Center for Justice Innovation

POLICY BRIEF

Advancing the Psychology of Diversion

The United States incarcerates an astonishing number of people with mental illness. National surveys suggest that more than half of people in prisons and jails have a history of psychiatric disorders or experience serious psychological distress, and the prevalence of serious mental illness among people in U.S. jails is estimated to be four to seven times higher than in the general population.[1] Correctional settings are far and away the largest institutional providers of mental health treatment in the U.S.

Effective community-based care for people living with serious mental illness remains an elusive goal for policymakers and practitioners. In the criminal justice reform space, alternative-to-incarceration programs (ATIs), including Mental Health Courts (MHCs), were developed to divert people with psychiatric disorders out of the correctional system and into community-based treatment. These programs have grown exponentially in recent decades and have diverted many people charged with misdemeanors and, in lesser numbers, felonies. Research has shown that MHCs reduce jail time for participants and successfully link them to community-based treatment.[2] Results are mixed, however, when looking at other outcomes, such as the alleviation of psychiatric symptoms or improvements in quality of life.[3] And while studies show MHCs can reduce recidivism compared to traditional court processing, the effects are modest.[4]

The best way to ensure *significant* effects on outcomes is for participants to "graduate" from the court—that is, to complete their treatment mandates. Studies consistently find that only individuals who *complete* diversion programming experience significant reductions in rearrests and recidivism.[5] Yet early termination is common. On average, only six out of ten MHC participants complete their programming.[6] This leaves up to 40 percent of MHC participants facing punitive court processes, including incarceration.

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Jails and prisons remain among this country's largest mental health facilities.

There can be many reasons for a participant's failure to graduate from a mental health court, including people's unmet needs that are known to be associated with an increased risk of re-arrest.[7] But the most salient reason is likely an inappropriate treatment plan. Diversion programs typically rely on jail medical records or short screenings to make decisions about eligibility for diversion and to develop community-based treatment plans. The screening instruments used in these contexts tend to be brief and narrow in scope—they are designed to identify people in need of a further assessment, not to provide a definitive diagnosis or nuanced clinical information.[8] As will be seen in the case studies below, these tools are generally insufficient for developing the individualized treatment plans that can increase the chances of success in court-mandated treatment for individuals with more complex behavioral health needs.

What the evidence suggests *will* help individuals struggling to adhere to treatment mandates is more thorough psychological assessments, including the use of psychological testing instruments. Psychological testing refers to the use of standardized measures to gain a deeper understanding of someone's cognitive, emotional, and behavioral characteristics. Along with diagnostic clarification, the goal is to develop individualized treatment recommendations. Standardized, or "norm-referenced," tests evaluate individuals in similar ways and compare the results with other individuals of similar ages and education levels. These tests are proven to be mostly effective at detecting and measuring a particular trait or disorder. This testing is then part of a broader psychological assessment, which can include a clinical interview, behavioral observations, and collateral sources of information (e.g., third-party interviews, reviews of records).

We contend that when someone enrolled in an ATI is struggling to adhere to their mandate, there should be a *presumption of reassessment*, including psychological testing when indicated, before they are deemed to have "failed" and are potentially incarcerated. This is to ensure that clinical struggles are not at the root of their non-adherence—struggles that psychological assessments are designed to detect. Although this use of psychological testing would be a new practice in most jurisdictions, the approach would be consistent with their underlying problem-solving and biopsychosocial models.[9] To illustrate the impact of psychological assessments, below we offer three case studies, drawing on people our organization has worked with. These are narratives of people enrolled in ATI programs for whom psychological testing proved critical to efforts to overcome their adherence challenges with court mandates.[10]

Brief screenings are not designed to detect what are often complex clinical needs.

Breaking Down Barriers to Diversion

"Chris" is a 20-year-old cisgender male enrolled in a felony treatment court. He was mandated by the court to attend services several times a week, including prosocial programming (youth anti-violence groups) and education courses. Chris was frequently late or absent from his appointments and, after several months, was discharged from services. Chris's case manager was able to locate another service provider for Chris; however, Chris's attendance with the new provider remained poor.

Chris built up very little "compliance time" toward completing his ATI mandate through the first several months of his participation in treatment court. His difficulties with engagement meant he faced the potential of treatment court failure and a lengthy prison sentence.

Chris was referred to a community treatment provider for possible placement in more intensive services. The provider identified that Chris struggled with concentration and attention, but he was not assessed as having significant mental health needs.

At that point, Chris's primary case manager referred him for psychological testing with the goal of gathering more information about his cognitive functioning and developing strategies to increase his adherence with his treatment mandate.

For Chris, this assessment included a thorough review of his past educational records, a lengthy interview with Chris and his mother, and the administration of the Wechsler Adult Intelligence Scale, Fifth Edition (WAIS-5), a measure of general intellectual functioning and specific cognitive abilities.

