



A GUIDE
TO THE ROLE
OF CRIME
VICTIMS IN
MENTAL HEALTH
COURTS

A Guide to the Role of Crime Victims in Mental Health Courts

Hope Glassberg
Elizabeth Dodd

Council of State Governments Justice Center
New York, New York

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The Office for Victims of Crime (OVC) was established by the 1984 Victims of Crime Act (VOCA) to oversee diverse programs that benefit victims of crime. OVC provides substantial funding to state victim assistance and compensation programs—the life-line services that help victims to heal. The agency supports the development of training and technical assistance to educate criminal justice and allied professionals regarding the rights and needs of crime victims. OVC also sponsors an annual event in April to commemorate National Crime Victims' Rights Week (NCVWRW). OVC is one of five component bureaus of the Office of Justice Programs (OJP), U.S. Department of Justice, with: the Bureau of Justice Assistance; the Bureau of Justice Statistics; the National Institute of Justice; and the Office of Juvenile Justice and Delinquency Prevention. Additionally, OJP has two program offices: the Community Capacity Development Office, which incorporates the Weed and Seed strategy, and the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office. More information can be found at <http://www.ojp.usdoj.gov>.

About the Council of State Governments Justice Center

The Council of State Governments Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. It provides practical, nonpartisan advice and consensus-driven strategies—informed by available evidence—to increase public safety and strengthen communities. The Justice Center specializes in taking on complex issues at the intersection of the criminal justice, public health, and social services systems. Staff and members are committed to bringing a diverse range of professions and perspectives together to ensure that recommended policy reforms are practical and effective.

Council of State Governments Justice Center, New York 10005

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Introduction

THE NUMBER OF MENTAL HEALTH COURTS IN THE UNITED

States has grown rapidly in recent years, from just four in 1997 to more than 175 at the beginning of 2007.* Each year, more individuals with mental illnesses involved in the criminal justice system participate in these programs, an increase that has translated into a greater number of victims whose cases are addressed by mental health courts. Many of the policymakers, advocates, and staff involved in designing and operating mental health courts recognize the importance of victims' rights policies in the traditional criminal court context. Yet few of the mental health court programs have similar formal policies for engaging crime victims.

This guide, created for stakeholders involved in either planning or operating these specialized courts, is intended to highlight the potential role of crime victims in mental health courts. It addresses the challenges court teams face in trying to involve victims and the reasons to devote time and energy to overcoming them. The guide offers concrete steps communities can take to ensure that the interests and needs of crime victims are reflected in court policies and practice.

It is difficult to measure how many cases accepted into mental health courts involve victims because courts typically do not track these numbers. The changing judicial purview of these courts, however, suggests that the number of victims whose cases are seen in

*This dramatic increase comes in response to the overrepresentation of people with mental illnesses in the criminal justice system. Without adequate treatment while incarcerated, or linkage to community services upon release, these individuals often cycle through the justice system. Mental health courts are one of many strategies to address the needs of people with mental illnesses. For more on the rise of mental health courts and the goals of these programs, see Council of State Governments Justice Center, *Mental Health Courts: A Primer for Policymakers and Practitioners* (New York: Council of State Governments, 2008). The Justice Center catalogues mental health court programs on its Criminal Justice/Mental Health Information Network (InfoNet) Web site, which can be viewed at <http://www.cjmh-infonet.org>.

mental health courts is increasing. When mental health courts first emerged, most only accepted participants charged with nonviolent misdemeanor crimes. An increasing number of courts, however, are now accepting participants charged with felonies, which tend to involve victims more often than do misdemeanors.¹ Some courts have even begun to accept participants charged with violent crimes, including domestic violence offenses.²

While many mental health courts, particularly those that accept cases involving violent crimes, may have informal processes for working with victims as issues arise, few courts have proactively and comprehensively considered the important role of crime victims. As

Mental Health Court Overview

IN THIS HANDBOOK, a mental health court is defined as a specialized court docket for certain defendants with mental illnesses that substitutes a problem-solving model for traditional court processing. Participants are identified through screening and assessment and voluntarily participate in a judicially supervised treatment plan developed by a team of court staff and mental health professionals. Incentives reward adherence to the treatment plan or other court conditions, nonadherence may be sanctioned, and success or graduation is defined according to specific criteria. In general, most mental health courts accept only individuals with *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (*DSM-IV*), Axis I diagnoses, more commonly known as serious mental illnesses, although no single definition exists for all mental health courts because each may set its own standards.³ These courts can be created through a variety of mechanisms including but not limited to county ordinance; memoranda of understanding among prosecutor, court, and primary defender offices; or grants.

Operational models may vary among mental health courts. Some courts use a pre-plea model, whereby participants are identified and accepted before a plea is ever entered; other courts use a post-plea model, in which a plea is a prerequisite for consideration;

a result, services to victims in mental health courts tend to be sporadic, if provided at all. Mental health court practitioners commonly cite two reasons for a lack of structured crime victim policies: their court accepts few cases involving clearly identified victims; and the nontraditional operations of mental health courts make it challenging for staff to actively involve crime victims in court processes.

