylor

Jackson County MHC Commission Members

San Francisco, CA
- Hon. Mary Morgan
- Martha Borja Acacio
- Leslie Cogan
- Maureen Edwards
- Jennifer Johnson
- Kathleen Connolly Lacey
- Lisa Lightman
- Cedric McKinny
- Martha McNeil
- Marcia Romero
- John Walter
- Tanya Weisheit

Santa Clara, CA
- Hon. Raymond Davilla, Jr.
- Francesca Allen
- Emanuella Chrysoglou
- Allison Crapo
- Carol Siddall
- Sandyha Shankar
- Roy Bennett

We are indebted to Ilonka Dazevedo for her indispensable administrative support. We would also like to thank Jessica Tseng and Barbara Watkins, project staff, for their contribution to this project.

KEY RESOURCES

It is important to acknowledge two key resources that have forged the base of our knowledge about mental health courts and serve as information clearinghouses for the court community. The first valuable resource is the National Center for State Court's interactive Problem-Solving Justice Toolkit (http://www.ncsconline.org/D_Research/Documents/ProbSolvJustTool.pdf). The Toolkit was developed for the Conference of Chief Justices and the Conference of State Court Administrators to help courts assess, implement, and plan problem-solving court programs. While the Toolkit was developed to cover all variations of problem-solving courts, it has a dedicated section to mental health courts and provides concrete examples and video clips from experts in the field.

The second resource is the Council of State Government's (CSG) Consensus Project. The Consensus Project aims to inform policy makers and criminal justice and mental health professionals about how best to serve the mentally ill population in the criminal justice system. As part of this project, CSG created a way to search existing programs via a database (http://cjmh-infonet.org/programs_start). The Local Programs Database is an on-line inventory database of mental health court programs. The purpose of the database is to encourage peer-to-peer networking. At the start of the NCSC's project, the CSG had indicated plans to update their previous web resource *InfoNet*. As of this publication, the updates are complete.

Front cover picture courtesy of www.mncourts.gov. "I'll See You in Court: A Consumer Guide to the Minnesota Judicial Branch."

Table of Contents

INTRODUCTION

People with mental illnesses (most of whom have co-occurring substance use disorders) are overrepresented on community corrections caseloads . . . . They face unique clinical risk factors and socio-economic challenges to successful community reintegration. Traditional community corrections agencies cannot always respond to people with mental illnesses effectively, due to both limited community resources and internal competencies and capacity, which creates a difficult situation for this population and the officers charged with their supervision.[1]

Mental illness is a disorder that haunts individuals in our criminal justice system. As this quote asserts, the current criminal justice system often fails to address underlying clinical risk issues — at times exacerbating mental illnesses with incarceration — and leaves the defendant spinning in a revolving door of crime and punishment, with little or no resolution. Ultimately, public safety is threatened and additional expenses are incurred by tax payers who fund a system that is ill-equipped to serve this population.

In 2003, Human Rights Watch reported that one in six American prisoners was diagnosed with a mental illness (such as schizophrenia, manic-depressive illness, or bipolar disorder).[2] Moreover, research has shown that a criminal defendant who has a mental illness is more likely to be arrested, receive a serious sentence, and, once incarcerated, is more likely to engage in fights or commit prison infractions.[3] These statistics have risen to the attention of the U.S. Senate, resulting in the National Criminal Justice Commission Act of 2009, which was introduced on March 26, 2009 by Senator Jim Webb, who declared that,

With four times as many mentally ill in our prisons opposed to institutions, the main point for all of us to consider is that these people who are in prison are not receiving the kind of treatment they would need in order to remedy the disabilities that have brought them to that situation.[4]

---

[1] S. Prins and L. Draper, *Improving Outcomes for People with Mental Illness Under Community Supervision* (New York: Council of State Governments, 2009), 7.

[2] Human Rights Watch, *United States: Mentally Ill Mistreated in Prison (Human Rights Watch, 22-10-2003)*, http://hrw.org/english/docs/2003/10/22/usdom6472.htm (February 2008).

[3] J. Massaro, *Working with People with Mental Illness Involved in the Criminal Justice System: What Mental Health Service Providers Need to Know (2nd ed.)* (New York: Technical Assistance and Policy Analysis Center for Jail Diversion, 2004), 3.

[4] Remarks of Senator Jim Webb from the Subcommittee on Crime and Drugs, U.S. Senate Committee on the Judiciary, Hearing on the National Criminal Justice Commission Act of 2009, http://webb.senate.gov/pdf/testimony611.pdf (June 2009).

Traditional Criminal Justice System

In the traditional criminal justice system, defendants with mental illness are often detained in jail for a period of time on ordinance violations or crimes. During their tenure in the local jail, these defendants struggle to maintain medication and treatment regiments, housing, a job, or volunteer opportunities, all of which are the crux of their ability to function within society. Typically the confinement of a defendant interrupts or ceases all medication regiments. The hostile environment of jail without prescribed medication and treatment supervision leads to a worsening of psychiatric symptoms (known as decompensation). After a relatively short period of time (1-6 months) the defendant with mental illness is released back into the community in a condition worse than that at the time of arrest and without the support necessary to maintain his daily life.

This series of events is described as the "revolving door phenomenon"[5] as the defendant, now decompensated, is re-arrested and charged with another crime soon after release from jail. It also demonstrates to the judiciary and department of corrections that the adversarial and punitive approach of the traditional criminal justice model is ineffective at resolving the underlying problems that contribute to criminal behavior and that confinement is not an effective deterrent. Through recognition of the revolving door phenomenon, the criminal justice system has acknowledged that it is poorly equipped to handle defendants with mental illness and, thus, has turned to a problem-solving approach, the Mental Health Court. In addition to addressing mental illness through a Mental Health Court, courts have taken this innovative problem-solving approach and applied it across other social problems including substance abuse (Drug Court), domestic assault (Domestic Violence Court), and quality-of-life crimes such as trespassing and vagrancy (Community Court).

First and Second Generation Mental Health Courts

In the late 1990s, as the number of persons with mental illness continued to increase in our nation's criminal courts, prisons, and local jails, and as the recidivism rate among offenders with mental illness continued to rise, mental health advocates, policy makers, and the court community questioned whether a problem-solving model, similar to that implemented in "drug courts"

[5] D. Denckla and G. Berman, *Rethinking the Revolving Door: A Look at Mental Illness in the Courts* (New York: Center for Court Innovation, 2001), 1-32.

(specialized dockets for defendants with substance abuse issues) ought to be adopted to serve defendants with mental illness.

Broward County, Florida (in 1997) and King County, Washington (in 1999) were among the first in the nation to implement a mental health court (hereinafter, MHC) model. The overarching philosophy of both drug courts and MHCs is to reduce recidivism through court monitored, community based treatment. Since it was primarily those localities with drug courts already in place or localities with a large mentally ill population that began expanding the therapeutic justice principal to mental illness, it is not surprising that MHCs have historically developed by emulating the structure and procedures of drug courts. By 2005, Redlich and colleagues began differentiating MHCs as belonging either to a first or second generation.[6] First generation MHCs tend to imitate drug court models more closely, whereas second generation courts have branched out in several ways. Second generation courts are more likely to accept felony charges, are less likely to use jail sanctions, more commonly employ pre-plea adjudications, and use court personnel or probation to supervise clients rather than community service providers.

There are as many mental health court models as there are mental health courts, and, aptly describing these differences practitioners proclaim, "if you have seen one mental health court, you have seen one mental health court."[7] As such, MHCs are distinguished or categorized by numerous program components including legal and clinical eligibility requirements, type and duration of court monitoring and supervision, treatment and services available, and adjudication alternatives.

Upon initial detention, a defendant may be given the choice to opt into the MHC docket and out of the conventional criminal processing track. Typically this is presented to the defendant during the arrest or detention stage or initial hearing (i.e. a first responder, mental health professional, judge, defense attorney, or detention staff recognizes behavior that might be indicative of mental illness).[8] Other entrance points into the MHC include a conviction or guilty pre-trial plea in the conventional court system and a recommendation by the judge to participate

---

[6] A. D. Redlich et al., "The Second Generation of Mental Health Courts," *Psychology, Public Policy, and the Law* 11, no. 4 (2005): 527-538.

[7] Council of State Governments Justice Center, *Mental Health Courts: A Primer for Policymakers and Practitioners* (New York: Council of State Governments, 2009), 7.

[8] Council of State Governments Justice Center, *Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court* (New York: Council of State Governments, 2007), 3.

in a MHC. Some MHCs encourage defendants to opt into the program by offering to dismiss charges or withhold adjudication until after completion of the program.[9]

Once referred for the MHC, defendants are screened for potential exclusion criteria based on, for example, histories of violence, co-occurring (substance abuse and mental health) disorders, past criminal charges, and issues of competency. The types of offenses accepted into MHCs range widely. Initially, MHCs tackled only non-violent petty offenses or ordinances, but more recently, second generation courts have widened the target criteria to include felonies and, occasionally, violent offenses.[10] While treatment may take longer than standard sentences in traditional courts, some offenders choose the MHC route nonetheless due to the opportunity for a clean (or at least cleaner) record; others recognize a recurring problem and value the opportunities and resources offered for obtaining mental health treatment. Once an offender opts into the MHC system, he or she is typically referred to as a "participant" or "client" to decrease the stigma associated with the MHC system and treatment process. Additionally, some courts have opted to avoid using "mental health" in the court's name to avoid further stigmatization (e.g., Center for the Individualized Treatment of Adolescents).

The Mental Health Court Team

The typical MHC decision-making team includes: judge, prosecutor, defense attorney, boundary spanner (also known as the case manager, court liaison, or court monitor), court staff, criminal justice staff (e.g., probation, police representative, jail representative) and mental health or treatment staff.[11] Throughout the MHC evaluation and treatment process, it is common for the MHC team members to develop a fiduciary relationship with the participant, especially with the judge.

Mental health court judges play a very different role than that of judges in traditional courts. As one judge described this unconventional role,

> *I'm not sitting back and watching the parties and ruling. I'm making comments. I'm encouraging. I'm making judgment calls. I'm getting very involved with families.*

[9] Council of State Governments Justice Center, (2007) p. 4.
[10] Redlich et al., (2005).
[11] This team composition is similar to Indiana's Drug Court Rules (see Section 15). Also note, during our site visit, the judge did not participate in the pre-docket meetings in Lee's Summit or Kansas City Municipal courts, both of which are pre-plea programs. See Appendix A for additional details.

> *I'm making clinical decisions to some extent, with the advice of experts. So I have much greater opportunities, I think, to harm someone than I would if I just sat there, listened, and said guilty or not guilty.*[12]

This statement underscores a common critique of the MHC system — the challenge for the judge to remain a neutral fact finder. The judge listens to the opinions of individuals who comprise the mental health court team (sometimes contributing his or her own opinions to that discussion), compiles the information received, and renders the final decision about the participants' compliance in treatment.[13] Judges must navigate through the information gathering maze, which means being cognizant of competing priorities held by team members who provide information about the participant.

Competing priorities are a natural part of the adversarial system and are expected to exist, in some form, in a collaborative effort such as a problem-solving court. Since MHCs operate across several disciplines it is not deemed unusual for mental health professionals, attorneys, and justice system staff (specifically defense attorneys and prosecutors) to be hesitant to join a MHC team as they weigh the professional "risk." Mental health professionals may be hesitant to accept and treat "forensic clients," that is, patients with mental health needs with a criminal history, and may be even more hesitant if the conduct included violence. Mental health professionals also may not feel qualified to deal with criminal issues and be concerned that if the treatment fails, funding could be at stake.[14] On the other hand, criminal justice staff often feel inadequately prepared in mental health diagnoses, treatment, lingo and protocol, ultimately limiting their knowledge of mental health issues to behavioral manifestations.

Defense attorneys grapple with ethical decisions in which they must act in the best interest of their clients. For example, while a defense attorney recognizes the urgent need of his client to receive mental health treatment, he may feel that advising the client to opt into a longer mental health treatment program (beneficial to the client in the long-run) would be contradictory to his

---

[12] G. Berman, "What is a Traditional Judge Anyway?: Problem solving in the state courts," *Judicature* 84 (2000): 82. Hon. Cindy Lederman quoted.

[13] L. Arkfield, "Ethics for the Problem-Solving Court: The New ABA Model Code." *The Justice System Journal* 28 (2007): 317.

[14] Denckla and Berman, (2001).

responsibility to decrease the client's sentence (beneficial in the short-run).[15] As another example, a prosecutor, while knowing the offender's need for mental health treatment, may discourage participation in a MHC. The prosecutor must weigh the public's best interest (that is, public safety) against the likelihood of the offender being successfully integrated back into the community. As such, prosecutors may ignore the long-term consequences to the offender in order to serve immediate needs for public safety, and if applicable, victim protection. These motivations and biases, or the professional lenses through which one views a situation, impact how information is interpreted. Ultimately, it is the judge's responsibility to wade through these conflicting agendas and assess the participant's situation.

Motivations and biases, or the professional lenses through which one views a situation, impact how information is interpreted.

The job of the team's "boundary spanner"[16] is to facilitate effective communication among the team members as well as between the team and external agencies. A breakdown in communication may occur because of the use of misunderstood role-specific jargon or other competing motivations. The boundary spanner, much like the judge, must navigate communication barriers to ensure that the participant's case progresses and treatment is properly defined and executed. The court monitor, King County, Washington's boundary spanner, was described by the Criminal Justice/Mental Health Consensus Project as follows:

> *The court monitor in the King County Mental Health Court serves as a link between the criminal justice and mental health systems. The court monitor first interviews candidates for the Mental Health Court in an effort to understand the defendant's mental health issues. She then requests approval for the release of information from the defendant and communicates with the case manager who handled the defendant's past treatment. Next, the court monitor prepares a report of the defendant's history and a proposed treatment plan to the court while explaining the workings of the court to the defendant. Finally, the court monitor meets with the public defender and prosecutor to discuss the case.*[17]

---

[15] Arkfield, (2007).
[16] H. Steadman, "Boundary-Spanners: A Key Component for the Effective Interactions of the Justice and Metal Health Systems," *Law and Human Behavior* 16 (1992): 75-87.
[17] Council of State Governments, *Criminal Justice/Mental Health Consensus Project* (Lexington, KY: Council of State Governments, 2002), 201.

Having a well-respected boundary spanner is crucial for the MHC process to run smoothly and effectively. Commonly, the boundary spanner funnels information regarding compliance with court orders and treatment engagement and participation. These reports come from mental health and service providers. If the boundary spanner is absent or not trusted, critical information from these agencies will not reach the ultimate arbiter, the judge. While courts use a variety of titles to refer to the boundary spanner or court liaison, we will, hereinafter, refer to this team member generally as a "boundary spanner."

Judicial Decision Making

Within the MHC, and unique to a problem-solving court model, information from mental health experts is not vetted as would be a proffered expert witness. Typically, experts will undergo scrutiny and possibly a challenge subject to admissibility rules in the adversarial system. In the problem-solving model, mental health expertise is presented to the judge in a nuanced and informal manner, and there are multiple events during the program in which expert, or mental health, treatment recommendations are shared with the team. These include the pretrial screening, the initial evaluation, the development of a treatment plan, case monitoring events, and staff conferences to determine if the defendant is complying, or has met program phase or graduation requirements. Essentially, experts both formally and informally share advice and recommendations on a routine basis throughout the client's participation in the program yet it is ultimately the judge's decision as to how she will assess this information.

It is this complex and collaborative communication process that the current National Center for State Courts (NCSC) project will address. While there is abundant literature on communication theory, there is a paucity of research that discusses communication and decision-making within the problem-solving court setting. As such, the NCSC developed, and introduces here, a communication model that effectively integrates the concerns of all members of the MHC team, both internal and external to the court. Furthermore, the NCSC presents a set of best practices that foster better managed MHCs, generates cultural changes suitable for MHCs within the criminal justice system, and encourages multi-disciplinary trust and cooperation among the MHC team.

METHODOLOGY

The NCSC, with the valuable guidance of an advisory council, conducted field research to gather information about the experiences and communication patterns of select MHC teams. During the summer and fall of 2008, NCSC staff visited seven mental health court dockets, collecting data through interviews with team members and observations of both in-court docket hearings and pre-docket staff meetings.

SITE SELECTION

Recognizing the vast diversity in program structures and protocols, the Advisory Council, comprised of a representative for each MHC team member and chosen from well-established courts across the nation, was pivotal in deciding which MHCs should be asked to participate in this project. In an effort to ensure a broad representation of mental health courts and to be inclusive of the differences that exist between mental health courts, a database containing individual court characteristics was compiled using data available through *InfoNet*[18] and through individual program's websites. Courts represented by members of the Advisory Council were excluded from consideration as participating sites for the purpose of expanding the scope of expertise as well as the variety of procedures represented across jurisdictions. A list of potential sites was presented to the Advisory Council for discussion and consideration. From this discussion, the Advisory Council identified the following elements as important to integrate into the selection criteria:

- ✓ Inception date was at or before 2005 (i.e., established programs of 5 years or more);
- ✓ Geographical representation (e.g., western, northern, southern, eastern U.S.);
- ✓ Range of participants served per year (i.e., a proxy for size of the court's jurisdiction and program);
- ✓ Varied clinical eligibility (e.g., serious and persistent mental illness, developmentally disabled);
- ✓ Varied legal eligibility (e.g., felony, misdemeanor, ordinance violations);
- ✓ Varied funding sources (e.g., local, state, national, grant funding, tax levy); and
- ✓ Prefer to include at least one program that:
  - ➢ Serves an adolescent population,
  - ➢ Accepts persons with mental retardation,

[18] See Council of State Government's Consensus Project's updated website, previously known as "*InfoNet*." The updated link is available at: http://cjmh-infonet.org/programs_start.

- Evaluates participants' competency, and
- Operates alongside a drug court docket.

Based on these criteria, project staff narrowed the list to six courts and gathered additional information about each program. The Advisory Council provided input on the selection of the final four sites, and participation was secured for Chittenden County MHC (Burlington, Vermont), Hennepin County MHC (Minneapolis, Minnesota), Jackson County MHC (which includes three separate dockets within Kansas City and Lee's Summit, Missouri), and San Francisco Behavioral Health Court (San Francisco, California). Due to the desire to include a MHC serving an adolescent population and considering its proximity to San Francisco (which eliminated the cost of a separate trip), the Court for the Individualized Treatment of Adolescents (San Jose, CA) was included as a fifth site. In the end, the project had a total of seven participating MHCs (one docket within each of four counties and three separate dockets within one county). Selection criteria for participating sites are tabulated in Appendix A along with site-specific narratives, process flowcharts, and communication models.

INTERVIEW PROTOCOL

Project staff conducted interviews as a means to explore individual perspectives on the communication models used within a MHC. Recognizing the differing roles that each team member plays, the NCSC developed separate interview scripts to address issues specific to each role (See Appendix B).[19] Each interview lasted approximately 30-60 minutes and addressed topics including general court structure and processes, perspectives on the traditional adversarial approach of criminal dockets versus the problem-solving approach used in MHCs, and interagency trust and communication. Interviewers probed MHC staff about cross-training opportunities (i.e., inter-agency criminal justice and mental health cross-training) and individual perspectives on "lessons learned" after five or more years in operation. While the interviews were guided by the interview scripts, the questions were designed to be open-ended, and interviewers tailored questions to each specific site and the interviewee's role in the court.

[19] All interview scripts were approved by NCSC's Internal Review Board. Prior to all interviews, the interviewee was given a brief description of the project and asked to sign an informed consent form describing how their information would be used. Appendix B includes an example of the Judge's Interview Script. Additional interview scripts were developed for: the MHC Director, Defense Attorney, Prosecutor, MHC Staff, Treatment Providers, and other MHC team members supervised by external agencies. Interview scripts and the Informed Consent are available upon request.

OBSERVATIONS

Each team member represents an agency in the courtroom, in pre-docket meetings, and informally throughout the program. To enhance the knowledge obtained through interviews, project staff conducted observations of pre-docket team meetings and court sessions. Project staff made observations of the physical layout of the courtroom and noted how that affects communication and court processes. Court session observations also provided insight into how team members interact with mental health court participants. During team meetings, project staff observed the informal communication exchanged between team members. These meetings were especially helpful in providing insight into the dynamics of the team and the roles that each team member played.

Decision-Making in Mental Health Courts

This report is not intended to serve as a comprehensive report about MHCs across the country nor is it intended to serve as an evaluation of the effectiveness of the participating courts described herein. This report *is* intended to: 1) present a context for models of communication, particularly within the MHC, 2) describe inter-disciplinary decision-making settings within a problem-solving court in the criminal justice system, 3) discuss the culture of managing a MHC, with consideration of the original intent of the program and its implementation, and 4) recommend best practices for both established MHCs and courts in the program's initial planning stages. Appendix A provides court-specific information, including flowcharts of the court processes and diagrams of communication models.

Models of Communication in MHCs

A discussion of MHCs would be remiss without discussing the context of the larger community within which they are designed and operated. More than 50 years ago, Ruesch and Bateson proposed a model of communication that asserts the existence of four fundamental organizational levels that frame and inform all types of communication.[20] The four levels, from the top down, are cultural expectations, group interactions, interpersonal communications, and intrapersonal processing. Briefly stated, the theory espouses that all communication is exchanged within a culture that dictates what is expected. Group interactions occur within this culture, and each group has its own set of expectations, rules, and norms. Interpersonal communication occurs between members of groups, and there are overlapping fields and forces that encourage and shape this level of communication. Finally, intrapersonal processes refer to our internal conversations and thoughts.