Chris's assessment revealed significantly below-average intellectual and cognitive abilities relative to others in his age group. He struggled with tasks requiring sustained attention and sequential information processing (i.e., encoding and organizing information in a stepwise manner). Chris had difficulties with many areas of executive functioning, which underly abilities such as planning, problem-solving, and motivating oneself toward long-term goals, such as the completion of a lengthy treatment-court mandate.

Chris's psychological assessment yielded multiple recommendations for treatment court staff, including suggestions for more effective communication with Chris to increase his engagement in services and court requirements. Feedback from case managers suggested that court parties were receptive to the results and that the information helped to change how the court communicated with Chris. In addition, recommendations for Chris's treatment providers helped them to target specific areas of difficulty for Chris—such as improving his organizational skills, helping him to set short-term achievable goals, and implementing short-term rewards for target behaviors.

Chris's story highlights several issues affecting diversion participants and individuals involved in the criminal legal system more broadly. Challenges such as intellectual disability, attention deficit/hyperactivity disorder (ADHD), and other neurodevelopmental disorders are far more common among individuals involved in the criminal legal system compared to the general population. People

who are incarcerated are about 10 times more likely to meet the criteria for ADHD, and they are significantly more likely to have an intellectual disability.[11]

Many individuals entering the criminal legal system with neurodevelopmental disorders or other cognitive/intellectual concerns have gone undiagnosed and untreated in the community. If that persists once they are justice-involved, they will likely experience significant difficulties completing ATI court requirements. Weaknesses in executive functioning, such as Chris manifested, can make basic courtroom procedures such as arriving on time or appearing attentive during court hearings an insurmountable challenge. An individual with ADHD may also struggle to complete court-mandated conditions when there are few immediate rewards for compliance and when consequences, such as jail time, appear far-off. This can lead to treatment court "failure" and criminal sentencing, even when participants are no longer engaging in criminal behavior.

A More Comprehensive Approach to Diversion

"Alvin" is a 57-year-old cisgender male with a history of severe alcohol use since his late teens. He was offered a felony ATI program with the requirement that he attend daily substance use treatment in the community and work with case managers to establish a legal means of earning income (through employment and/or public benefits). After several months in the program, case managers and court parties became concerned that Alvin was missing appointments at least once or twice a week but reporting to staff that he was attending them, despite clear documentation to the contrary. When asked about these instances, Alvin protested that he had been present and became upset when challenged.

Alvin was referred for psychological testing—specifically, a cognitive assessment—to shed light on potential impairments in cognition or memory. He was administered a standardized test of neuropsychological status, including tests of short- and long-term memory, learning, attention, and basic problem-solving. As with any forensic assessment, the test battery also included brief measures of whether Alvin put in an acceptable level of effort when completing cognitive tasks, which helped to increase confidence in the results.

The results of Alvin's cognitive assessment pointed to profound deficits in learning and memory. For instance, his ability to recall a list of words and a short story was lower than 99 percent of people in his age group. Interviews with Alvin's family revealed that he had been experiencing problems with memory in recent years, with family members also citing instances in which Alvin reported false information about events with great conviction. The results suggested the likely presence of a neurocognitive disorder linked to his long-term alcohol use, which can result in the impairment of memory and executive functioning.

Alvin's case manager updated treatment providers on the results of the psychological testing: chiefly, Alvin's learning and memory deficits, and his tendency to confabulate (create false memories)—a tendency common in individuals with neurocognitive disorders linked to alcohol use. Alvin's case

management team used this information to refer Alvin to a more comprehensive neuropsychological assessment site where Alvin could receive further medical screening and a formal diagnosis that might allow him to apply for social security disability benefits, as well as make him eligible for a home health aide who could help him improve his daily functioning (including planning for and attending appointments).

Alvin's story reflects two simultaneous population trends in the criminal legal system. First, the jail and prison population in the U.S. is aging exponentially. In 1991, individuals over age 55 represented just 3 percent of the prison population; by 2021, this proportion had risen fivefold.[12] Second, the rate of cognitive disabilities (including neurocognitive disorders linked to underlying medical causes, long-term substance use, and/or traumatic brain injury) is four to six times higher among people who are incarcerated relative to the general population.[13] Assessing for cognitive impairment resulting from dementia or traumatic brain injury—such as difficulties with memory, attention, verbal communication, or executive function—can identify individuals more likely to struggle in correctional settings, giving added impetus to the option of community-based treatment. Identification of these deficits can also help ATI courts to develop treatment and court-monitoring plans that take into consideration these deficits—to match participants' cognitive abilities, and to give them a fair chance at succeeding.