Without exception, MHCs operate within each of these four levels. The culture of a MHC is framed by the court, the community the court serves, and the network of community agencies upon which the court is dependent. Group interactions exist among the network of agencies represented by the MHC team, with the treatment community, corrections, social services, and families working together with attorneys, judges, and clients to serve the best interests of the persons with mental illness and the community. Interpersonal communication takes place

[20] J. Ruesch and G. Bateson, *The Social Matrix of Psychiatry* (New York, NY: W.W. Norton, 1951).

between team members as they discuss routine matters such as program policies, available community resources, and the progress of individual program participants. Each team member also intrapersonally processes the information garnered from each of the other levels of communication.

A broad set of forces "shape the contours" of the MHC, including politics, community resources, services, and opinions.[21] In a problem-solving court setting, communication typically starts with a planning or stakeholder group that directly influences the nature of the MHC and sets the stage for its overarching culture. While there will certainly be representatives from those agencies that ultimately form the MHC team, the stakeholder group should also incorporate the perspectives of community agencies that work with mental health issues outside of the problem-solving court model. For example, in Jackson County, Missouri there is a Mental Health Court Commission that holds bi-monthly meetings to review the status of mental health resources in the community, discuss policy decisions that have been made regarding the three MHCs in the county, and strategize ways in which each of the participating agencies can contribute to the success of mental health treatment throughout the county, not just within the MHC programs. In addition to the agencies that comprise the Jackson County MHC teams (judges, prosecutors, public defense, case managers (boundary spanners), and treatment providers), the Commission also includes representatives from local police departments and their Crisis Intervention Training (CIT) programs,[22] the local jail, the Kansas City Executive Office, the Jackson County Community Mental Health Fund (the funding agency for the treatment provided by the MHCs), the National Alliance on Mental Illness (NAMI), the Missouri Developmental Disabilities Planning Council, and the Missouri Department of Mental Health. Of special note, the Commission employs the Resource Development Institute (RDI) as an in-house research division. RDI produces reports on topics of interest to the Commission, ranging from inmate self-assessment surveys to court outcome measures, and participates in Commission meetings.

[21] N. Wolff and W. Pogorzelski, "Measuring the Effectiveness of Mental Health Courts: Challenges and Recommendations," *Psychology, Public Policy and the Law* 11 (2005): 542.

[22] Crisis Intervention Training (CIT) is specialized training for uniformed patrol Law Enforcement Officers in how to respond to calls concerning persons with mental illness in crisis. The training was provided by NAMI of Kansas City.

Although we refer to a MHC as a "court," it is not a stand-alone organization.[23] Judges who preside over MHCs may be responsible for other dockets and MHC team members may not be solely responsible for the MHC clients, with an exception in high-volume problem-solving courts. For this reason, how the MHC is situated within the larger court influences the flow of communication and the influx of cases referred to a MHC is often dependent on team members' other responsibilities and associations. For example, a defense attorney who has clients in the misdemeanor docket may identify a client who may be eligible for the MHC and who otherwise would have been overlooked as a referral. Similarly, a judge who presides over other dockets may be able to identify potential clients through a parallel docket. This network influences the MHC and how it functions, especially around the expediency to which defendants are referred to the MHC.

The MHC is a team of individuals, each representing a key interest at stake. A diagram of each of the networked interests is depicted below. The judge, prosecutor, and defense attorney comprise the traditional criminal court "team" (see Figure 1). In the MHC, as seen in most problem-solving courts, representatives from treatment providers, social services, and corrections are also integrated as part of the team (see Figure 2).

As previously described, information is exchanged at each organizational level: within the community, between the groups upon which the MHC is dependant, between MHC team members, and within individuals. Therefore, understanding the culture, role, and perspective of each agency represented on the MHC will advance the level of communication and the effectiveness of the interactions among team members. The purpose of team interaction is to make legal and clinical decisions about clients. This team approach may seem inconsistent when MHCs are referred to as "judicially supervised treatment,"[24] but the description underscores the fact that, even though the court relies on others to coordinate and resolve client problems, it still maintains the locus of control and, through the boundary spanner, serves as the hub of the

[23] See Brief of *Amici Curiae* in the Court of Appeals of MD, September Term, 2008, No. 118 *Brown v. Maryland*, explaining that problem-solving courts are not "new *courts* in that they are not separate, free-standing judicial institutions. Rather, [they] are specialized, alternative-sentencing dockets that offer diversionary programs to qualified offenders." Footnote 2.

[24] Council of State Governments, *A Guide to Mental Health Court Design and Implementation* (New York, NY: Council of State Governments, 2005), 63-70.

communication center. Due to the multiple perspectives and possible conflicting priorities that are inherent in team interactions, the team setting permits, even requires, a cross-over of roles across agencies, disciplines, and interests.

FIGURE 1. TRADITIONAL COURT COMMUNICATION MODEL

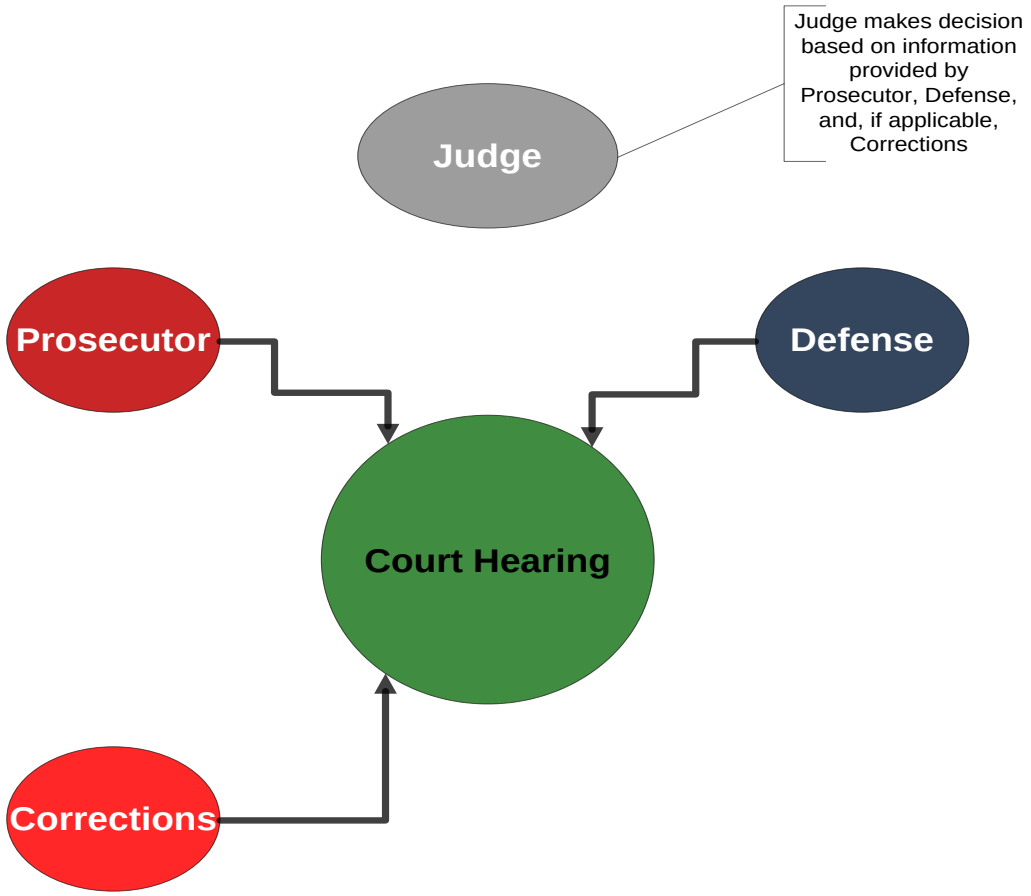
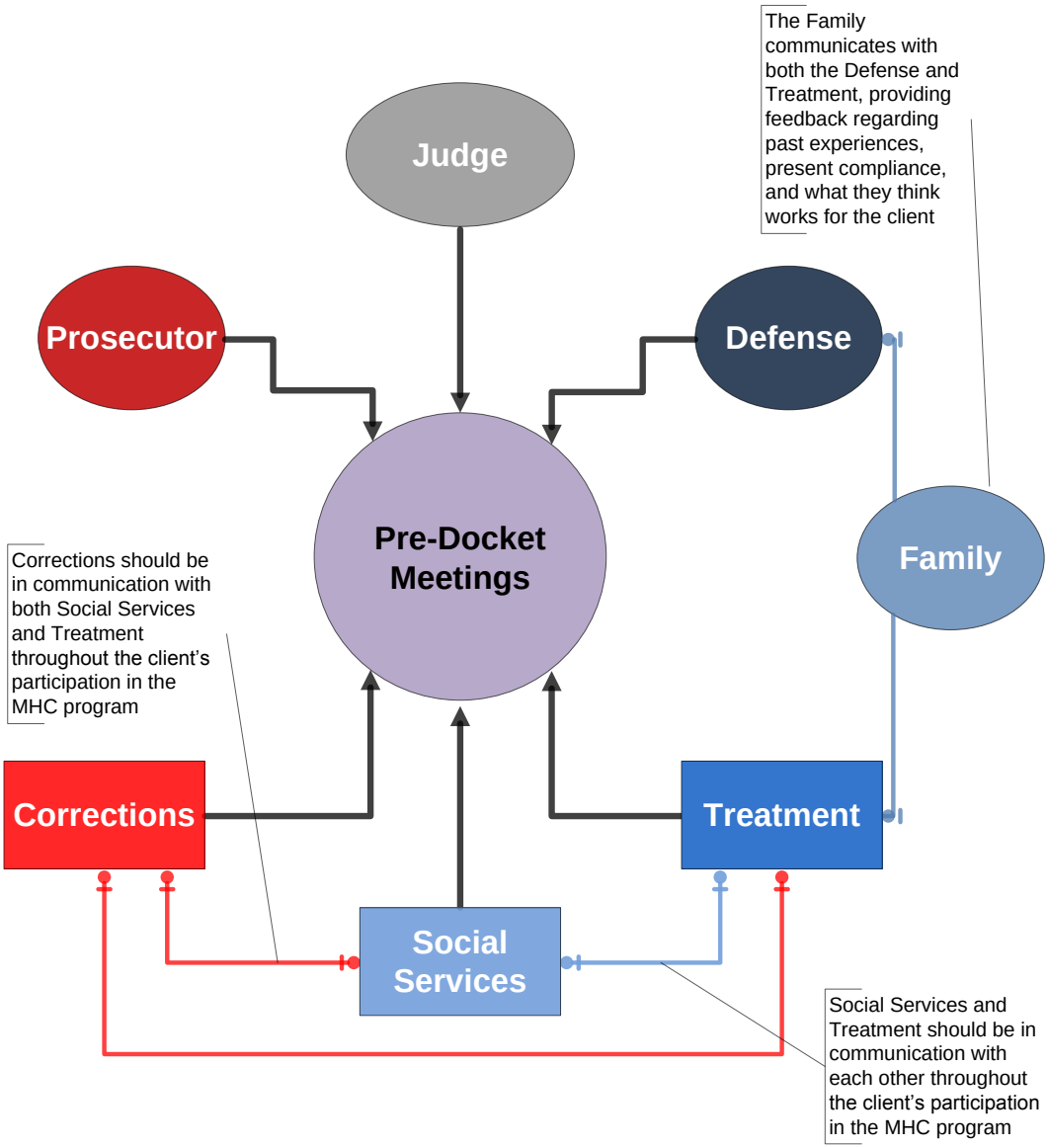


FIGURE 2. MHC COMMUNICATION MODEL



The perspectives of all team members should be represented at the Pre-Docket meeting even if all individuals from each group are not at the table. For example, if there are multiple Defense attorneys, a single attorney could be chosen to be liaison to the MHC, gathering updates from all attorneys and presenting that information to the team (this approach also works well for multiple Corrections participants or multiple Treatment providers). Additionally, information from Treatment, Social Services, and Corrections could be funneled through a boundary spanner who then attends the meeting and passes on the perspectives of those groups.

Legal Decision-Making

Problem-solving courts operate much the same as other small group legal decision-makers (e.g., the trial jury). Juries represent a wide range of community values; as such, jury decisions, which result from multiple persons debating the presented facts and reaching a consensus, provide a boost to public trust and confidence in the judiciary. Similar to the members of a jury, MHC team members represent the unique perspectives of their respective agencies, boost confidence through multi-agency cooperation, and come together to discuss the facts before them and reach a consensus. However, this collaborative decision-making setting introduces novel challenges for the court as it addresses the legal principles of representation, privacy, and due process. In turn, how a court chooses to address these challenges influences the dynamics among team members as well as team member communication with the client.

Three common problem-solving court models are:[25]

- Pre-plea diversion – defendants are offered a stay of prosecution if they participate in the court-supervised treatment. Failure to complete the program will lead to the prosecution's filing of charges and adjudication. Upon successful completion, the defendant is discharged without a criminal record.
- Post-plea admission – defendants are required to enter a guilty plea prior to entering treatment.[26] Failure to complete the program leads to the sentencing phase of the previous adjudication. Upon successful completion, criminal charges are dismissed.
- Post-adjudication admission – defendants enter treatment after conviction, but before serving their sentence. Failure to complete the program leads to activation of the sentence, and the guilty plea remains on the record. Upon successful completion, the sentence is considered served through the treatment program.

Voluntary admission to the program may be complicated by the fact that the defendant, when taken into custody and perhaps decompensating without treatment, volunteers to be admitted into the program. Under some MHC models, a defendant who accepts admission into a program is effectively waiving his or her right to trial. And throughout the process, the question of

[25] Program descriptions based on P. M. Casey, D. B. Rottman, and C. G. Bromage, *Problem-Solving Justice Toolkit* (Williamsburg, VA: National Center for State Courts, 2007), 12. www.ncsconline.org/PSC.

[26] Note that the National Legal Aid and Defender Association's Ten Tenets of Fair and Effective Problem-Solving Courts states that the defendants should not be required to enter a guilty plea (Tenet #5) to receive treatment or enter the program. http://www.nlada.org/Defender/Defender_ACCD/ACCD_TenTenets.

the defendant's competency must be addressed since such competency sets the threshold for the defendant's ability to make legal decisions. The court must ensure that the defendant has a realistic understanding of the legal consequences of his decision to participate in the program. According to a study by the Bazelon Center for Mental Health Law, the best way to ensure this is to provide defense counsel as soon as the defendant is considered a candidate.[27] Involving the advocate in each stage of the program can improve the defendant's comprehension of the court's orders and treatment requirements.

The exchange of information, particularly medical or treatment history, in a criminal proceeding that is open to the public raises privacy concerns. Therefore, the structure and content of communications in a public courtroom is dictated by the need to comply not only with the client's wishes concerning the sharing of his or her information, but also with federal and state laws that govern the release of medical, mental health, and treatment records. MHCs have addressed this dilemma using various approaches. First and foremost, clients sign waivers authorizing certain team members to obtain personal information. According to a report by the Council of State Governments, "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."[28] Second, some MHCs have changed the configuration or their use of the courtroom to accommodate the need for more private interaction with the client. For example, the Santa Clara Court for the Individualized Treatment of Adolescents allows only one client at a time into the courtroom. Granted, juvenile information is often held to be confidential, but juvenile courts are not required to be closed to the defendants on the docket. Third, some MHC judges have tailored the manner in which they communicate with MHC clients in an effort to preserve the client's privacy. Judges in two of the participating MHC sites also served as the judge for their court's Drug Court program. In both instances the judges commented on the different approaches that they take with MHC clients versus Drug Court clients, stating that they called MHC clients up to the bench and spoke in lowered voices, intentionally making it difficult for the court audience to hear.

[27] R. Bernstein and T. Seltzer, *The Role of Mental Health Courts in System Reform*," (Washington DC: Judge Balzelon's Center for Mental Health Law, 2004), 25.
[28] Council of State Governments Justice Center, (2007).

This contrasted with the more traditional courtroom manner of the judge, such as having the client stand at a podium or table in open court as used with the Drug Court clients.

Expert evidence in a MHC is presented in the form of psychological or psychiatric evaluations, urine analysis reports from a lab, and verbal reports from probation officers or social workers that are supervising client progress and compliance. In the traditional court, the judge evaluates the expert evidence through admissibility rules (e.g., *Daubert* or *Frye* standards). If under a *Daubert* admissibility rule judges act as a "gatekeeper" of proffered expert evidence, they must evaluate it based on the methods the expert used to arrive at the conclusion. A concern, as noted in the dissenting U.S. Supreme Court opinion in this case, is that judges will be required to become amateur scientists in all disciplines presented before the bench. The concern was also aptly raised by a trial judge presiding over a drug court,

> *If therapeutic justice frees judges from . . . limits of our own expertise. I cannot imagine a more dangerous branch than an unrestrained judiciary full of amateur psychiatrists poised to 'do good' rather than apply the law. ~Judge Hoffman*[29]

In response to this concern, problem-solving courts can borrow from decades of rigorous jury decision-making research, specifically research that has promulgated innovations at trial to improve jurors' comprehension of the evidence. Jury research has challenged old assumptions that jurors are passive entities and replaced that image with jurors who actively process information. This is known as the "education model" and emulates learning in a classroom setting. A similar model can be applied to MHCs. Judges are no longer passive decision-makers, but instead ask questions of the client and those who are supervising or offering services to the client. The judge receives enhanced, individualized information from numerous, collaborative sources (e.g., treatment reports, observations, probation evaluations) which allows for a more informed decision.

As in all cross-disciplinary settings, it is important to have input from all MHC team members, yet equally important to be cognizant of where the role of one team member ends and another role begins. In the traditional setting, the court has the option to restrict expert testimony that is not relevant to the issues at hand or not within the scope of the proffered expert's

[29] M. B. Hoffman, "Denver Drug Courts and Its Unintended Consequences," in Drug Courts in Theory and in Practice, ed. J. L. Nolan, Jr, (New York: Aldine Transaction, 2002).

expertise. In MHCs, though, each team member is encouraged to "leave their hat at the door" and to leave stereotypes and one-sided or linear thinking behind. There is a delicate balance which places more weight for the treatment plan decision on the treatment provider, and likewise, more weight for the legal decisions on the lawyer. Managing the scope of expertise has always been the judge's responsibility[30] and there is no reason to believe that such balance cannot also be successfully managed by MHC judges.

Unlike in traditional courts, MHC clients do not enjoy the benefit of a cross-examination or questioning during the presentation of evidence. Case law has addressed the issue of whether a full-blown hearing is required before the court can terminate a client, thus imposing his or her sentencing or adjudication,[31] but it has yet to provide a clear answer on what, if any, due process rights apply when contested facts arise over compliance with the MHC's orders. A related issue is how the MHC resolves an issue of conflicting expertise. For example, in one of this project's participating sites, a psychologist's report was offered in a case about a competency evaluation. This client had been evaluated several times for competency and the results were conflicting. The psychologist, coincidentally, dropped off a copy of an unrelated report to the judge's chambers while a pre-docket meeting was in session. The psychologist overheard the discussion of the client she evaluated and offered further explanation. Undoubtedly this was a unique opportunity for that team, illustrating the importance of communication between the MHC and the agencies which provide MH services. It also illustrates that the MHC operates with the information at hand, even if that information is incomplete, or at times, conflicting.

Relationships and trust can either favorably or unfavorably bias any evidence or message presented in MHCs more so than in traditional courts. For example, if a probation officer provides information and he is a trusted member of the team, that information is accepted more readily than it would be if provided by an unknown newcomer. As such, trust and teamwork are critical to the successful exchange of information. Team members who detect an environment of trust will not feel threatened to defend his or her territorial interests and will more freely communicate with the team, sharing not only the information that they have, but offering their unique perspective of

[30] N. L. Waters and J. P. Hodge, *The Effects of the* Daubert *Trilogy in Delaware Superior Court* (Williamsburg, VA: National Center for State Courts, 2005).
[31] See *New York v. Kimmel*, June 16, 2009.

how that information should be interpreted. Input will be shared across roles and new perspectives will emerge, or so is the hope of an interdisciplinary problem-solving setting.

Interdisciplinary Decision-Making Settings

Schram theorized that all communication is processed through a filter,[32] meaning that a message is encoded, interpreted, and then decoded. However, our individual experiences and perceptions create stereotypes, or "rose-colored glasses," that distort the incoming message. In consequence, individual members of a group rarely receive an exact translation of a shared message.

Mental health court decision-making takes place in teams and in numerous settings. Therefore, communication models must reflect team communication and collaboration in all settings while also accounting for applicable filters to the shared information. The four key settings in which teams exchange information is in administrative meetings, informal meetings, pre-docket staff meetings, and docket hearings in the courtroom.

Program Development

As a MHC is implemented, it is shaped through iterative developments with key stakeholders. Typically, the information exchanged at an administrative or stakeholder meeting is filtered through local politics and influenced by the program's funding source. Competing interests at this stage shape the processes and procedures of the MHC and drive the production of outcomes. MHCs undergo periodic assessments and adjustments by these same stakeholders after the program has been implemented and allowed to "settle."[33] Another source of influence is derived from the local legal and service cultures and predominantly available community resources. Ideally, the stakeholders, administrators, MHC team, and community service representatives agree upon a common goal of the program. Judges, and at times other MHC team members, attend the administrative meetings and provide feedback to the stakeholders about how well those goals are being met. Through the exchange of information at this level, there is a trickle-down effect that determines how communication is modeled among the MHC team. One example

---

[32] W. Schram, *How Communication Works, in The Process and Effects of Communication* (Urbana: University of Illinois Press, 1954), 3-26.

[33] See for example, P. H. Rossi and H. E. Freeman, *Evaluation: A Systematic Approach* (Newbury Park, CA: Sage Publications: 1993).

of this circumstance occurred during our visit to Chittenden County, Vermont. The MHC team opted to address a miscommunication with a treatment provider that had impacted the ability of the court to function effectively. The team members took the initiative to set up a meeting with the local treatment provider in order to discuss shared goals and correct miscommunications.

Off-Stage Communication

The problem-solving approach has created a relatively new communication setting in that informal interactions now occur among MHC team members. This setting, which occurs between more formalized events, is often overlooked, yet the communication style at this stage directly influences the communication in more formalized settings. Goffman aptly described this setting as "off-stage" in his 1959 work.[34] He illustrates the social meaning of behaviors and interactions through a drama or play metaphor. In this drama known as life, everyone has roles and scripts, and our thoughts and actions are interpreted by an audience. There is a front stage setting in this drama, which is our more formalized presentation of ourselves, but there is also an "off-stage" persona that allows us to let down our guard and break from a role stereotype. MHC staff interact "off-stage" and are permitted to privately dissent about the values of the team or safely discuss ideas without the presence of the entire group. As another illustration of the off-stage setting, it is well-known that the best networking opportunities and ideas take place during breaks or social hours at professional conferences.

The frequency and ease of off-stage communication depends on the proximity of team members' offices. The more distance between offices, services, and buildings, the less often off-stage discussions occur. Recent advancements in technology (e.g., virtual meetings, e-mails, etc.), however, can reduce barriers set up by physical distance. Therefore, MHCs with an integrated technology system for exchanging information are able to communicate quickly and effectively with all team members and also expand opportunities for off-stage communication. As an example, one of the project sites had a case management system that was available to all team members. The system allowed data entry as well as viewing permissions so that, as a client sat with a probation officer (PO), not only could that PO record notes about the visit, but he could also review what the mental health treatment provider had to say about the client's progress. In

[34] E. Goffman, *The Presentation of Self in Everyday Life (New York:* Anchor Books, 1959).

addition, if during a routine review of a client's file, a PO found that the client had lost his housing, she could contact the client's social services advocate to discuss the issue prior to the next scheduled team meeting about the client. The system would act as a collective memory, minimizing mis-understandings and facilitate transitions of new team members. One drawback noted by this site is that the case management system is only as good as the data that is entered. As such, if one team member decides not to participate then the remainder of the team is working with incomplete information. We believe that the MHC team operates more effectively when off-stage communication is facilitated because it further enhances the level of trust shared among team members.

Back-Stage Communication

A third communication setting is the regular pre-docket staff meetings or conferences of the MHC team. Continuing with Goffman's theoretical framework, he refers to this setting as "back-stage." The team, or actors in Goffman's analogy, convene together with less restricted communication as compared to the front-stage setting. Information exchanged is typically accepted as "off the record." Recall Schram's theoretical suggestion that, in all settings, members filter and interpret the exchanged information. Applied to MHCs, the boundary spanner, a representative from an external agency, plays the liaison role and passes along information on behalf of other members of the agency to the MHC team. Together, the team interprets expert advice and discusses alternative strategies to resolving recurring barriers to the client achieving success.

If the boundary spanner has limited or restricted information about the client, team discussions will fill in the gaps or a final answer will be delayed until a time at which the person with the relevant information can be reached.

In many instances, the boundary spanner coordinates interactions and activities between multiple agencies or other stakeholder interests and shares information with the team. When the boundary spanner role is executed effectively, he or she facilitates the flow of information from external agencies to those on the MHC team. Conversely, ineffective communication occurs when the boundary spanner is unable to share complete information. If the boundary spanner has limited or restricted information about the client, team discussions will fill in the gaps, draw on past experiences, or delay a final answer until a time at which the relevant information can be provided.

This scenario occurs most frequently with the routine absence of a key team member, but can also occur when one agency is not committed to the MHC processes and limits or withholds information from the team.

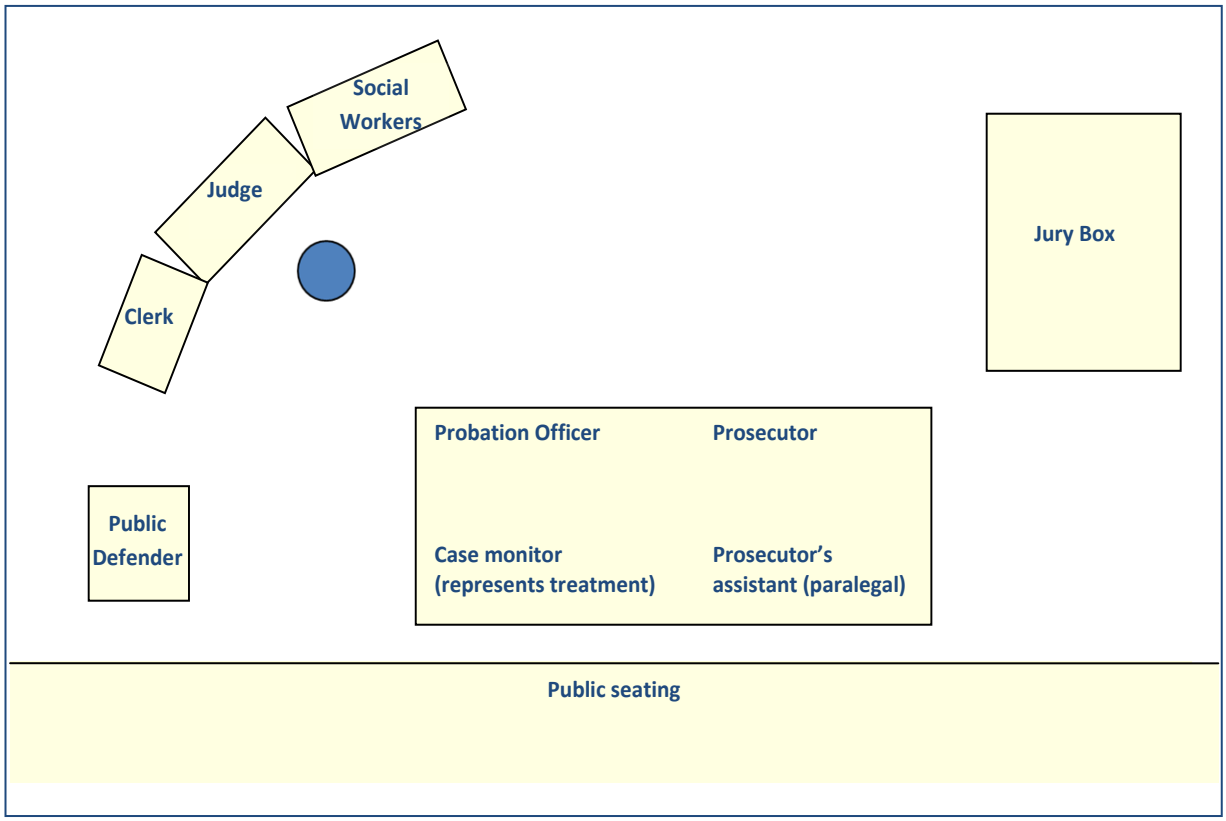
Front-Stage Communication

The final setting in which communication is exchanged by the MHC team is also the most visible, the in-court docket. The docket is known as "front-stage" in the Goffman analogy. Docket hearings take place in the formal setting of a courtroom with the judge seated on the bench and interacting with the client. Communication is exchanged within the view, if not also within the hearing, of the public, or court audience, that often includes other clients and family members. One exception to this was seen in the juvenile MHC where the status hearings were conducted privately in a courtroom. The juvenile's family was present in the courtroom; however, the general public, as well as other participants were not admitted to protect the juvenile's privacy. Other than the private hearings of the juvenile mental health court, the processes and roles of team members in a juvenile MHC largely mirrors those of adult mental health courts. Team members are present and play various roles, depending on the culture of the MHC. While this is the most formalized and public setting for MHC team members, it is noteworthy that this setting is less formal than the traditional criminal docket. Each MHC stages the courtroom in a unique manner, yet the staging itself plays a large role in dictating the social context and communication flow among those present.

For example, during site visits, project staff witnessed two unique, but very different uses of the jury box. In one court, the clients sat in the jury box and waited to be called to the bench for their turn with the judge. Once the client had spoken to the judge, he or she was free to leave the courtroom or sit in the audience to listen to the rest of the docket. In another court, the jury box was used as a "penalty box" in that clients who failed to make court cost payments were instructed to wait in the jury box until the end of the docket. At that time, the judge called the clients to the bench and proceeded with their updates. As another example, a judge preferred to speak informally to clients about their progress and liked to do so in a lowered tone of voice so as to not be heard by the whole courtroom. The diagram below depicts the layout of this courtroom. Upon entering the court, the judge had another team member remove the podium (the blue circle) that

had been placed in front of his bench as he felt that the presence of the podium was at odds with how he wanted communication to be exchanged during the docket hearing.

FIGURE 3. DIAGRAM OF EXAMPLE COURTROOM



MANAGING MHC CULTURE

Theories of communication and the forces that influence team interactions illuminate the underpinnings of culture. However, as previously quoted, "if you have seen one Mental Health Court, you have seen one Mental Health Court."[35] The term "local legal culture" is a phrase used to understand what drives variations in performance across state courts.[36] From a scientific perspective, the beauty of state courts lies in their differences. These variations provide a ripe opportunity to explore alternatives that offer innovative and effective solutions to improve courts' services. While such differences exist, commonalities across court cultures define models or typologies from which other courts learn, and at times, emulate.

From a scientific perspective, the beauty of state courts lies in their differences. These variations provide a ripe opportunity to explore alternatives that offer innovative and effective solutions to improve courts' services.

Building on previous work in this area, Ostrom and his colleagues present a framework to understand the court culture in "Trial Courts as Organizations."[37] Culture is the:

> *Espoused values (i.e., the values that shape why an organization acts in a particular way) and basic assumptions (i.e., jointly learned values, beliefs, and assumptions that become shared and taken for granted in an organization) that shape the way work gets done in the organization. . . . A court's management culture is reflected in what is valued, the norms and expectations, the leadership style, the communication patterns, the procedures and routines, and the definition of success that makes the court unique. More simply: 'The way things are done around here.'*
> *~Ostrom et al., 2007*

The structure and processes employed by judges, administrators, managers, and court staff define a court's culture. These are, according to Wolff and Pogorzelski, the "soft processes" such as the styles of enforcement, interaction, personality, and social capital.[38] Values held most indispensable by the organization, such as fairness, efficiency, and independence, depend on court culture. Empirical field work by Ostrom and colleagues present typologies to explain the performance of the complex organizations we know as courts. They draw on assessment tools and

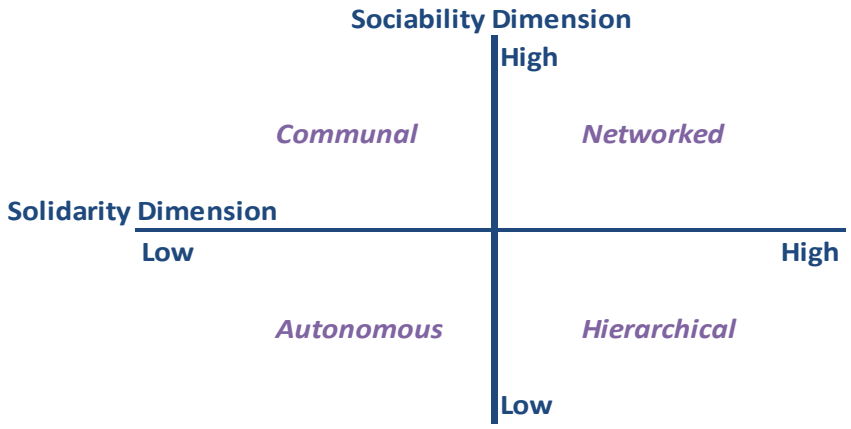
---

[35] Council of State Governments Justice Center, (2009).
[36] See, R. Nimmer, *The Nature of System Change: Reform Impact in Criminal Courts* (Chicago, IL: American Bar Foundation, 1978). T. W. Church, Jr. et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts.* (Williamsburg, VA: National Center for State Courts, 1978).
[37] B. J. Ostrom et al., *Trial Courts as Organizations* (Philadelphia, PA: Temple University Press, 2007).
[38] Wolff and Pogorzelski, (2005), p. 21.

observations to describe the viewpoints, values, and prevailing norms of judges, attorneys, and court staff and explain four basic typologies. The four typologies identify where viewpoints fall along two dimensions, creating a two by two matrix presented in Figure 4 below:

"The first dimension is *Sociability*, the degree to which judges and administrators get along and emphasize the importance of cooperative social relations. A second dimension is *Solidarity*, the degree to which judges and court administrators pursue shared goals, common tasks, and agreed upon procedures."[39]

FIGURE 4. COURT CULTURE CLASSIFICATION



Each quadrant is described below and represents a court culture typology.

Autonomous- Many judges in this type of court are most comfortable with the traditional adversarial model of dispute resolution. Judges adopt a rather passive approach and referee the investigations carried out by attorneys. Autonomy is highly valued by the judges. This typology is low on solidarity and low on sociability.

Hierarchical- Low on sociability, but high on solidarity, judges and administrators in this type of court value accountability and efficiency. Rules and procedures are clearly stated. Technology and monitoring systems allow for a structured environment.

[39] B. J. Ostrom et al., "Court Cultures and their Consequences," *Court Manager* 20 (2005): 15.

Communal – Courts of this type emphasize the importance of group involvement and flexibility. Creativity is encouraged and teamwork is necessary for developing policies and procedures. This typology is low on solidarity, but high on sociability.

Networked – The emphasis in this type of court is innovation. There are efforts to integrate other criminal justice system partners and community representatives for collaboration. These courts are drawn towards adopting problem-solving courts and therapeutic justice. As such, this typology is high on solidarity and sociability.

These four typologies provide a framework to understand the court's culture, and courts do not rigidly fall within one typology; they more often fall along a continuum of each scale. (See Appendix C for the detailed value matrix for each typology.) The pioneers of the court culture work emphasize that there is typically a culture in operation and that culture, at times, aligns with the vision of the court's leaders, and at times, does not. In addition, and based on the court culture research conducted by the NCSC, court staff and judges often hold unique perspectives of what culture is preferred; judges are more innovative, high-level thinkers whereas court staff and division managers are more interested in hierarchical and managerial tasks and procedures.[40]

We propose, as part of this project, to discuss the culture of the courts along several work areas and apply these dimensions to the participating MHCs we observed. The purpose of presenting the work on culture is to understand a vision or goal and recognize whether the MHC is operating as intended or within the intended typology.

The dominant management style for MHCs is creative, particularly during the development of the specialized docket. Policies arise from the support of a lead judge, key stakeholders, or other representatives from mental illness advocates. This style adapts both attributes from the communal and networked typologies (or high on solidarity dimension).

In *communal* courts, changes in policies and procedures are open to interpretation by semi-autonomous teams, and one of our participating sites provided an example of this since it was decided that clients from outside the geographical area or outside the specified target population would be admitted to the program. While this culture embraces flexibility and creativity, it lacks solidarity and consistent procedures.

[40] M. Kleiman (May 19, 2009). National Association for Court Managers' presentation. On file with authors.

On the other hand, a court operating in a *hierarchical* typology is rule-oriented and monitors its work through evaluation that is designed specifically to improve efficiency of processes and reduce errors. This approach integrates technology and modern administrative methods to improve record keeping and communication. For example, one participating court benefited from a university designed case management system that was expected to improve inter-agency communication by making case information available in a more real-time manner, allowing routine updates to be determined through the system and leaving the valuable, face-to-face pre-docket meeting time open for more in-depth discussions of possible problems or persistent issues.

The *networked* court culture encourages and monitors court performance measurement which can be used to recommend appropriately targeted adjustments. However, currently no national MHC performance measures exist.[41]

Cultures shift throughout the program's development. Most often, MHCs develop through the ingenuity of a passionate judge or a retired judge who is no longer under the direct influence of the court's politics. This judge is able to perform "under the radar" (akin to court leaders under the autonomous typology) to bring together the necessary parties who embrace the underlying goals and values for a MHC. Regardless of typology, recognizing or possibly indemnifying team members against the professional risks assumed as an active team member might foster honest communication and encourage participation.

Once a MHC is established and implemented, the court's culture shifts towards the communal and networked typologies (i.e., high on sociability). MHC staff build personal relationships and establish trust among team members (e.g., through retreats or other networking opportunities) and agree upon common goals. In the networked typology, this common goal unites the stakeholders and team members to provide justice for the client, which in turn, should translate to increased safety for the entire community. Goals of MHCs range from saving tax dollars, protecting public safety, connecting eligible clients with community resources, reducing crime and victimization, to reducing homelessness of the mentally ill. A shared vision unites the MHC team and provides leadership, especially in a networked culture.

[41] The NCSC is currently underway with a project, funded by Bureau of Justice Assistance (BJA) to do just that-- create performance measures specifically for MHCs.

What is often missing from MHCs, based on our field work, is leadership to establish contingency plans. For example, if a MHC judge retires, undergoes an extended absence, or is reassigned to another docket, are policies in place to sustain the work of the MHC? The hierarchical culture excels at this function, since a hierarchical culture will have more clearly identified role expectations. The networked typology brings everyone to the table, figuratively and literally, and the duties of each member of the team are clearly known. The team strives to achieve consensus, reconciling differences of opinion. In the networked culture, the team shares a vision and, across represented disciplines, is able to work toward that goal.

Communication styles are also mired in culture. For example, in a communal court, the MHC team limits the psychological and physical distance between members and works through stereotypes that stand in the way of effective teamwork. Team communication and interaction is less hierarchical and more egalitarian in this culture. MHC judges operating in the networked typology emphasize and promote the diversity of shared ideas, the inclusion of all staff, and encourage professional training and development.

Having discussed court culture and how the typologies apply to MHCs, it is essential to underscore that typologies are not value-laden as good or bad.[42] Knowing the culture of a MHC is best used to understand a vision and recognize whether the MHC is operating within the intended typology. Furthermore, MHCs will achieve better results if, as the court becomes more established, the envisioned typology shifts towards a culture enabling sustainability and consistency.

[42] Ostrom et al., (2007), 134.

MHC Best Practices & Recommendations

The previous court culture discussion provides a framework for modeling communication best practices in MHCs. As a result of this project, we present four key recommendations. First, we recommend that MHCs develop clear, written policies and procedures (e.g., admittance, termination, graduation, and succession planning). Second, we recommend that a balanced set of performance measurements be designed specifically for MHCs. Performance measures should incorporate accountability, efficiency, social functioning, recidivism, and procedural justice. Third, we propose that a culture assessment tool be adapted specifically for MHCs to test our hypothesis that MHCs practice in a communal culture, yet typically envision and prefer to operate within a networked culture. Fourth, due to the level of interagency collaboration essential for MHCs, cross-training on substantive mental health issues should be required for all team members along with less formalized trust building exercises to eliminate stereotypes and misunderstandings of terminology.

Recommendation 1: Develop Written Policies and Procedures

Individuals with mental illness thrive on consistency. Their illness, as well as the state of their affairs, is often unpredictable, but in a therapeutic environment — where all team members provide a consistent message — clients make progress. Consistency is delivered to the MHC clients when the team has a shared vision of the purposes and goals of the MHC. Therefore, it is important to the success of the court for the team to agree upon a goal; this will ensure that the client receives a similar message from each member of the team. MHC staff reported that some clients attempted to "play" them by seeking a more satisfactory answer from another team member. This scenario underscores the importance of exhibiting a united front. From our interviews, MHC staff suggest that this situation is akin to a parental role in which both parents must share information to deliver a common message. Interestingly, in Santa Clara's Center for the Individualized Treatment of Adolescents, the court staff grappled with adolescent clients' parents who *did not* play the parental role society expects of them. Juvenile MHC clients are dependent on their parents to facilitate treatment, be compliant with court orders, and share the court's message and this adds an additional layer of complexity to the program's success. While consistency is

important, we do not recommend that courts present a "one size fits all" approach since a hallmark of the MHC model is that clients deserve individualized treatment plans.