Complex Needs and a Revised Strategy for Success

Manuel is a 21-year-old cisgender male with a history of regular cannabis use since the age of 16, although he has not been formally diagnosed with any psychiatric conditions. Initially, he was offered a felony ATI program aiming to build career skills and financial stability, alongside an emerging adult program focusing on developing life skills such as healthy relationships. However, after switching programs several times due to misalignment with his needs, Manuel was given a final opportunity to successfully complete the ATI program with a referral to a treatment center that emphasized addressing his substance use. This treatment plan involved exploring triggers for his cannabis use, developing coping strategies, and learning healthier behaviors. Manuel was required to attend three therapeutic group sessions and one individual counseling session per week, abstain from cannabis, and engage weekly with his case management team.

However, Manuel struggled with attendance, a challenge that worsened after he was attacked by peers on two separate occasions. While the exact identities of his attackers are unclear, they are known to be connected to ongoing conflicts in Manuel's neighborhood. This left him feeling unsafe, further complicating his ability to engage with the program. As a result, he continued to struggle to adhere to the program's requirements, as evidenced by repeated positive drug tests for cannabis and regular tardiness or absences.

Manuel was referred for a psychological assessment, specifically personality testing,

to evaluate his psychological and personality functioning and identify any factors affecting his ability to participate in court-mandated services. Personality assessment tools are valuable in the diagnostic process, particularly when the full scope of a person's condition is unclear or when a more detailed understanding of their psychological needs is required. These tools include validity scales, which help to determine whether a person might be overreporting symptoms (exaggerating) or underreporting (minimizing). The results indicated that Manuel paid close attention to the questions and answered in a consistent manner, neither exaggerating nor minimizing his psychological challenges.

The assessment further revealed that Manuel was experiencing debilitating fears, grounded in real potential dangers following the two recent assaults. In addition, he was struggling with overwhelming symptoms of depression and anhedonia—the inability to experience pleasure or interest in activities that once brought him joy. Anhedonia can negatively affect motivation, interest, and overall enjoyment, often leading to increased isolation and social withdrawal. Manuel's genuine fears of being re-assaulted likely exacerbated his depression and played a major role in his difficulty adhering to court-ordered programming requirements, despite his consistent verbalizations of wanting to succeed.

In light of this report, the court revised Manuel's mandate, permitting him to participate in virtual programming to enhance his safety. Additionally, the court recommended a more tailored approach to treatment, including rehabilitation for cannabis use, individualized youth programming, and vocational support to address his specific needs. Since these adjustments were made, Manuel has shown consistent progress: attending programming regularly, testing negative for cannabis, and making significant strides in his life. Notable improvements include ending an unhealthy relationship, living with a supportive family member instead of continuing to move between different apartments, and demonstrating a renewed sense of motivation in his job search, even securing new employment opportunities on his own.

> Psychological assessment is less costly—likely by orders of magnitude—than incarceration.

Manuel's case underscores several challenges faced by individuals involved in the criminal legal system, particularly those with underlying mental health and substance use issues. Conditions such as anxiety, depression, and substance use disorders are often prevalent but may go undiagnosed or untreated, leading to significant barriers to completing court-mandated requirements. In Manuel's case, the fears stemming from his prior assaults, added to his struggles with depression, were not only contributing to his substance use but also complicating his efforts to engage with the diversion program. Personality testing proved essential in identifying these issues, highlighting how comprehensive psychological evaluations can significantly improve outcomes for those navigating the criminal legal system.

Conclusion

Psychological assessment, including the targeted use of psychological testing, is used in clinical practice to inform diagnosis, guide treatment planning, and track progress over time. By providing a comprehensive profile of an individual's emotional and cognitive functioning, coping mechanisms, and personality traits, assessment enables clinicians to develop treatment plans that can target the root causes of maladaptive behaviors. In the ATI context, psychological assessment can help to identify complex clinical needs and to develop individualized treatment plans that increase the chances of someone completing a court mandate. This can also be crucial in reducing recidivism by exploring a person's most pressing criminogenic needs.

Thorough psychological assessment—not incarceration—should be the default when a participant is struggling in court-mandated treatment and services. If systems respond to non-adherence to treatment early, they can avert the worst-case outcome of incarceration, and the far more common occurrence of repeatedly switching programming and treatment midstream for ATI participants, which soaks up valuable court and program resources.

This type of advanced assessment is not easily accessible through the public healthcare system and is rarely offered to people who are justice-system involved. It can also be time-consuming and resource intensive. However, it is less costly—likely by orders of magnitude—than incarceration. It also spares the participant the myriad, documented harms of jail or prison and gives them a greater opportunity of exiting altogether the revolving door of unmet treatment needs, criminal legal involvement, and incarceration.

FOR MORE INFORMATION

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[10] All identifiable information has been changed to protect privacy. The second case—"Alvin"—is a composite of several different client stories.

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