In addition to agreeing on a shared goal, and as another means for presenting a consistent message, the MHC team, alongside a planning committee, should set policies for three principle areas: (1) Who should be admitted?; (2) What determines when the client qualifies for graduation?; and (3) What is the program's succession policy? The first fundamental policy for MHCs is setting the program's target population. The planning committee of any MHC should set clear and realistic goals regarding admittance to the program, and the MHC team bears responsibility for communicating this information to the client and those who screen or identify potential clients. Setting a target population, and committing that target to paper, helps MHC staff to avoid a phenomenon known as "widening the net" or the acceptance of clients that fall outside of the agreed upon program requirements. The Jackson County MHC provides an example of net widening in that one of its municipal MHCs has developed a "parallel track" for clients who fall outside of their service area. These clients are told to attend treatment and to appear before the court for regular docket hearings, but are not provided the same supervision and support as the clients that meet the program's target population requirements. While it is admirable to want to serve as many community members as possible, the court must continually evaluate whether it is adequately able to serve this expanded population of potential clients when such service includes identifying appropriate service providers in proximity to the court, evaluating the caseload capacity of legal aid to provide representation, and adjusting clinical eligibility requirements (if the population is different from those served in other localities).

The second fundamental policy for the planning committee to set is that of clear graduation criteria. Graduation requirements are, understandably, amorphous. However, the client must be told what criteria are used to determine when he or she meets the expectations of the program. Chittenden County MHC provides each client with a "Participant Handbook" designed to outline what is expected throughout the program. It is written in clear and simple terms. The program involves three major phases and lists the estimated time a client can expect to remain in each phase, along with key concepts, or objectives, for each. For example, phase three, the final phase before graduation, states the key concept is to, "reinforce a legal lifestyle with use of positive

coping skills and develop specific goals." The Handbook clearly lists the requirements of this phase (e.g., minimum of 60 consecutive days of compliance with treatment and negative urine screen results to graduate the program).

While most MHCs have considered admittance and graduation policies, MHCs are less likely to have considered the third fundamental policy, a succession plan and length of tenure for MHC team members. Specialized dockets typically emerge out of a judge's agenda to resolve the revolving door phenomenon. One judge indicated that his status as a retired judge meant he did not have to engage in politics to establish a MHC, but as he contemplates full retirement he recognizes the need for a solid succession plan. As with any successful program, there is a need for an alternate judge to oversee the docket during temporary absences or vacations, but court leadership should also require that additional judges develop the necessary expertise (and temperament) to oversee the docket in the future. A similar succession plan should be applied to other key team members. In one site the prosecutor's office slowed down the admittance process because the prosecutor on the team was new and unfamiliar with the issues and how the MHC team operated. The prosecutor did not feel comfortable with the team and lacked the discretionary power to make decisions without first consulting the lead prosecutor. Shadowing or training for a new MHC team member permits a smooth transition, assuming there is overlap with the outgoing team member.

Well-established MHCs are now among the ranks of other problem-solving courts, such as drug courts, in which they face longer-term challenges. For example, one participating MHC considered whether to accept alumni, or clients who have successfully graduated from the program, but have now re-entered the criminal justice system with new charges. This situation draws attention to the need for a thorough evaluation of the MHC's effectiveness, primarily as it relates to the goal of reduced recidivism. All programs experience some level of recidivism, but courts must have policies in place to decide how, and if it is appropriate, to handle recidivating clients. This policy should require a new assessment on whether this program can meet the client's needs and why the previous judicial supervision was not successful long term. Along a similar vein, the court should track not only characteristics of those who fail the program, but also those who return to the criminal justice system to better diagnose necessary programmatic adjustments.

Recidivism after participation in a MHC suggests a lack of sustainable aftercare or a shift in available or suitable community resources for the client, or a variety of other "relapse triggers." As previously discussed, the goal of the MHC is not to cure the mental illness, but to facilitate receipt of necessary mental health services to maintain control over disruptive symptoms. As such, courts should conduct a resource assessment prior to program implementation.[43] Periodic assessments enable the MHC team to respond to changes in the community and changes in their target population, both for those currently in the program receiving treatment as well as those who are undergoing aftercare treatment.

The MHC team members from larger jurisdictions were constantly in communication with local mental health agencies to identify new and evolving resources and to evaluate the level and type of service offered. In San Francisco, the boundary spanner conducted site visits to evaluate and research local programs. She indicated this was an ongoing effort, as it was a constantly changing landscape.

Smaller communities had fewer options to enlist service providers, but maintaining effective collaboration and working relationships with the existing providers became more important for the program's success. The Chittenden County MHC team recognized the importance of staying connected with a local provider and set up a meeting to share information and better understand the motives and goals of each organization serving the clients. The quality of service is ultimately tied to the client's success, and, while this is a new role for the court, the team members in a problem-solving docket are tasked with assessing available service providers.

While the focus thus far has been on the benefit that clearly stated policies have on the client, they are just as beneficial to the MHC team members. A policies and procedures manual can serve as a reference guide to MHC team members, as is the case in the San Francisco Behavioral Health Court (BHC). The San Francisco BHC Policies and Procedures Manual not only gives a general overview of the Court and case processing, but also provides descriptions of each team member's role and an appendix containing mental health diagnoses, definitions, and relevant acronyms. The result is that team members have a clear understanding of what is expected from them as well as background knowledge, about both the court and mental health communities,

[43] For technical assistance on resource assessments and program implementation guidance, see the NCSC's Problem-Solving Justice Toolkit: http://www.ncsconline.org/D_Research/Documents/ProbSolvJustTool.pdf.

required to be a productive MHC team member. With concrete roles outlined for each team member, they are able to relate their role to that of other team members and discern the importance of their perspective in the decision-making process. Both of these outcomes create a more cohesive, team-oriented environment.

In addition to developing a clear set of policies and procedures, MHCs must demonstrate their accountability to funding sources, court leaders, the community, and mental health stakeholders. Accountability translates to what is "success?" As such, we recommend that MHCs collect outcome and performance data to effectively manage their court. Several of the participating sites appreciated the importance of data collection and had begun collecting program and client data. In Vermont, the court employed a county treatment court coordinator as well as a state treatment court administrator to oversee all of the state's problem-solving court programs. A primary component of these positions was to collect and monitor program data.

Recommendation 2: Design and Implement Performance Measurements

Performance measurement is considered an essential activity in many government and non-profit agencies because it:

Has a common sense logic that is irrefutable, namely that agencies 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 p. xvi

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

As a recent innovation, MHCs in some jurisdictions are considered experimental. While there are currently over 200 MHCs nationwide,[44] there is a paucity of data that evaluates the success of MHCs through methodologically rigorous techniques (such as using appropriate control conditions).[45] Moreover, there is a lack of consensus on what key elements ought to be used to measure the performance or success of MHCs.

[44] Estimate provided by the Council of State Governments.
[45] See for example, Wolff and Pogorzelski, (2005).

Generally speaking, the purpose of a 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. As the Public Defender in San Francisco succinctly said, "the goal [of the BHC] in the beginning was to get people out of the criminal justice system, then it was to get them treatment, and now it is to get them to the point of having a fulfilling life." The extent to which MHCs offer an effective problem-solving alternative to the criminal justice system is currently unanswerable without adequate performance measures designed specifically for MHCs.

As part of this project, the NCSC requested team members share their perspectives and experiences with both effective and ineffective procedures since their program's inception. Based on these discussions as well as previous MHC evaluations, we determined that there are four primary areas of concern that could effectively be addressed by the creation of MHC specific performance measures. The four areas, referred to as measurement domains, are: 1) accountability, wherein MHCs are accountable to funding sources, stakeholders, and the community within which they operate; 2) efficiency, wherein MHCs are efficient at serving clients and coordinating interagency interactions (e.g., client assessments and evaluations are conducted in a timely manner to respond to immediate client medication and housing needs; courts provide efficient client monitoring and compliance is readily shared between the MHC team members; and courts make as efficient use of the time spent holding pre-docket staff meetings and dockets as possible); 3) recidivism and social functioning, wherein clients are expected to improve social functioning and establish a productive life in the community, reduce recidivism, and establish a network of support; and 4) procedural justice, wherein the court is evaluated from a public perspective (i.e., MHC is not just a loop hole for serving jail time), legal perspective (i.e., due process and privacy rights are respected), and from the client's perspective (i.e., years of judicially supervised therapeutic justice is not judged as more punitive than the conventional punishment of several months in jail). Each of these domains is addressed in detail below.[46]

[46] These four domains, as part of a larger set of balanced and comprehensive performance measures, are currently under review by the NCSC as part of a BJA funded project on performance measures for MHCs. The results of this project are forthcoming in 2010.

Accountability

Accountability indicators apply to both the individual client (for their crime) and to the program (to funding agencies and oversight boards). To bolster public support for the program, the client is held accountable for upholding his or her end of the program contract. MHCs must demonstrate the "value-added" with regard to time and costs as compared to the traditional criminal docket.[47] The impetus for creating a specialized docket was the criticisms of the traditional courts' inability to reduce recidivism of defendants with mental illness and assure those defendants were engaged in treatment. However, a specialized docket requires additional staff, time, and resources to operate as compared to a criminal misdemeanor or felony docket. Undoubtedly, in these tough economic times, funding agencies and court leaders will demand MHCs to quantify and evaluate the costs as compared to the value of the program.

Efficiency

All courts, whether employing specialized dockets or not, address timeliness and efficiency of operations.[48] Drug court researchers developed processing measures to assess timeliness between events, response time after a precipitating event, and frequency of contacts with the drug court client.[49] While MHCs should adopt similar measures of processing efficiency, their application in a MHC setting requires sensitivity to the unique clientele.

While no formal standards or event timeliness measures have yet been proposed specifically for MHCs, some participating courts have, in practice, creatively structured the docket call order as a mechanism for either a reward or a sanction to the MHC clients. For example, one participating site called those who demonstrated positive behavior for the week (as determined in the pre-docket meetings) first to report to the judge, while the others waited. As a similar way to impose minor sanctions, a judge in another participating site held clients who did not pay the court costs in the courtroom until the end of the docket (approximately three hours). The judge

---

[47] See proposed cost and cost avoidance performance measures for drug courts in Rubio, et al., Performance Measurement of Drug Courts: The State of the Art. *National Center for State Courts: Statewide Technical Assistance Bulletin,* (2008): *6.*

[48] See for example, *CourTools: Trial Court Performance Measures: Measure 3*, *"Time to Disposition*," (Williamsburg, VA: National Center for State Courts). American Bar Association, *ABA Standards for Criminal Justice: Speedy Trial and Timely Resolution of Criminal Cases*, 3d ed., (Conference of Chief Justices and Conference of State Court Administrators' Case Disposition Time Standards, 2006) at: http://www.ncsconline.org/d_research/TCPS/Standards/stan_2.1.htm.

[49] Rubio et al., (2008).

explained to the clients during the docket, “I am not asking you to do anything different than what I myself do.”

Other processing delays are not a result of the type of clientele, but an end product of the involvement of multiple agencies. Simple coordination and communication can be rife with logistical and structural complexity. Any set of efficiency measures should incorporate efficiency techniques that work to facilitate interactions both with external agencies and, internally, between the MHC team and the client.

The participating courts worked to find solutions to the structural and logistical complexities. For example, in Jackson and Hennepin Counties, the MHCs arranged to have a “one-stop shop” building that enhanced the client’s ability to comply with the court’s orders to report to numerous agencies. Housing a place for the clients to pick up their medication and meet with a case manager (boundary spanner) or other service provider not only improved the client’s compliance, but also the court’s efficiency. In Chittenden County, the courthouse was able to house the MHC’s case managers so clients were able to meet with their case managers and appear for court in the same visit.

In the participating sites, clients were most often able to meet with their attorneys immediately prior, during, or following the scheduled docket hearing. While this was convenient for both parties, the sites experienced disruptions and delays during the docket, especially evident when the court had a higher volume of clients to process. Moreover, in a couple of sites, the docket start time was routinely uncertain, leaving the clients to wait for long periods of time. A typical docket length was three hours, which tested the clients’ patience and composure. One strategy to address the time issues is to stagger the docket start time to alleviate both the waiting time for clients and to permit a more flexible time frame for attorney-client interactions.

Client-specific needs, when considered, will also facilitate the client’s progress in the program. For example, Jackson County’s Drug Court holds dockets in the evenings. While this is an increased burden on the MHC team, the clients were better able to manage their schedules and maintain a steady job. In Santa Clara’s CITA, parents were required to take time off work and the juvenile clients were pulled from school to attend court. A flexible schedule is one option to overcome some of these logistical complexities.

Reduce Recidivism and Improve Social Functioning

From a purely criminal justice perspective, the goal of the MHC is to reduce recidivism. The primary impetus for establishing a MHC is to provide a meaningful response to a defendant with mental illness to prevent future violations of the law. Arrests, fines, and jail time have proven ineffective as punitive responses to deter defendants with mental illness from committing crime, because the underlying social problem remains unresolved; and at times, the behavior is exacerbated by traditional criminal justice confinement. Courts must demonstrate that the program has been the impetus for a reduction of in-program recidivism and is more effective at deterring and preventing a client's future arrest or conviction.

In a MHC improving a client's social functioning is equally as important as reducing recidivism. In fact, the premise of MHC is that improved social functioning is the key to reducing recidivism. The court's expectations of clients vary widely among problem-solving courts; what is a "successful" outcome or impact for time spent in drug court does not automatically translate to a successful outcome for MHC. For MHCs, we propose that successful clients establish reliable and stable relationships and network with appropriate supportive agencies. MHC clients receive on-target treatment services during the program, but, to sustain social functioning, clients should graduate with a plan for continued aftercare treatment. Most importantly, clients should engage in behavior that establishes productivity within and contribution to their community, the "contributing member to society" concept. Additional refinement through empirical research of this idea is strongly encouraged. However, our suggestions include: clients must sustain housing, develop skills or engage in productive activities (e.g., volunteer work, educational opportunities, employment), and establish financial stability.

In fact, the premise of a MHC is that improving social functioning will be the key ingredient for reducing recidivism.

Procedural Justice

The goal of a MHC is to effectively balance public safety for the community with justice and accountability for the client. One measure of that balance is the achievement of "procedural justice." A concept first introduced by Tom Tyler, procedural justice occurs when all parties agree that, regardless of the outcome, the procedures used to arrive at that outcome are deemed fair

and just.[50] An important, but sometimes overlooked participant in the courts is the public, and MHCs must work to secure the public's trust and confidence in the program.[51] A MHC can know that it has achieved one component of procedural justice when the public believes that, rather than being a means for defendants to avoid responsibility for their crimes, the program instead holds the defendant responsible thus providing the community with the retribution from the defendant that it deserves.

MHCs are faced with a unique position due to the commitment of time required by the client. Generally speaking (and clearly spelled-out by most MHC's admittance paperwork), a client in MHC commits to the duration of the program, which is often longer than the likely alternative jail sentence if he or she went before a traditional criminal court docket. Furthermore, client comprehension and competency to make legal decisions or understand court orders is impeded by the operating mental illness, developmental disabilities, and/or prescribed medication.

Therefore, to achieve procedural justice, the court is responsible for ensuring the client's comprehension of court orders and program requirements, which is a challenging responsibility considering the client's mental illness. The NCSC's *CourTools*[52] Measure 1 provides an example of how to measure a court's ability to serve the public through access and fair treatment. A component of the measure is procedural fairness in which the client or court user is asked, for example, "As I leave the court, I know what to do next about my case." In another question used to measure procedural fairness, the client can agree or disagree to, "The judge listened to my side of the story before he or she made a decision." These questions act as a gauge of whether or not the court satisfied its responsibility to ensure fairness and comprehension of court orders.

RECOMMENDATION 3: ADAPT CULTURE ASSESSMENT TOOL FOR MHCS

As previously discussed, the culture assessment tool developed by Ostrom and his colleagues is an excellent way to understand what makes courts unique. We recommend that a modification of that tool be adapted specifically for MHCs. Our hypothesis is that MHCs practice in a communal culture, yet often envision a networked culture as their ideal culture.

---

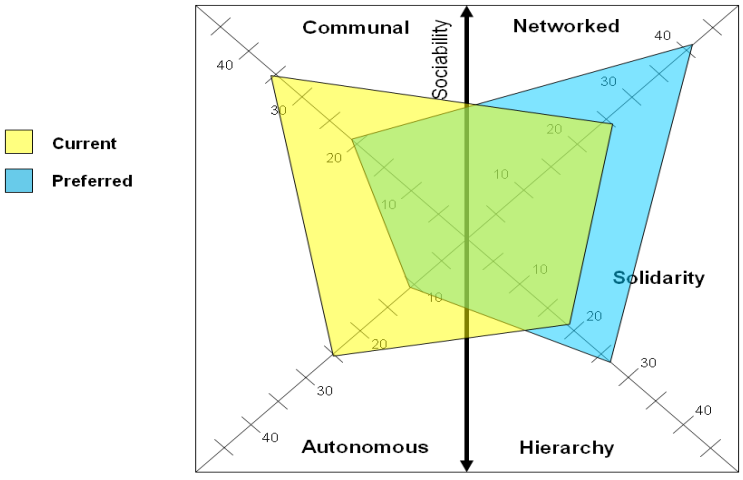
[50] T. R. Tyler and A. E. Lind, *The Social Psychology of Procedural Justice* (New York, NY: Plenum Press, 1988).
[51] See *Trial Court Performance Standard Area 5: Public Trust and Confidence,* (Williamsburg, VA: National Center for State Courts) at: http://www.ncsconline.org/d_research/TCPS/area_5.htm.
[52] See *CourtTools: Trial Court Performance Measures*, (Williamsburg, VA: National Center for State Courts) at: http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm.

Based on the work of Ostrom et al., both the communal and networked cultures are high on the sociability dimension providing considerable overlap across typologies.[53] The hallmark of the communal culture is egalitarianism, in which there is a mentality to work together to get the job done and improvisation is encouraged. On the downside, within the communal culture, team members may disagree about program goals and, since each team member is viewed as an equal, autonomous contributor to the group, each may improvise accordingly. Each team member represents another organization, with its own culture to consider. Additionally, communal cultures with low solidarity do not prioritize case processing or efficiency, and administrative management is seen as an "unwanted chore."

Similar to the communal culture, a networked culture thrives on creativity and innovation. MHCs place considerable value on external relations with community agencies. In fact, the role of the judge in a networked culture is defined by his or her unique role change. A judge is not a passive, detached referee, but a problem-solver and plays a more therapeutic role. A strength of the networked culture lies in its ability to effect change and manage case processing efficiently. However, a downfall of a court enmeshed in this culture lies in its potential to overextend itself and embrace new and innovative programs that are not supported by the necessary resources.

A visual representation of the two cultures and the utility of the modified MHC cultural assessment tool appear in Figure 5 below.

FIGURE 5. CULTURAL ASSESSMENT MODEL



[53] Ostrom et al., (2007).

Figure 5 shows "kites" or shapes that overlap on each of the four quadrants. As can be seen, no court is completely within one quadrant, but the majority of the kite area overlays on the dominant culture. Also shown in the figure, the preferred kite falls predominantly in the networked culture. Yet, as our hypothesis states, and the diagram illustrates, the current culture, or the culture under which MHCs will typically operate, is more communal.

From our field work, we encourage courts to consider their operating culture and whether it is aligned with their envisioned or preferred culture. This recommendation is supported by one of the Center for Court Innovation's (CCI) key problem-solving principles, "Collaboration."[54] CCI's principle parallels the benefits of a networked culture and proposes that MHCs "encourage greater trust between citizens and government, and foster new responses." Adapting a court culture tool for MHCs will enable more courts to assess their program's culture and adjust as needed.

Recommendation 4: Require Training

During site visits, training opportunities for the MHC team were relatively rare, and team members reported that they acquired or accomplished much of the training or educational opportunities needed through self-study. Several team members reported a personal interest in the intersection of the two disciplines, explaining their passion to serve on the team. This passion fueled their motivation to seek information and opportunities to learn, but was rarely funded by their employer or required of their position.

Cross-training on substantive mental health and criminal justice issues should be required for all team members. The predominant training that team members reported receiving was a "101 on Mental Illness," if you will, that enables the team to better understand mental illnesses and the types of behaviors or symptoms that are typically exhibited. This training was primarily provided to those with backgrounds in the criminal justice field.

Mental health advocates hope that those in the criminal justice system who encounter individuals with a mental illness will understand that there is no cure for the mental illness; yet there is treatment that can lead the individual to gain control over their symptoms and function within society. Through the collaborative MHC environment, advocates hope to dispel the

[54] R. V. Wolf, *Principles of Problem-Solving Justice* (New York: Center for Court Innovation, 2007). See also, Wolf and Pogorzelski (2005).

common stereotypes and stigmas of the mentally ill. Furthermore, mental health advocates claim that the criminal justice system has, until recently, seen the mentally ill through "criminal" filters, without fully understanding the limitations of those suffering from the illness and the appropriate responses to their behaviors.

Conversely, courts offered less criminal justice-related training to mental health professionals. The court's processes and the legal issues such as privacy, due process rights, compliance with court orders, and sanctions are but a few of the issues MHC team members grapple with daily. However, most team members reported that they learned primarily from on-the-job training and by asking lots of questions. Team members routinely educated one another on such issues and reported that "there were no dumb questions." Clearly, there was a cross-over of disciplinary knowledge and collaboration across team roles.

Research on mental health courts has not identified whether the problem-solving approach, as a whole, is effective at addressing the needs of the community and defendants with mental illness, much less which specific techniques are adaptable to the mainstream dockets and which are the driving force behind the effectiveness.

While we are recommending training for MHC teams, a recent article by Farole suggests that innovators in this field are exploring how to mainstream problem-solving techniques into conventional court settings,[55] drawing partly on a 2000 resolution by the Conference of Chief Justices and Conference of State Court Administrators in support of this effort.[56] While Farole finds widespread support of problem-solving methods among the mainstream judiciary, evaluators have not produced sufficient or specific empirically-based research to adopt this endeavor. A main concern is that the research on mental health courts has not identified whether the problem-solving approach, as a whole, is effective at addressing the needs of the community and defendants with mental illness, much less which specific techniques are adaptable to the mainstream dockets and which are the driving force behind the effectiveness of this innovation. It is simply too early to be embracing the adaptation of MHC methods without an informed evaluation of current programs.

---

[55] D. J. Farole, Jr., et al., *Problem Solving and the American Bench: A National Survey of Trial Court Judges* (New York: Center for Court Innovation and California Administrative Office of the Courts, 2008).

[56] D. Becker and M. Corrigan, "Moving Problem Solving Courts into Mainstream: A Report Card from the CCJ-COSCA Problem Solving Courts Committee," *Court Review* 39*, 2003: 4.*

One promising point from Farole's article is that 86 percent of his respondents indicate an interest in learning more about mental illness and treatment. The expansive use of problem-solving techniques has required that the bench seek additional knowledge about mental illnesses. This is a component that, through judicial education and training, is of obvious benefit.

In the traditional criminal justice approach, each individual plays his or her role in the process. Durkheim, in 1893, advanced a sociological theory about this division of labor. Each member of a society has a distinct role to play, but there is a need for a "common conscience" that enables social order and a well-functioning society. When MHCs are first formed they are comprised of individuals who were trained in a culture in which each person performs his or her own role in the court proceeding. MHCs challenge those distinct roles and assumptions and require individuals to overlap roles and work within a team so that, for example, the probation officer plays the role of a social worker and the social worker plays the role of a probation officer. This requires the team members to try on different hats, work together, and see beyond their own stereotypes. An advantage is that the team, as a group, feels responsible for the end result of the process to which he or she contributes. Tasks are no longer compartmentalized, insights into other perspectives are gained, and growth is encouraged.

The team dynamic requires that the team build relationships and trust among members. Trust building is a key component of any problem-solving court team and is primarily developed through longevity as colleagues. Unfortunately, the MHC teams are relatively new and there is comparatively high turnover among some critical roles. If staffing changes are inevitable, one promising remedy, if afforded the time, is to encourage the replacement to shadow the departing member. This will, in a sense, encourage continuity while simultaneously building the new relationships.

Another mechanism to improve trust among team members is through management of physical proximity. In Minnesota, one case manager's office from probation was housed next to one of the social worker's office in the courthouse. There was a separate annexed building location with a similar pairing of MHC team members. This strategy encouraged the teams of two to consult one another and work closely together.

A final strategy for building trust among team members was using the age-old forum of a retreat. For decades, businesses have been holding retreats for the purposes of networking, establishing relationships, and building trust. This strategy was reported by those on MHC teams as a way to effectively build bridges between the various roles each played. The ability to meet outside of formal meetings and courtrooms was particularly constructive.

Thus far, the discussion of networking has been limited to the MHC team. Yet, many interviewees discovered a value in communicating with those in a similar position, representing a different MHC. Such networking may extend to communications with neighboring courts or nationwide conferences. Forums such as on-line listservs or nationwide associations will facilitate such connections. For example, the National Association of Drug Court Professionals holds an annual training conference, at which the first ever forum for Mental Health Courts was adjunct this year (2009).[57] From our fieldwork, judges indicated an interest in creating a judicial association for mental health court judges. Regardless of the forum, substantive and trust-building training are two key components to a successful and effective MHC and should be part of any implementation plan.

[57] Portions of this report were presented at this conference. See, N. L. Waters and S. M. Strickland (2009). *Holistic Justice Means Leaving Your Hat at the Door.* Presented at National Association of Drug Court Professionals' Mental Health Court/Co-Occurring Disorders Forum on Sunday June 14, 2009, Anaheim, CA.

CONCLUSION

The purpose of this report was to examine communication and decision-making within the problem-solving court setting. As such, the NCSC developed a communication model that effectively integrates the concerns of all members of the MHC team, both internal and external to the court. The NCSC also presented a set of best practices that promote better managed MHCs, generate cultural changes suitable for MHCs within the criminal justice system, and encourage multi-disciplinary trust and cooperation among the MHC team.

The field work, along with the guidance of the Advisory Council, led to several key conclusions and recommendations, and the following discussion summarizes the lessons learned. As a fairly recent innovation, MHCs have an opportunity to develop and refine policies and procedures for the program. As expected, each court faced inefficiencies and yet all courts implemented creative solutions to manage their caseflow and administer their programs. Technological advancements proved to be a source for facilitating collaboration and enhanced, timely exchange of information among the MHC team members. However, courts are at the preliminary stages of using such technology to track and collect program and client data that will promote evaluation and measure performance.

All of the participating courts faced struggles with including a full spectrum of collaborator's interests. Logistical, legal, political, and financial factors were but a few of the reasons offered to explain the absence or minimal participation in the MHC. For the purposes of bolstering community and stakeholder support and to enrich the capabilities of a team-based approach, all interests should be represented in the program's planning, implementation, and evaluation stages. An added benefit of this inclusive approach is that it creates multiple opportunities for effective cross-training, the lack of which was a widespread concern expressed by the MHC team members. New members of the team would benefit from shadowing or additional mentoring in order to boost their knowledge of court processes and establish trust with the remaining team members.

Fieldwork in the participating sites inspired the following four recommendations. First, MHCs should develop more thorough written policies and procedures. This is not to say that MHCs should standardize treatment plans. On the contrary, a comprehensive and standardized set of procedures and policies will better enable the court to carry-out the individualized treatment that

MHC clients require. While the culture of problem-solving courts embraces flexibility and creativity, it may also lack the solidarity and consistent procedures that are needed if the team is to fulfill its goal of providing a unified message to both the client and the court's stakeholders.

Second, MHC-specific performance measures should be developed. The measures should focus on domains such as accountability, efficiency, recidivism, social functioning, and procedural justice. This effort is underway through a Bureau of Justice Assistance grant to the NCSC. A group of national experts and representatives from MHCs across the nation will convene to develop an inclusive, yet manageable number of performance measures. The measures will be tools designed to better manage and effectively administer MHCs. These measures will undergo a field test to gauge the practicality of implementation.

Third, a MHC Culture Assessment Tool should be developed. This tool would be part of a set of tools to assess the operation of the program, yet account for the unique culture and communication dynamics inherent in a team-based MHC. The culture assessment tool would be sensitive to the higher order political and funding influences as well as interpersonal relationships with members of the MHC team. The primary use would be to monitor the implementation of the program, as intended, and to conduct periodic assessments as to whether the program's current culture is aligned with the court's vision.

A final recommendation is to develop model curriculum for training those working in MHCs. With the widespread support of problem-solving methods among the mainstream judiciary, it is anticipated that more courts will embrace MHCs as an alternative to traditional criminal justice sanctions for the mentally ill population. However, it requires the court's commitment to train and prepare the MHC team for their problem-solving role. Both substantive and trust building training are key components for an effectively operating MHC.

It is the desire of the NCSC that this project will enlighten the communication and decision-making processes of MHCs in order to improve outcomes for the mentally ill and better serve the affected community. Certainly, additional research is required to identify what aspects of this relatively new, multi-disciplinary approach are conducive to reducing recidivism for defendants with mental illness and improving public safety.

APPENDICES

APPENDIX A: SITE SPECIFIC INFORMATION

Appendix A contains a number of documents pertaining to the sites that were included in the study. Table A-1 is included for comparative purposes and contains site characteristics and information that was gathered and reviewed by both the NCSC research team and the Advisory Council to ensure a high degree of variability among the sites.

TABLE A-1. SITE COMPARISON INFORMATION

Mental Health Court	Inception Date	Region	# Participants per Year	Eligibility Criteria		Funding Source
				Clinical	Legal	
Hennepin County MHC Minnesota	2003	North	200-300	Axis I, TBI, competency, MR	Misdemeanor, non-violent felony	Federal, state, local
Jackson County MHC Missouri	2001	South	201-500	Axis I, MR	Ordinance violations, non-violent felony	Federal, state, local, tax levy, MH agencies
San Francisco Behavioral HC California	2003	West	125-150	Axis I, MR	Misdemeanor, felony	Federal, state, MH agencies, private grants
Chittenden County MHC Vermont	2003	East	51-100	Axis I or II, adjunct drug court docket	Misdemeanor, felony	State, MH agencies, United Way
Santa Clara CITA California (Juvenile)	2001	West	51-100	Axis I	Misdemeanor, misdemeanor probation violation, non-violent felony	State, state MH

Below is table A-2 which contains a quick reference to the information that is provided in the communication models that follow. This table shows who is present at pre-docket meetings and what perspectives are included. Following the table are more in-depth descriptions of the participating sites and the process model and communication model for each court.

TABLE A-2. WHO'S SITTING AT THE TABLE?

Role	San Francisco BHC	Hennepin County MHC	Chittenden County MHC	Santa Clara (Juvenile)	Jackson County (Drug Court)	Jackson County (Kansas City)	Jackson County (Lee's Summit)
Treatment	✓	✓	✓	✓	✓	✓	✓
Prosecutor	✓	✓	✓	✓	✓	☑	✓
Corrections	✓	✓	✓	✓	✓		✓
Judge	✓	✓	✓	✓	✓		
Defense	✓		✓	✓		✓	✓
Social Services		✓	✓	✓	✓		
Family				✓			

☑ Role added to pre-docket meeting after observation completed.

Hennepin County Mental Health Court (Minnesota)

General Overview

The Criminal MHC was implemented as an adjunct program to the Community Court, serving defendants charged with quality-of-life offenses. The Hennepin County Criminal Mental Health Court in Minneapolis, Minnesota handles approximately 200 participants at any given time. The Criminal MHC operates daily dockets, although only 5-10 clients appear before the judge on a typical day. In addition, there is a considerable length of time between each docket appearance by clients, ranging from monthly to every six months. Clients are assigned to a case manager from probation or human services, based on his or her criminal justice history. Two diagrams follow that present the process model and communication model of the court, and areas of interest are noted within each diagram. As noted in the process model, the court may order a competency evaluation which ensures the client enters as a voluntary participant prior to acceptance into the program . This court also accepted clients with traumatic brain injury and developmental disability.

Lessons Learned

To overcome logistical challenges, the Criminal MHC opened PRISM Center (Providing Resources and Integrating Services to the Mentally Ill), which serves as a collaborative effort between the courts, corrections, social workers, and the county medical center. In essence, PRISM is a one-stop shop social service center for the Criminal MHC clients and improves the chances that clients will stay compliant with medications. In addition, the PRISM Center houses a probation officer and a social worker, and that proximity enables them to work as partners.

Impact on Recommendations

The field work at the Criminal MHC directed our best practice recommendations to develop written policies and procedures (Recommendation 1); specifically to develop succession planning. The Criminal MHC was supported by the leadership of Chief Judge Burke, but has been implemented and presided over by Judge Hopper. Judge Hopper has developed a Handbook for judges to temporarily preside over the Criminal MHC docket, which, when the time comes, will ease the transition of incoming judges. A second recommendation arises, in part, from the observations of the team. The communication model for the Hennepin County team identifies that the Criminal MHC did not have a dedicated representative from the public defender's office to either attend the pre-docket meetings or to represent individual clients. The public defender was not required to appear in court since clients differ in legal status upon entering the program (some were post-plea others post-adjudication). These inconsistencies led to our recommendation to require training (Recommendation 4). Having a dedicated public defender would provide the opportunity for that individual to undergo substantive training and would also foster trust among the team members.

FIGURE A-1. HENNEPIN COUNTY MHC PROCESS MODEL

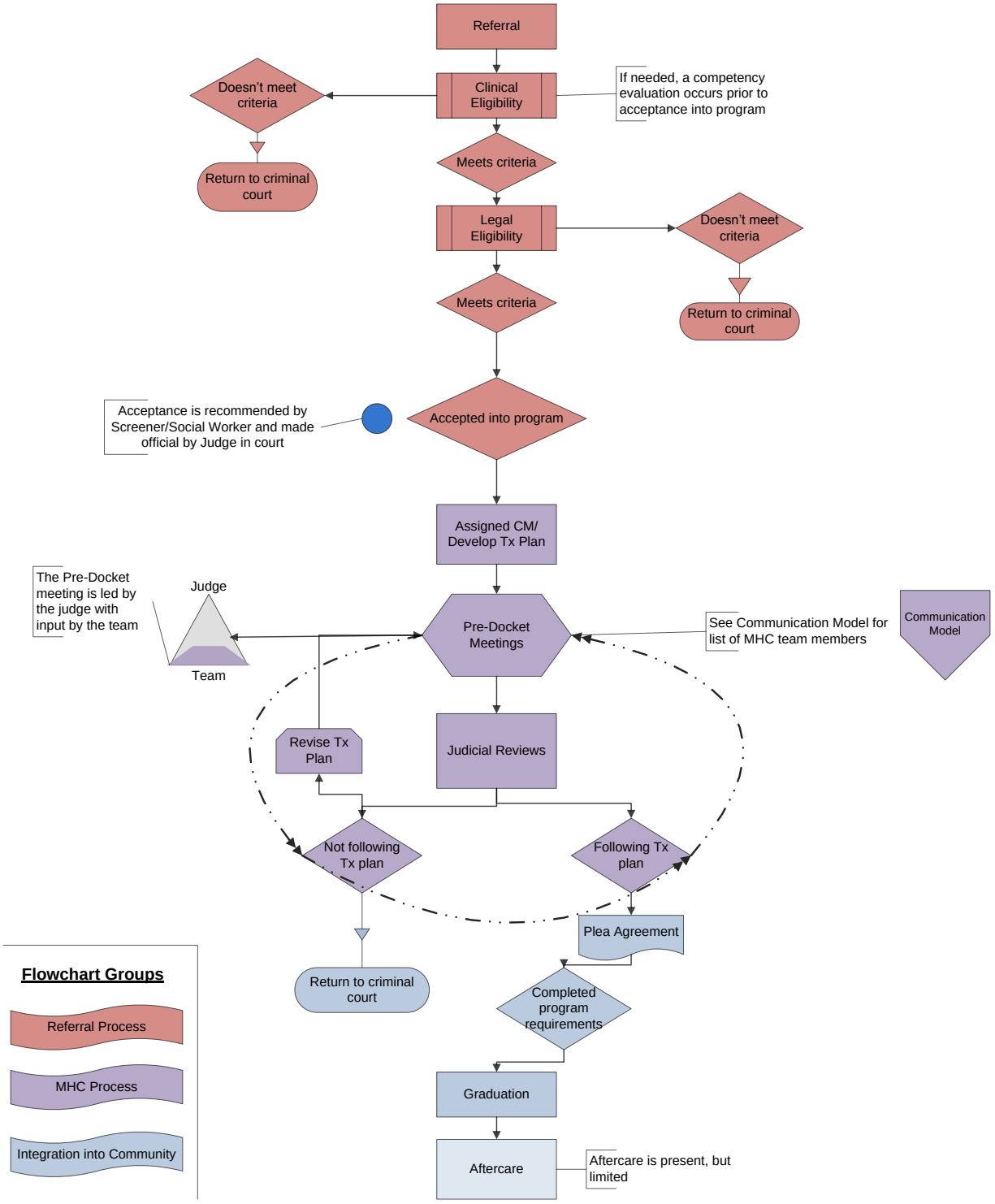
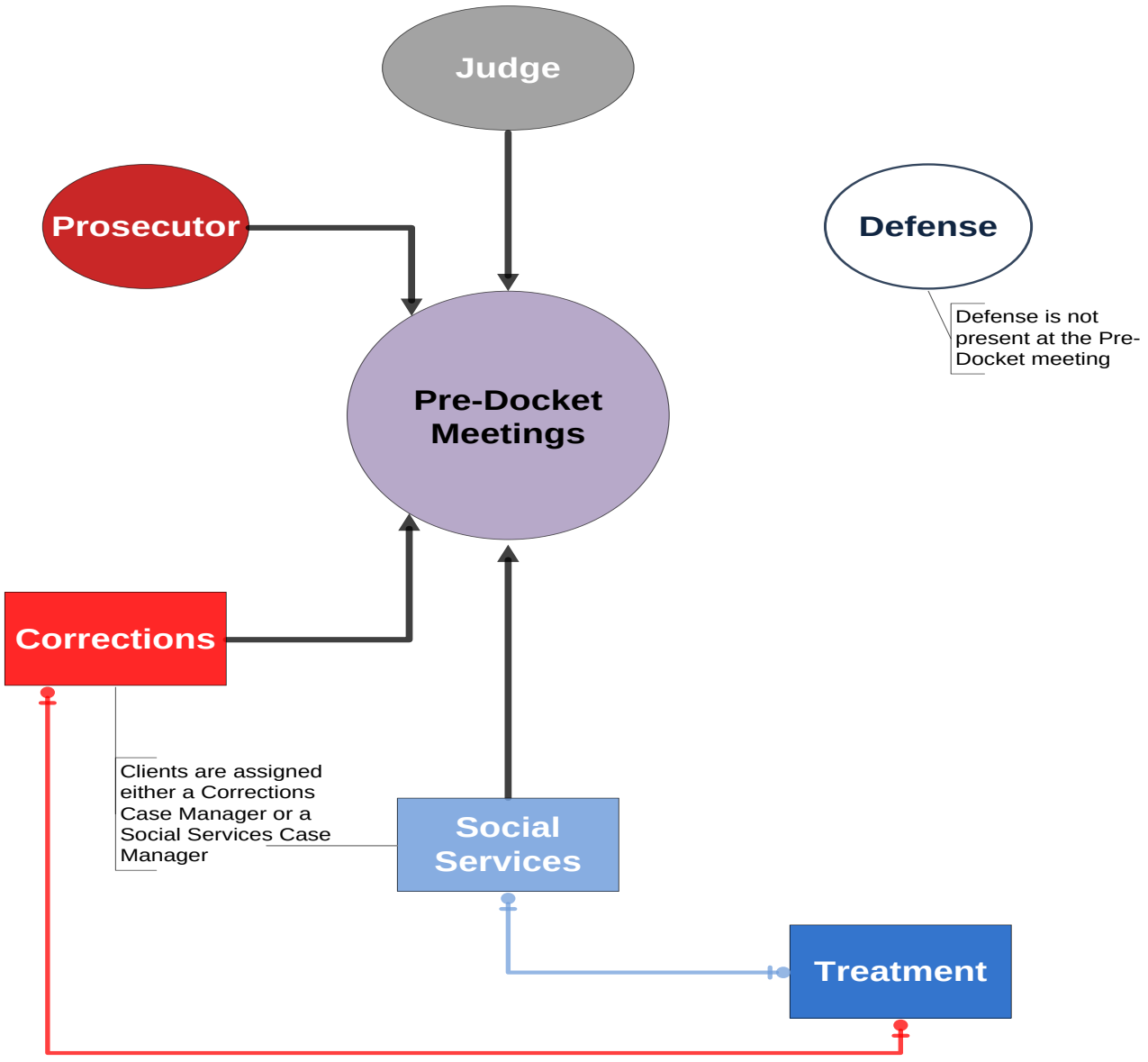


FIGURE A-2. HENNEPIN COUNTY MHC COMMUNICATION MODEL



JACKSON COUNTY MENTAL HEALTH COURTS

There are three MH courts/dockets in the County: 1) 16th Circuit Court, Drug Court – MH track (state court that serves the entire county, but holds docket hearings in Kansas City and Independence); 2) Kansas City Municipal MHC (local court that serves Kansas City residents); and 3) Lee's Summit Municipal MHC (local court that serves residents of Lee's Summit). All dockets operate as pre-plea diversion programs, and all dockets are serviced by a boundary spanner known as a court monitor. The Jackson County court monitors have been called "mental health navigators," and their leadership role is shown throughout the process and communication models that follow.

Unique to Jackson County is 1) the existence of a MH Commission, which provides strategic planning and oversight to the mental health resources in the community; 2) a MH Fund (or Tax Levy), which funds, through a property tax, some of the mental health treatment available to the community; and 3) the Resource Development Institute (RDI), which is a local research agency designated to work with the MH Commission and the MH Fund to research mental health-related issues in Jackson County. As an example, RDI periodically conducts what it calls the "Snickers Study" to assess mental health issues within the jail population. Research from this and other studies have informed the MH Commission on how best to respond to the needs of the county's mentally ill population.

JACKSON COUNTY MENTAL HEALTH COURT (DRUG COURT)

GENERAL OVERVIEW

This MHC is run as a track of the Jackson County Drug Court. It is a low volume court, accepting approximately 55-60 participants, all felons and all with co-occurring disorders. In addition to the court monitors mentioned above, this MHC team includes probation officers and client advocates. Both of these positions offer an extra layer of supervision for the court's clients, with the client advocates offering "wrap-around" services such as providing bus passes, contacting social services, etc.

LESSONS LEARNED

In an effort to overcome the problem of differing locations for team members, this MHC team uses an integrated computer system as a means of tracking client progress. The use of the computer system allows team members to gather routine progress information so that valuable face-to-face time at the pre-docket meeting can be spent discussing specific client problems.

IMPACT ON RECOMMENDATIONS

Our field work regarding the MH track of the Jackson County Drug Court showed that this MHC operates as a judge-oriented or autonomous culture. Recognizing this helped in shaping the recommendation to include a culture assessment tool (Recommendation 3) in order to determine if the court was operating as intended.

FIGURE A-3. JACKSON COUNTY MHC PROCESS MODEL (DRUG COURT)

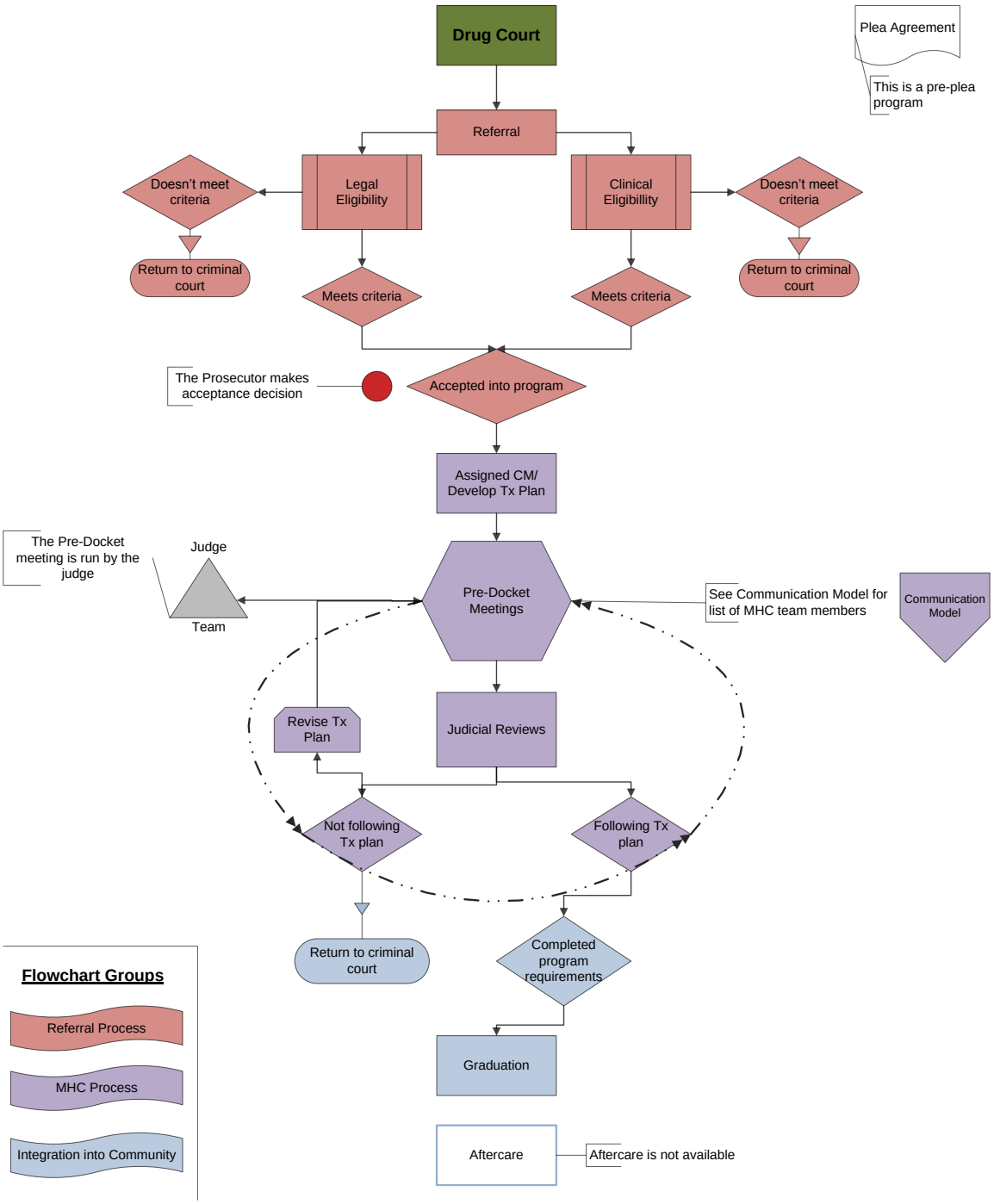
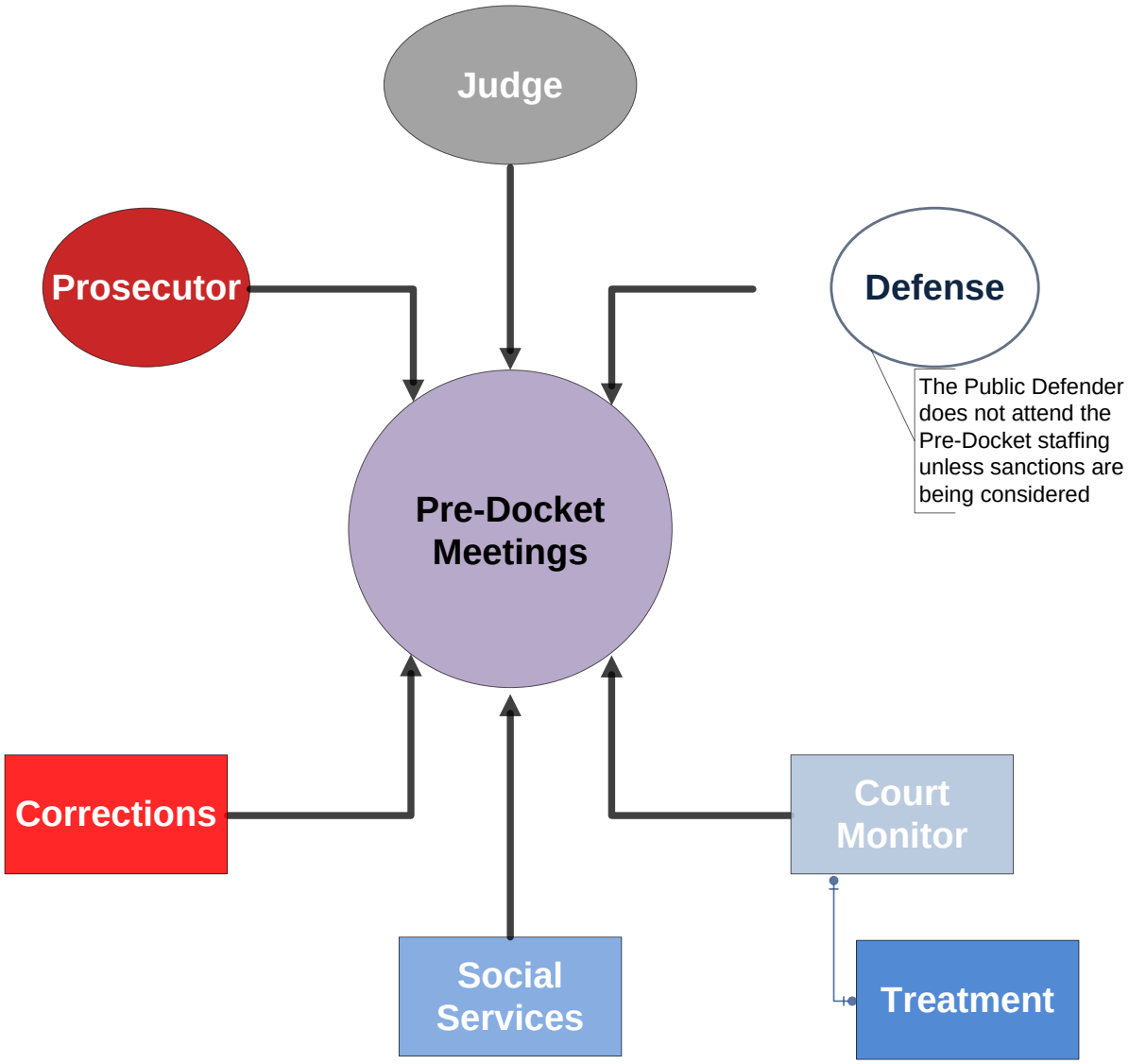


FIGURE A-4. JACKSON COUNTY MHC COMMUNICATION MODEL (DRUG COURT)



JACKSON COUNTY MENTAL HEALTH COURT (KANSAS CITY)

GENERAL OVERVIEW

The Kansas City Municipal MHC accepts ordinance violation charges (the equivalent to misdemeanors in other states) for Kansas City, Missouri and holds a weekly docket. The team supervised approximately 160 participants and contends the volume is growing rapidly. Kansas City is a large, urban area, and the participants battle homelessness and other quality-of-life issues in addition to their mental illnesses. At the time of our site observation, the court's MH team consisted of the public defender and the court monitor who served as a representative for treatment. The judge and the prosecutor did not attend pre-docket meetings, and, as shown in Table A-2, this court is the only participating site that does not have a corrections representative, but this is due to the fact that there is no probation office associated with the Kansas City Municipal Court.

LESSONS LEARNED

A primary lesson shared during the field work was the need to integrate the prosecutor's role into the MHC team. Prior to and at the time of our site visit, the prosecutor did not participate in the pre-docket meetings. Instead, she was given a list of names for defendants that had been referred to the MHC and spent time during the court docket checking to see if those defendants met the legal eligibility requirements of the MHC. Since the prosecutor is not full-time with the MHC, she expressed that spending too much additional time with the docket would leave the Municipal Court's remaining prosecutors short-handed, but she did recognize that it would be in the best interest of the MHC if she became more involved with the team and had discussed that option with the other team members (the public defender and boundary spanner). Following our site visit, the prosecutor began participating in the pre-docket meetings, and this change is shown in the Kansas City communication model.

IMPACT ON RECOMMENDATIONS

The relative longevity of the Kansas City Municipal MHC posed a unique question: should the court accept previous graduates into the program, and, if so, how should that client's treatment plan be changed so as to avoid future recidivism? This situation directly affected our belief that MHCs must have clear written policies (Recommendation 1) regarding their target population and the level of aftercare treatment that is either provided by the court or available in the community. This situation also led to our finding that MHCs must have performance measures (Recommendation 2) in place that determine their rate of recidivism. In addition, the observation of the Kansas City Municipal MHC docket hearing confirmed that efficiency is critical in large, urban courts and that it is often necessary to develop creative solutions to problems such as an extended docket. Adopting performance measures (Recommendation 2) related to efficiency can help the court more effectively manage its caseload and discover solutions, such as staggering the start times of the docket hearing, that will help it to run more smoothly.

FIGURE A-5. JACKSON COUNTY MHC PROCESS MODEL (KANSAS CITY)

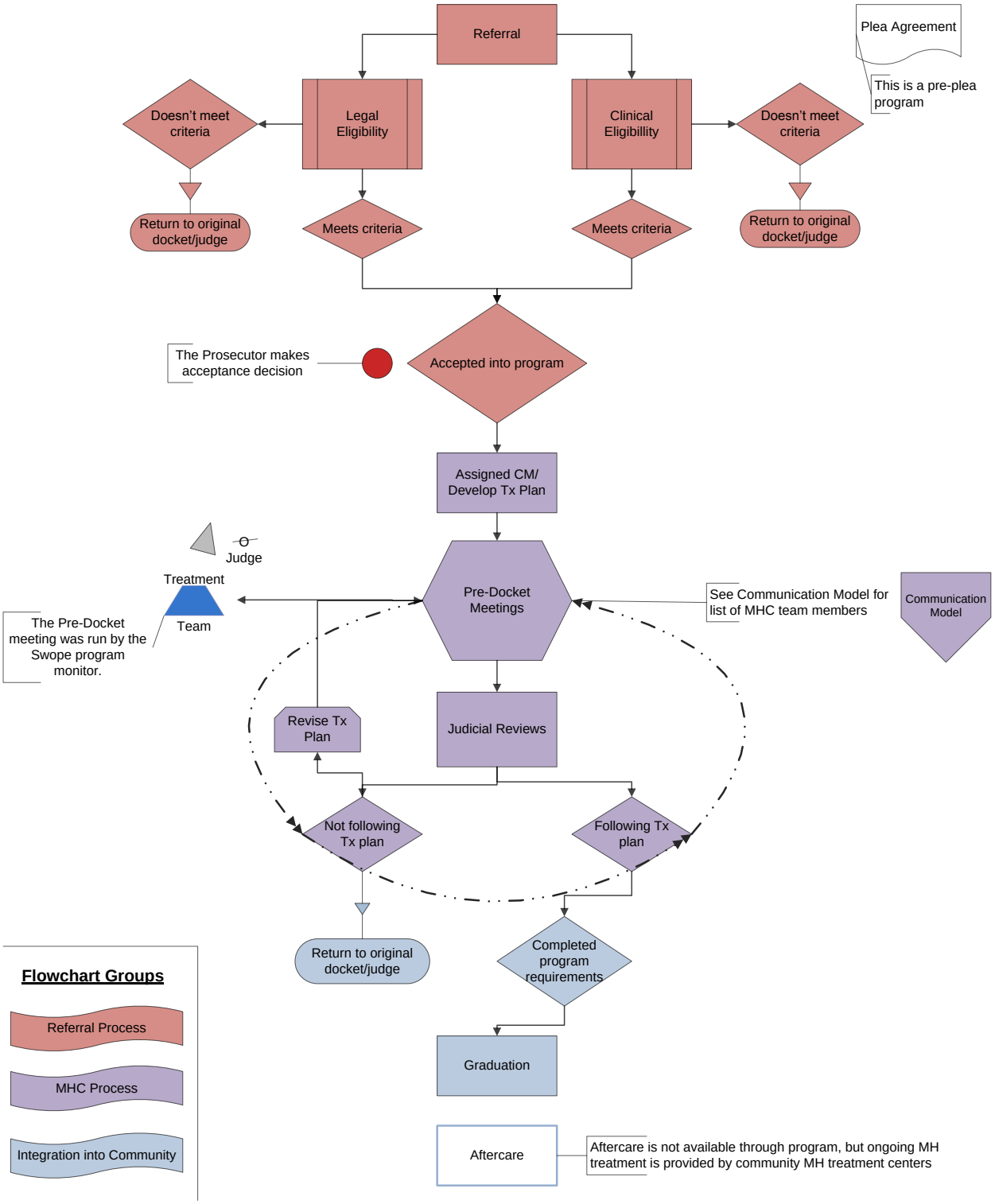
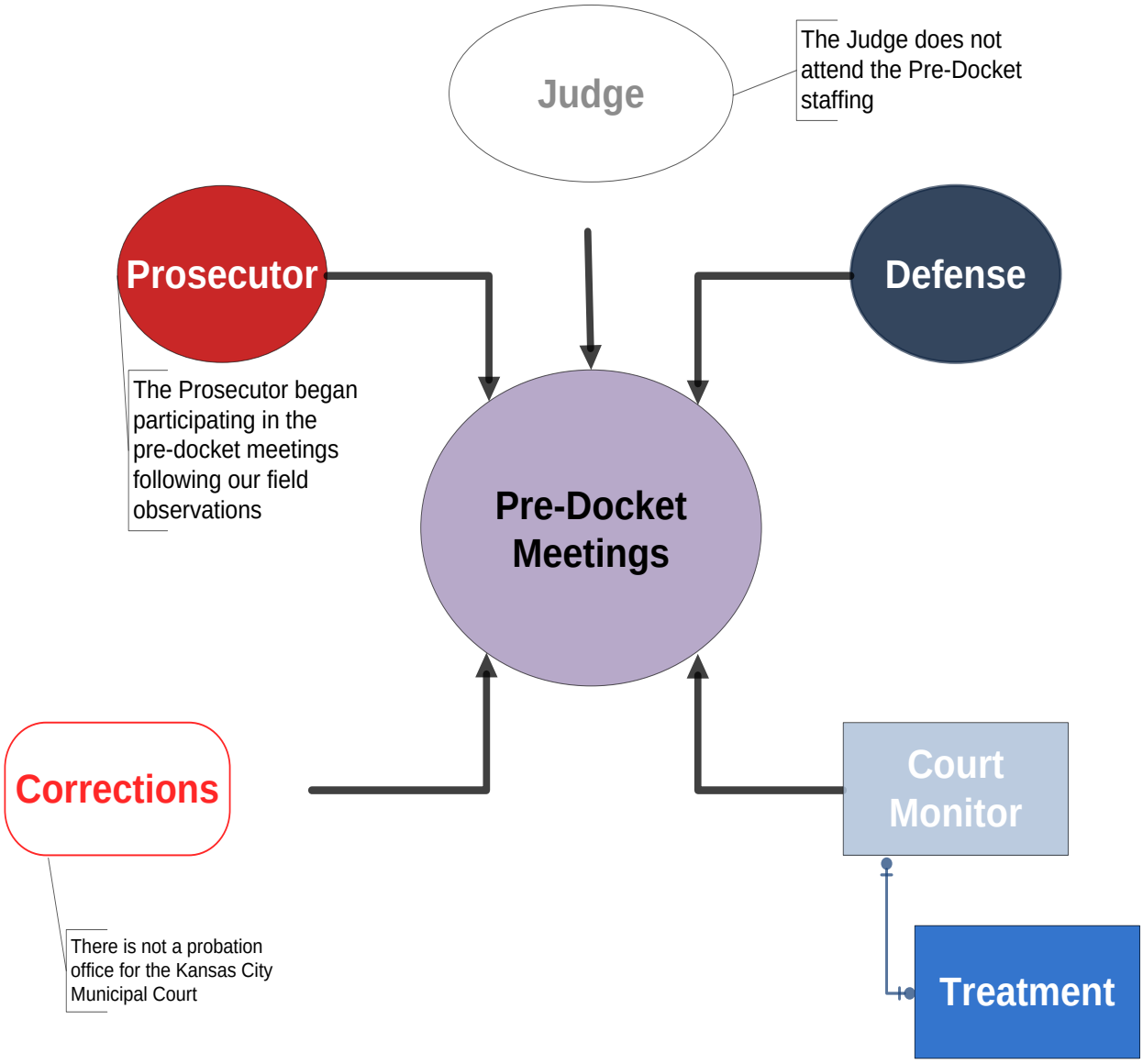


FIGURE A-6. JACKSON COUNTY MHC COMMUNICATION MODEL (KANSAS CITY)



Jackson County Mental Health Court (Lee's Summit)

General Overview

Lee's Summit MHC is a municipal court accepting ordinance violation charges (the equivalent to misdemeanors in other states) that serves a suburban area outside of Kansas City. At the time of our field work, the docket was held monthly and included approximately 15 clients. The targeted population includes a unique set of clientele. Many of the participants are living with family members, so that family dynamics are a larger issue over homelessness, as seen in some of the more urban areas. As a suburban area, the MHC faces additional logistical challenges. For example, the local jail, which held in-custody participants, was located an hour away from the courthouse.

Lessons Learned

There was a turnover of control for the pre-docket staffing meetings, originally run by probation and currently run by the prosecutor. The judge is not present at the pre-docket meeting, as illustrated in the communication model that follows. The judge raised ethical concerns to explain his choice not to attend. One of the challenges faced by Lee's Summit MHC is the lack of funding and limited staff resources. However, the MHC was able to overcome many of these challenges by sharing resources, soliciting volunteers from Kansas City, and using part-time commuters to staff the MHC team.

Impact on Recommendations

The experiences of the Lee's Summit Municipal MHC provide useful lessons for other MHCs contemplating expansion into nearby suburban or rural areas. Our recommendation to develop clear written policies (Recommendation 1), admittance policies in particular, applies to courts under development and those serving new or expanded populations. Courts must continually evaluate whether they are able to serve an expanded population of potential clients, including identifying appropriate service providers in proximity to the court, evaluating the caseload and staffing capacity, and adjusting clinical eligibility requirements (if the population is different from those served in other localities). In addition, the unique staffing situation within the Lee's Summit MHC (volunteers and part-time commuters) illustrates the need for both cross-disciplinary and trust/team-building training (Recommendation 4). Fortunately for Lee's Summit, there are training opportunities in nearby urban areas (i.e., Kansas City) that can be tapped as resources for the Lee's Summit team.

FIGURE A-7. JACKSON COUNTY MHC PROCESS MODEL (LEE'S SUMMIT)

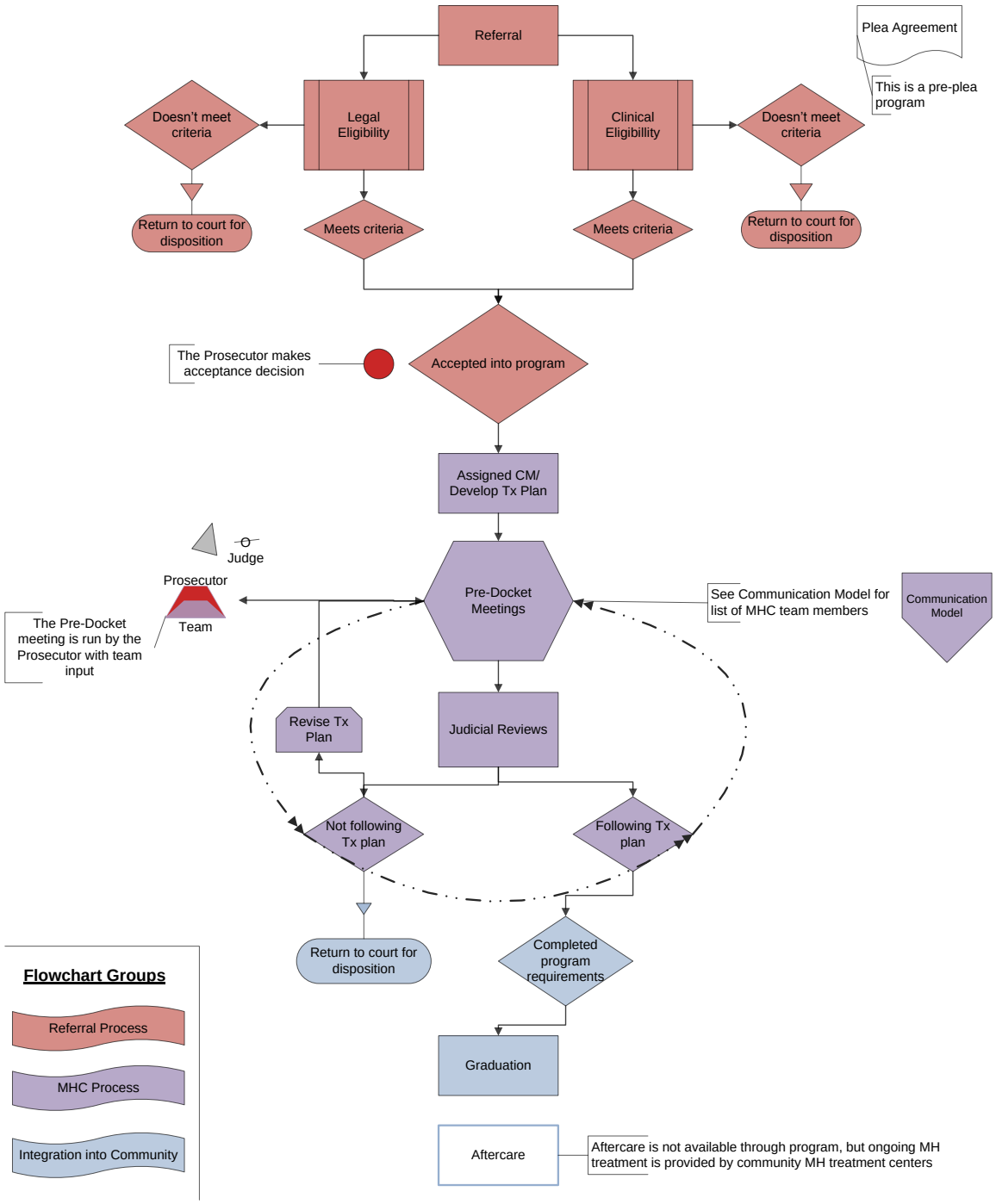
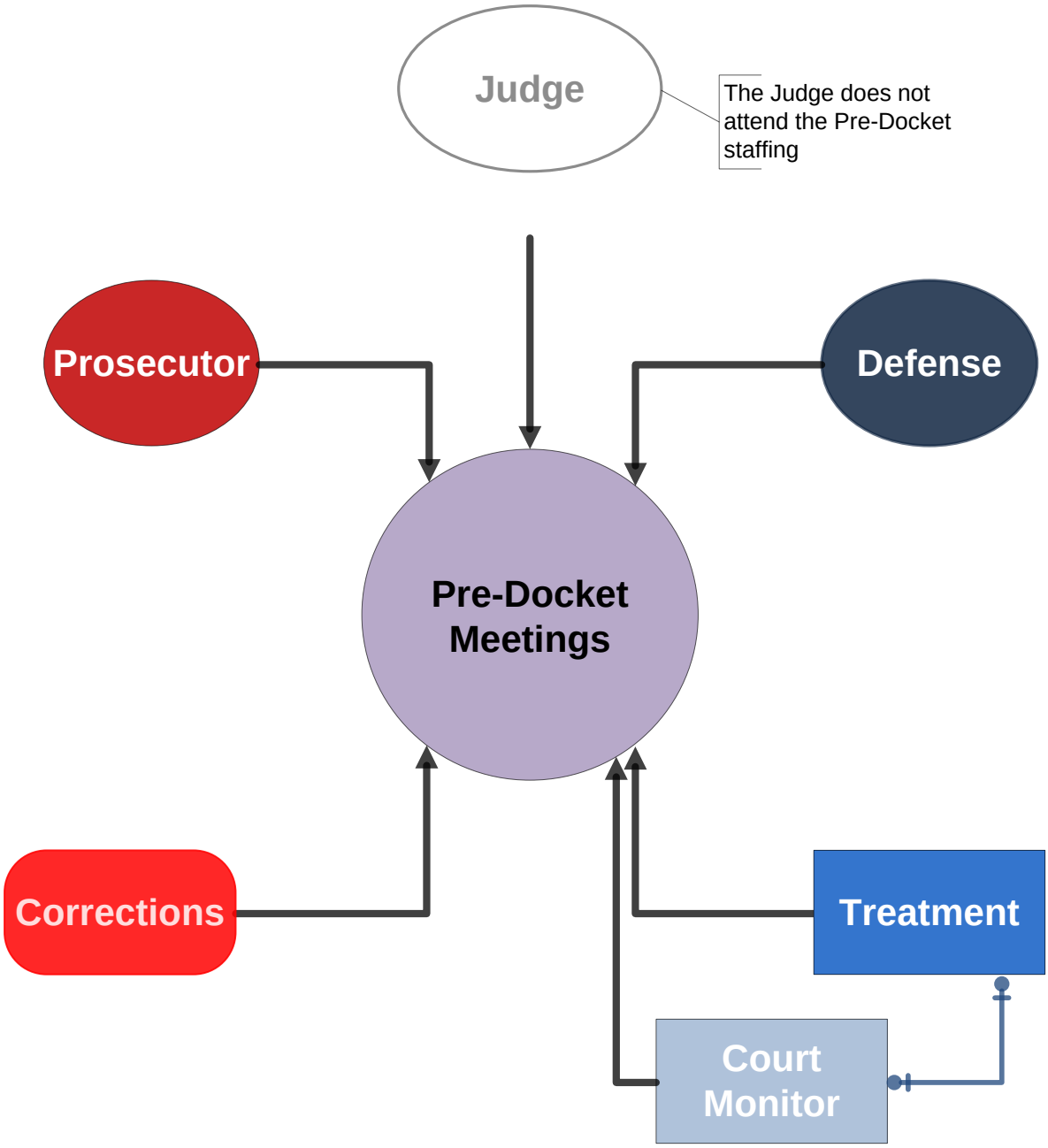


FIGURE A-8. JACKSON COUNTY MHC COMMUNICATION MODEL (LEE'S SUMMIT)



San Francisco Behavioral Health Court

General Overview

Serving over 800,000 residents in San Francisco County, the San Francisco Behavioral Health Court (BHC) represents a large urban court with a diverse population of participants. It deals with a number of issues that one would expect to find in such a large court, as well as mental health courts in general, including homelessness and co-occurring disorders. The court processes a high volume of participants with approximately 130 on-going participants seen in the weekly docket. In response to the diversity among the participants, the court utilizes a number of specialized treatment providers, including one provider who serves African-American men and other providers who specialize in serving different racial, ethnic, and lifestyle groups. In order to effectively manage the large number of providers in the area, Jail Psychiatric Services survey and evaluate different programs for inclusion in the BHC's pool of available treatment options. The two diagrams that follow present the process model and communication model of the court, and areas of interest are noted within each diagram.

Lessons Learned

While reflecting on the visit to the San Francisco BHC a number of observations provided valuable insight. First, a representative from Jail Psychiatric Services served as the boundary spanner on the BHC team. This seemed especially helpful in identifying possible participants at a very early stage of the justice process. A second aspect of the court that proved insightful was the efficiency of the court. With the large number of participants, it is imperative that the process be both efficient and well organized. San Francisco BHC was successful in both of these areas, and with the innovative implementation of a computerized case management system, team members were able to provide timely updates and reports on participants. The records were also available to the judge while she was on the bench, allowing her to easily access information while interacting with participants.

Impact on Recommendations

These observations helped guide our best practice recommendations to develop written policies and procedures (Recommendation 1) and to design and implement performance measures (Recommendation 2). The BHC has developed a policies and procedures manual that provides structure to both the team members and clients. As part of this manual, the BHC has outlined the referral procedure to require that jail psychiatric services (JPS) screen all possible participants. This requirement ensures that the client's clinical eligibility requirements are determined by a single agency, thus promoting consistent treatment of clients no matter when in the criminal justice process they are referred to the court. The case management system utilized by the BHC gives the court the opportunity to better track participant progress which, in turn, gives the court the data needed to measure its efficiency. Additionally, the system promotes enhanced and timely communication between the team members and facilitates an environment where judges and the BHC team make informed decisions.

FIGURE A-9. SAN FRANCISCO MHC PROCESS MODEL

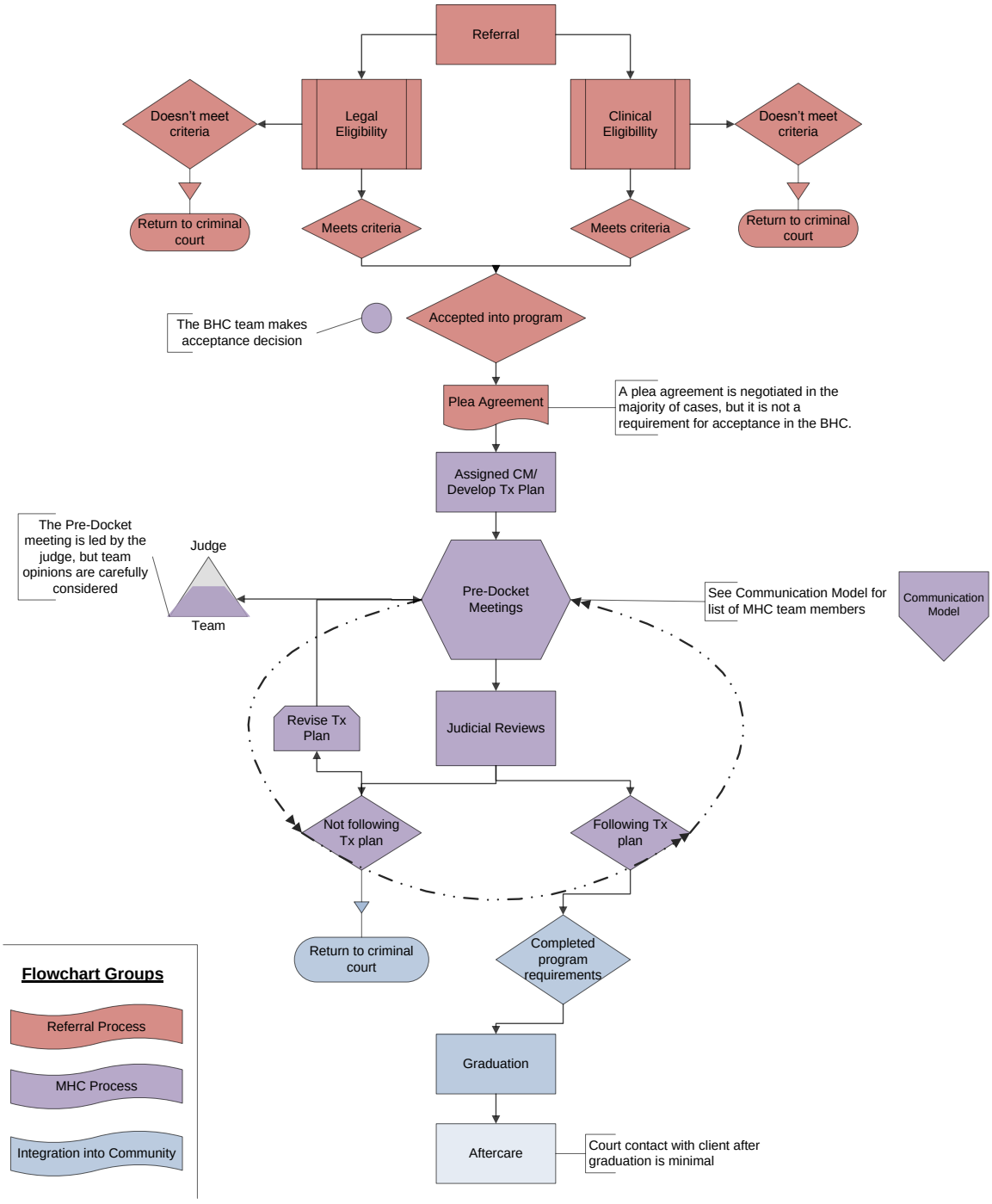
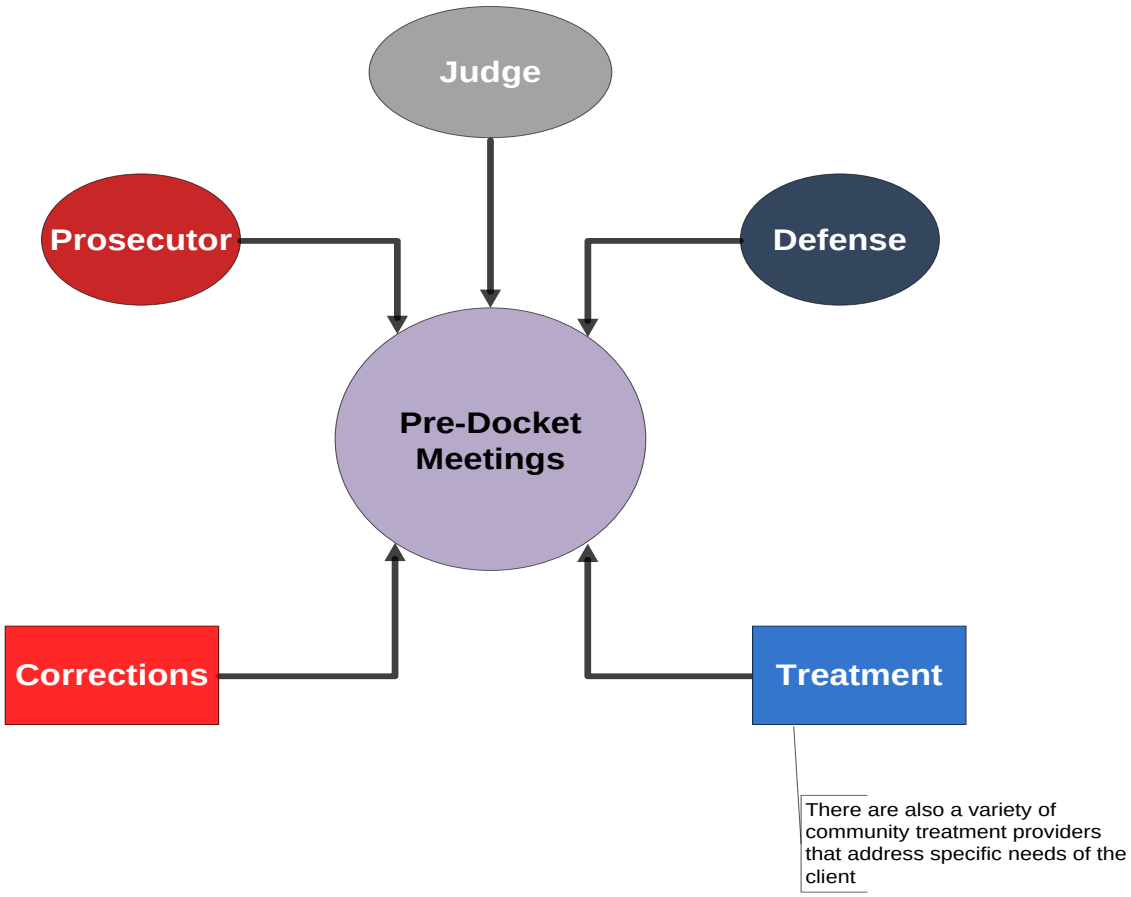


FIGURE A-10. SAN FRANCISCO MHC COMMUNICATION MODEL



CHITTENDEN COUNTY MENTAL HEALTH COURT (VERMONT)

GENERAL OVERVIEW

Chittenden County MHC is located in Burlington, Vermont and handled a comparatively low volume of clients, 50-100 per year. The MHC is adjunct to a drug court docket, allowing the court access to resources that address co-occurring disorders. Chittenden County MHC advance clients diagnosed with Axis I or II disorders through the program when they complete requirements at three distinct phases. The communication model on the subsequent page illustrates that multiple interests are represented in the pre-docket meetings. Moreover, in the model, corrections are represented by probation and a representative from the police department. The integration of the police on the team reinforces the court's efforts to receive early referrals from diverse sources. Additionally, the police department dispatches responders who have mental illness training to incidents in the community.

LESSONS LEARNED

Since Chittenden MHC serves a relatively small community, the local mental health services are limited. As such, it becomes particularly important to maintain relationships with agencies that provide services to the MHC clients. During our visit, the MHC team procured a meeting with a local provider to exchange agency goals and enhance communication. Proactive measures to identify local resources and to evaluate their services are essential for MHCs. Another lesson learned from our field work was the advantage of housing the case managers in the courthouse. Clients were able to meet with the case manager during the same visit as their court appearance.

IMPACT ON RECOMMENDATIONS

Chittenden County MHC provides their participants with a Handbook with clearly written expectations. This is a model for our recommendation to develop written policies and procedures (Recommendation 1), but also to cater to the participant and their need for making an informed decision about entering the program. Chittenden's MHC includes a County Treatment Coordinator to collect program and participant data.[58] This position underscores their dedication to monitoring the court's performance and, in part, prompted our recommendation to collect performance measures (Recommendation 2). The culture in the Chittenden MHC encouraged trust and personal relationships, and the judge operated as an egalitarian leader, seeking a team-based decision. This environment spurs a recommendation to encourage team-building efforts as a part of the required team training (Recommendation 4) as well as an evaluation of the current operating culture (Recommendation 3) to assess whether the court is operating as intended. Furthermore, it was evident that the team was self-motivated to seek opportunities for education. While admirable of those individuals, inter-disciplinary substantive training is necessary for all MHCs (Recommendation 4), and opportunities for such training should be provided by the court.

[58] Vermont also has a state-wide position to coordinate data collection for all Vermont treatment courts.

FIGURE A-11. CHITTENDEN COUNTY MHC PROCESS MODEL

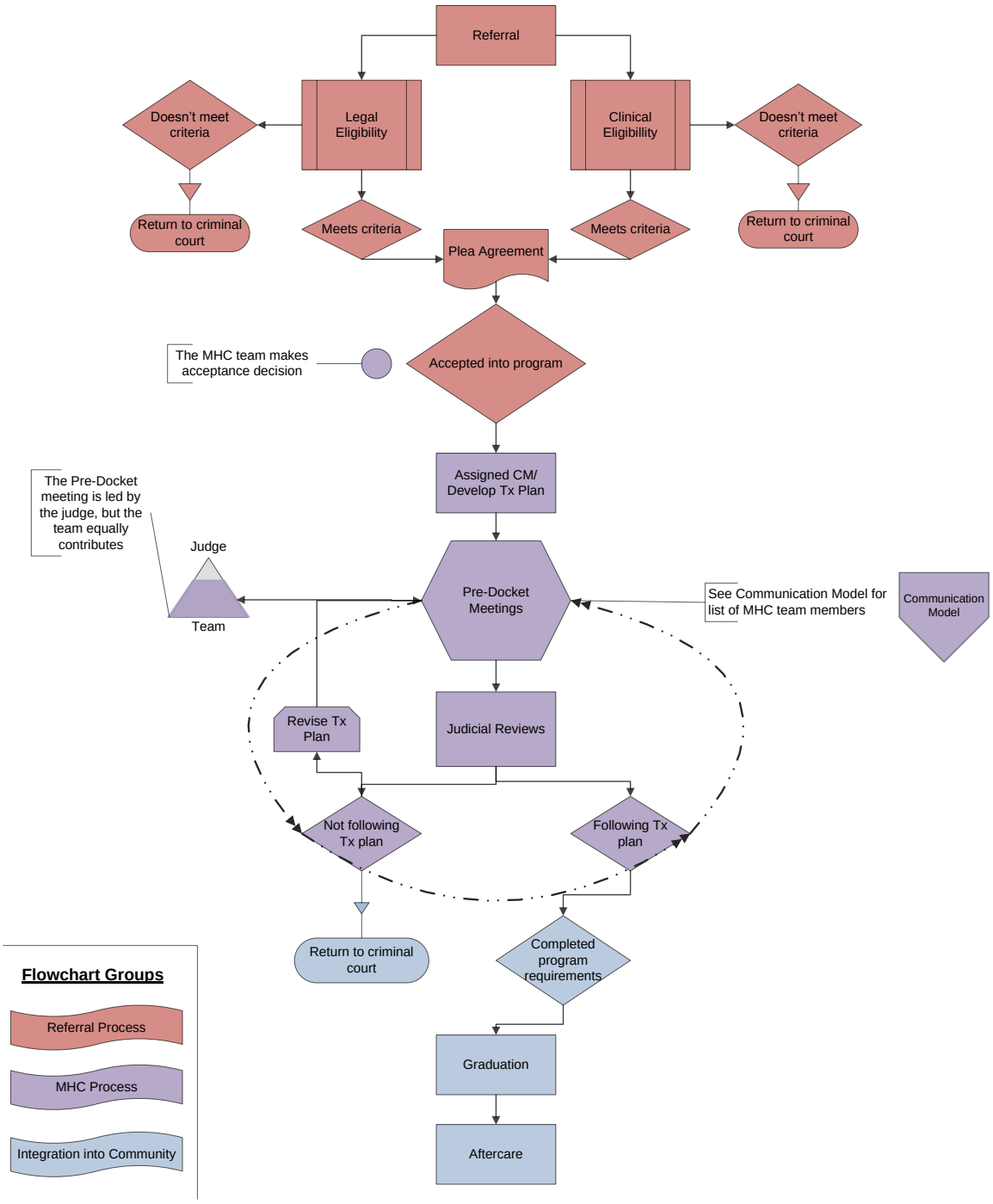
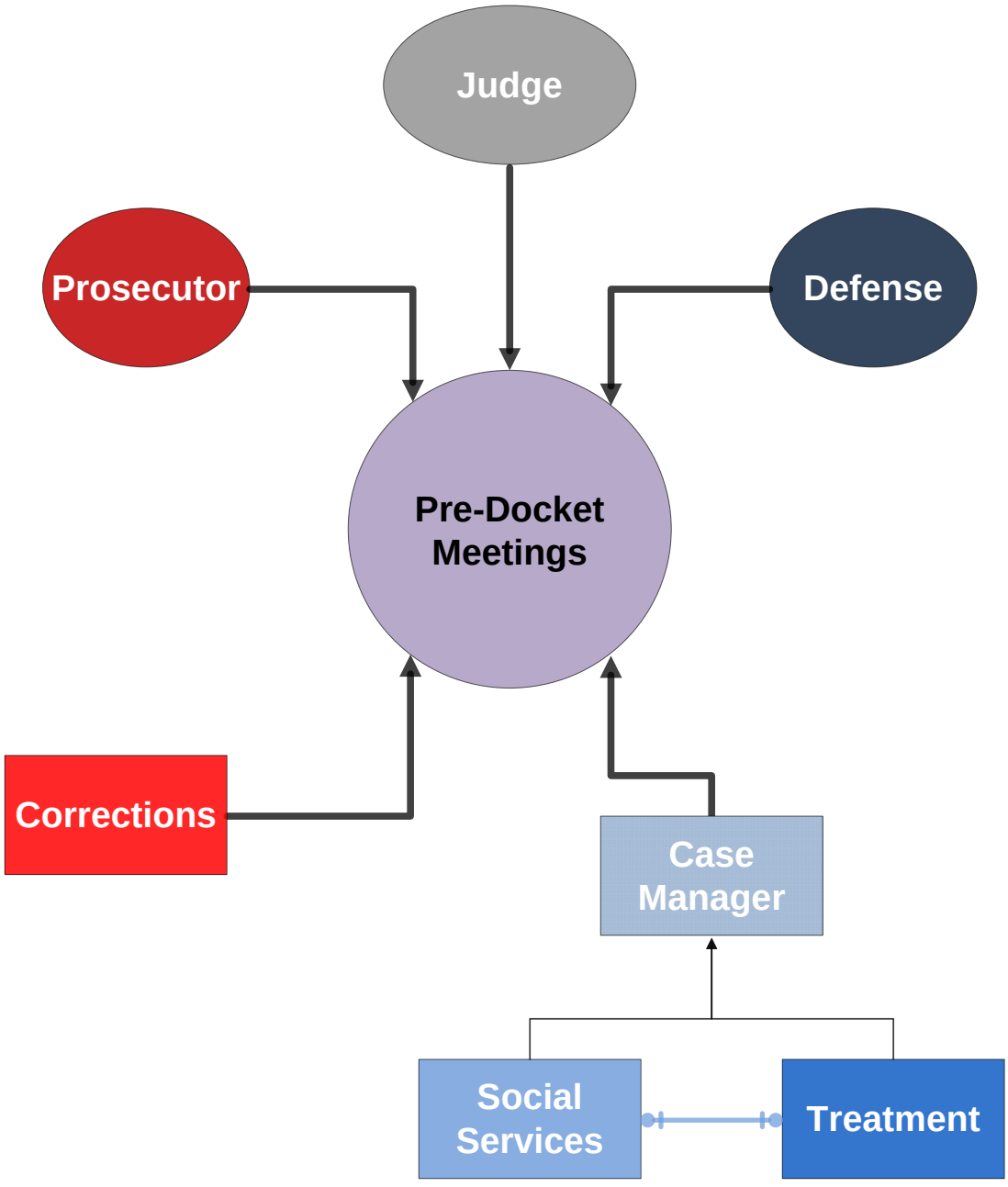


FIGURE A-12. CHITTENDEN COUNTY MHC COMMUNICATION MODEL



Santa Clara Court for the Individualized Treatment of Adolescents (Juvenile)

General Overview

The Court for the Individualized Treatment of Adolescents (CITA) was included in the study to gain perspective on juvenile mental health courts. The court is located in Santa Clara County which includes a number of cities, the largest being San Jose. CITA is a part of a large urban court, but the number of participants is limited to 50. Due to its target population the court has a few unique aspects, including the addition of an educational advocate at the pre-docket meetings, hearings that are not open to the public, and the involvement of parents or guardians in the program. The two diagrams that follow present the process model and communication model of the court, and areas of interest are noted within each diagram.

Lessons Learned

A number of issues came to light while visiting CITA. One was the involvement of the parent/guardian in the process. Success and compliance in the program was not only reliant on the participant, but also on the support of the parent/guardian. If a guardian did not provide transportation for the juvenile to attend the periodic status hearings or meetings with the treatment provider, the juvenile would be seen as non-compliant when, in fact, it was the guardian who was non-compliant. This introduces the aspect of suitability (reflected as clinical suitability in the process model) where the team must consider the likelihood that the guardian will support involvement in CITA.

Impact on Recommendations

Through the observations, certain recommendations were made regarding the efficiency of the court. All status hearings were conducted during normal operating hours of the court, requiring the juvenile to be withdrawn from school and requiring the parent/guardian to take time off of work. Both of these situations make compliance more difficult. This not only applies to juvenile programs, but to adult mental health courts as well. One goal of the court is to improve social functioning (including the participant acquiring employment), yet court procedures impede this accomplishment. This led to the recommendation that MHCs can improve efficiency and success (Recommendation 2) by operating outside of normal working hours or by creating a more effectively run docket where clients have a better idea of when they will be called. This change eliminates the need for clients to be present for the entire docket and minimizes the court's interference with client and parent/guardian employment.

FIGURE A-13. SANTA CLARA MHC PROCESS MODEL

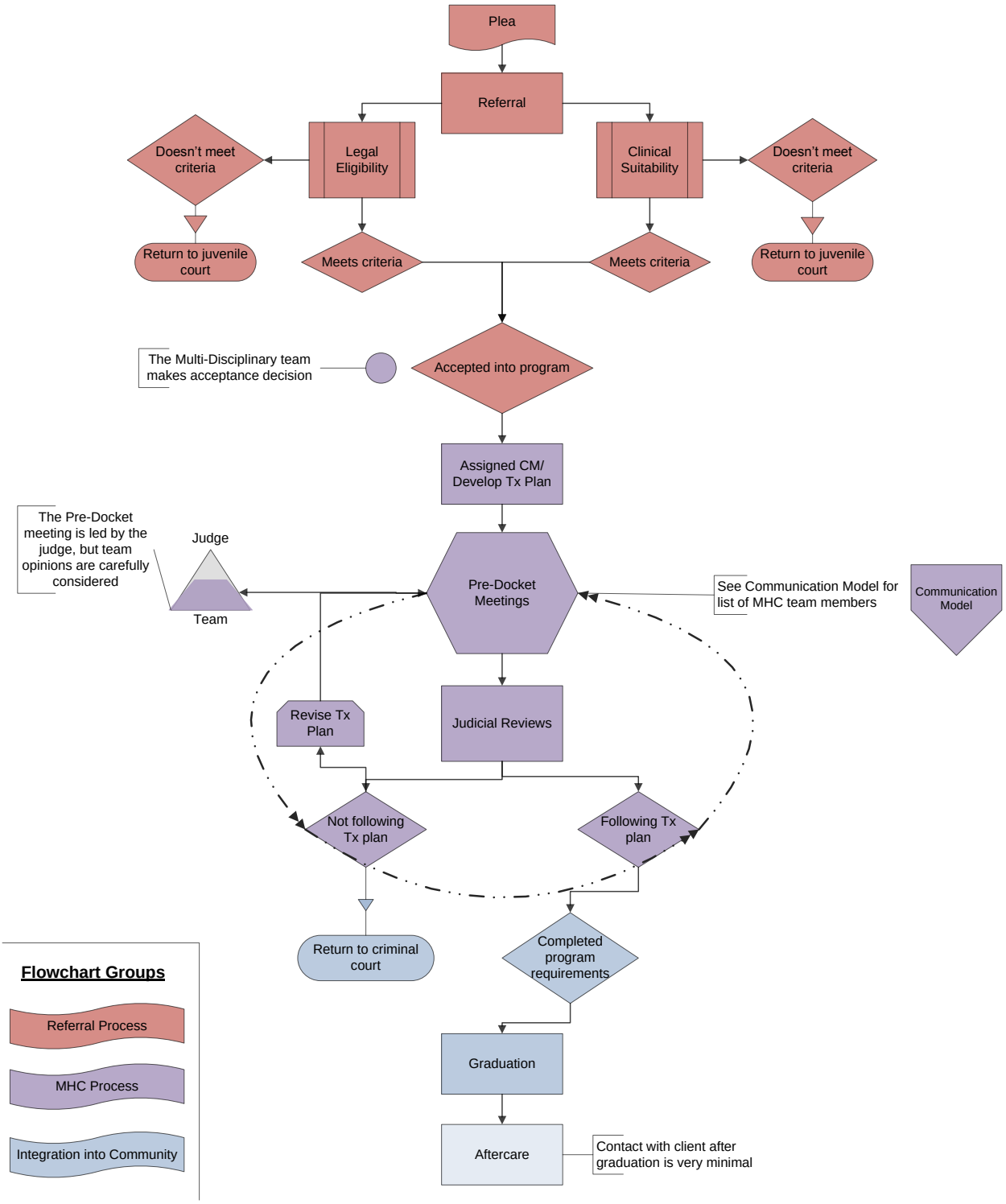
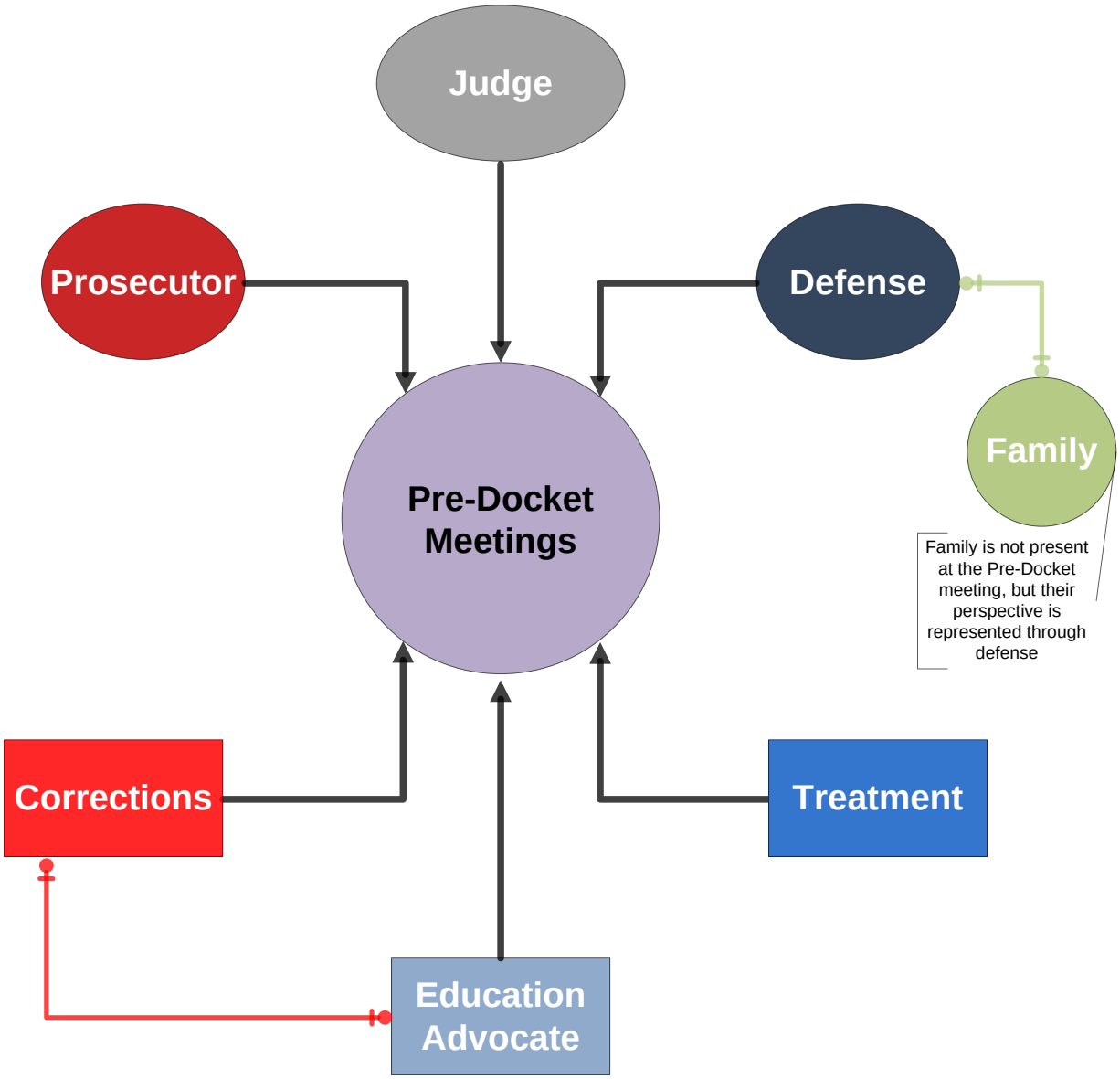


FIGURE A-14. SANTA CLARA MHC COMMUNICATION MODEL



APPENDIX B: INTERVIEW SCRIPT- JUDGE

A. MHC Structure & Processes

1. How long have you been a judge and how long have you been with the MHC?
2. How are judges assigned to MHCs?
   a. [If somewhat voluntary] What made you interested in sitting on a MHC?
3. Prior to the court's inception what models or resources were used to design the MHC?
4. Is there a regularly held administrative or procedural meeting to discuss the program? If so, what are some of the key issues discussed at this meeting?
5. Based on your experience, would you recommend any changes to this structure or process to improve communication?

B. MHC Team

6. Who oversees the MHC?
7. In your opinion, how does the team interact in the pre-docket meetings?

C. Expert Evidence for Judicial Decision-Making

8. How often does the judge interact with/ hear input from the treatment providers? Are all treatment providers present at the pre-docket meetings?
9. Is your interaction with the TP formal (set times) or informal (as issues arise)?
   a. Do you have additional interactions with the team outside of the pre-docket meetings? If so, how?
      i. In person
      ii. Through written correspondence
      iii. Through verbal communication or meetings with court staff
      iv. Through computerized or electronic interface
      v. Other methods (list)
10. It is generally accepted within the problem-solving court community that there are benefits of receiving expert opinion/evaluation outside of an adversarial proceeding? What are the drawbacks?

D. Judges on Traditional vs. Problem-solving approach

11. Are you aware of different ethical codes that apply to you in a MHC setting as compared to a traditional court? If so, how does that affect you?
12. How would you describe your role in the MHC – as a member of the team, as an advocate for the participant, as a fact finder, etc.?
13. How do you handle issues of familiarity with team members or the participant? Does that impact your decisions? If so, how?
14. Describe your role presiding over the MHC as compared to a traditional docket.

E. Interagency Trust – Establishing and Building

15. What do you think contributes to or detracts from the level of trust that exists between the MHC staff and the treatment providers?
16. How could communication and collaboration between treatment providers and the MHC staff be improved?
17. Psychologists/social workers speak a different language than those in the legal community.

a. What have you had to learn to communicate effectively with those in the mental health community? What efforts, if any, have been made to better understand the interdisciplinary issues?

18. Do you have any cross-training opportunities to work with the MH community? Who sponsors these opportunities?

19. Would a model curriculum be useful (at which both treatment providers and MHC judges/court staff were brought together)?
    a. If so, what content would you recommend to include in such a seminar/curriculum?
    b. What other training recommendations would you suggest? Would electronic resources such as online education or networking opportunities with others in MHCs be helpful?
    c. Would you see a benefit to a local program, regional program, or a national program?

20. Was there anything that you know now that you wished you learned early on in your work with the MHC, particularly anything useful for those planning to implement a new MHC?

APPENDIX C: CULTURE TYPOLOGIES

	Communal	Networked	Autonomous	Hierarchical
Dominant Case Management Style	**Flexibility**—General agreement on performance goals exists, but centralized judicial and administrative staff leadership is downplayed and creativity is encouraged. As a result, individual judges apply court rules, policies, and procedures in alternative acceptable ways.	**Judicial Consensus**—Judicial expectations concerning the timing of key procedural events come from a working policy built on the deliberate involvement and planning of the entire bench. Follow through on established goals is championed and encouraged by a presiding (administrative) judge.	**Self-managing**— Limited discussion and agreement on the importance of court- wide performance goals exist. Individual judges are relatively free to make their own determinations on when key procedural events are to be completed.	**Rule oriented**—Judges are committed to the use of caseflow management (e.g., early case control, case coordination, and firm trial dates) with the support of administrative and courtroom staff. Written court rules and procedures are applied uniformly by judges.
Judicial and Court Staff Relations	**Egalitarian**—An effort is made by judges to limit the psychological distance between them and administrative courtroom staff. Hierarchy and formal processes exist, but court staff members go outside normal channels when it seems appropriate to "do the right thing".	**People Development**—Judges value and promote a diverse workforce and diversity of ideas; act to enhance professional administrative and courtroom staff development; and seek to treat all staff with fairness and respect.	**Personal Loyalty**—Individual judges use their own criteria to monitor, evaluate, and motivate courtroom and other staff. Judges have wide discretion in how they recruit, manage and organize their courtroom support staff.	**Merit**—Administrative and courtroom staff members are closely monitored and evaluated through regular and structured performance appraisals. Work-related feedback, merit recruitment, and promotion are emphasized.
Change Management	**Negotiation**—Changes in court policies and procedures occur incrementally through judicial negotiation and agreement. In practice, procedures are seldom rigid, with actual application open to interpretation by semi-autonomous work teams of individual judges and corresponding court staff.	**Innovation**—Judges and court managers seek input from a varied set of individuals (e.g., judges, court staff, attorneys, and public) and measure court user preferences concerning policy changes. Individual judges and administrative staff are encouraged to monitor court performance and to recommend necessary adjustments.	**Continuity**—Judges resist a rule- and process-bound organizational setting. Centralized change initiatives may be considered unfeasible because each judge exercises a wide scope of latitude in the choice of case processing practices and judges are perceived to resist court wide monitoring.	**Modern Administration**—Judges and administrative staff seek cutting edge technology and modern administrative methods to support administrative procedures that reduce errors and enhance the timeliness of case processing and the accuracy of record keeping.
Courthouse Leadership	**Trust**—Judicial and administrative staff leaders seek to build personal relationships and confidence among all judges and court staff members; emphasize mutually agreed upon goals with staff members; attempt to help all obtain satisfaction from work.	**Visionary**—Judicial and administrative staff leaders seek to build an integrated justice system community. All judges and court staff are asked to meet organizational performance goals that focus on results that matter to those served by the courts rather than simply those who run them.	**Independence**—Centralized court leadership is inhibited because judges prefer to work with few external controls. Each judge and corresponding courtroom staff members are concerned primarily with their own daily responsibilities and exhibit little interest in efforts aimed at improving court or system-wide performance.	**Standard Operating Procedures**—Judicial and administrative leaders rely on clearly established rules and directives—preferably in writing— to guide court operations. The system may appear impersonal given the emphasis on knowing and using the proper channels to get things done.
Internal Organization	**Collegiality**—Information on a wide variety of topics (e.g., caseflow, resources, personnel) is shared through informal channels reflecting personal relations among judges, administrative, and courtroom staff. Judges and court staff strive for consensus and to reconcile differences.	**Teamwork**—Judges and administrators seek a shared court-wide view of what needs to be accomplished. This knowledge facilitates judges and court staff, drawing from different departments and divisions if necessary, to work collaboratively to perform case processing and administrative tasks.	**Sovereignty**—Courtroom practices reflect the policies and practices employed by individual and autonomous judges. Therefore, accepted practices are slow to change, stability and predictability are emphasized, and confrontation minimized.	**Chain of Command**—Explicit lines of authority among judges, administrative staff, and courtroom staff create a clear division of labor and formalize expectations that judges and court staff will do the jobs they are assigned.

Source: Ostrom, et al. (Spring 2005) "Court Cultures and their Consequences." *Court Manager* Volume 20, Number 1.

300 Newport Avenue
Williamsburg, VA 23185-4147
800.616.6109
www.ncsconline.org

This project was supported by Grant No. 2007-DD-BX-K157 awarded to the National Center for State Courts by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.