Though courts are starting to accept participants who have been charged with violent crimes, most still focus on individuals whose crimes do not necessarily have readily identifiable victims, such as public nuisance crimes and certain types of misdemeanor property crimes. Thus, the need for victims' rights policies can be less apparent

and still others use a conditional plea model, in which participants are required to plea, usually guilty or in abeyance, in order to participate. Finally, some courts will accept participants after they have been convicted and have violated the terms of traditional community supervision. Despite these differences, there are some common characteristics of mental health courts, including no trials or sentencing, which eliminates the use of evidence, witnesses, and testimony.

The composition of mental health court teams can vary, but typically the team includes a judicial officer; a treatment provider or case manager; a prosecutor; a defense attorney; and, in some cases, a court supervision agent such as a probation officer. Many mental health court teams also utilize a court coordinator to be responsible for the overall administration of the court and for encouraging communication and coordination among team members.

NOTE: This sidebar uses definitions taken from the Justice Center publication *Mental Health Courts: A Primer for Policymakers and Practitioners* (New York: Council of State Governments, 2008). Supplemental information was provided by mental health court expert Tim Murray (in discussion with Hope Glassberg, March 23, 2007) and the Justice Center publication *Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court* (New York: Council of State Governments, 2008).

than in traditional criminal courts. In addition, mental health court teams frequently encounter cases involving crimes allegedly committed by participants against family members or caregivers, who may not identify themselves as “victims.” Consequently, court staff, already extremely busy with participant caseloads, may find it difficult to seek out victims in cases where they are not readily identifiable or to parse through complicated family dynamics related to interfamilial crime in order to ensure adherence to traditional victims’ policies.

The nontraditional operations of mental health courts also likely account for their limited victims’ rights policies. Unlike criminal court proceedings, mental health court proceedings do not include witness testimony, preliminary hearings, motion hearings, trials, presentencing and sentencing hearings, restitution hearings, and probation hearings. Lacking these features, many court practitioners may not know how to incorporate victims into court processes, even if they want to do so.

Regardless of the reasons for the lack of victims’ rights policies, the impact is clear: victims of crimes committed by individuals accepted into mental health courts frequently do not have access to the services and supports they would have received if their cases had been processed through traditional criminal courts.

There are also clear implications for officials overseeing mental health court systems. By not formalizing policies and procedures related to crime victims, officials have no means to measure whether services to victims are uniform, effective, or in accordance with victims’ rights policies and principles, state constitutional amendments, or state laws utilized throughout a jurisdiction’s criminal justice system.

Materials available to mental health court staff interested in addressing these issues have been limited. This guide seeks to fill that gap. Designed for mental health court teams, victim advocates, mental health advocates, service providers, and policymakers, this guide helps those involved in mental health courts understand why crime victims are an integral part of the court’s mission and operations, and increases familiarity with victims’ rights policies and practices commonly employed in criminal courts that can be adapted for mental health courts.

Members of mental health court teams may be understandably reluctant to take on this subject, given the resource demands involved with establishing formal victims' rights policies. To be sure, it will require staff time and meetings for court staff to both familiarize themselves with victims' laws in their jurisdiction and to plan appropriate responses. Funding Sources on p. 30 outlines possible resources to support services to victims.

In addition, there are many justice system and community-based victim assistance professionals who can support court staff's efforts to help victims understand and exercise their legal rights and provide information about and referrals to appropriate victim services. This guide suggests that court staff familiarize themselves with victims' laws in their state and, to the extent possible, formalize how staff can leverage victims' resources, providers, and advocates already within their jurisdiction to meet obligations to crime victims.

ORGANIZATION OF THIS GUIDE

This guide answers two key questions about addressing the needs of crime victims in mental health courts:

1. Why address the role of crime victims in mental health courts?

This chapter explains the value of involving victims in the mental health court setting and adopting formal policies and procedures that respond to their needs.

2. How can victims' rights be incorporated into mental health courts? This chapter outlines standard victims' rights upheld in criminal courts around the country and details ways to adapt these rights for the nontraditional operations of mental health courts.

ADDITIONAL RESOURCES

The Council of State Governments Justice Center has produced several publications that complement this concise guide. They explore in detail many related topics, including the involvement of people with mental illnesses in the criminal justice system and mental health courts as an emerging response. Users of this guide interested

Glossary

Community-based victim service programs: Independent, usually nonprofit, organizations supported by some federal and state funds (mostly through grants) and donations from community groups and individuals. Some community-based programs serve all categories of crime victims, and others are dedicated to serving specialized victim populations, such as sexual assault programs or domestic violence programs. Most provide comprehensive services to victims, regardless of whether they choose to report the crime and participate in the criminal justice process. These services may include assisting clients with counseling, medical and legal accompaniment or advocacy, referrals to other agencies, shelter and residential services, and prevention education.⁴

Criminal court: A court empowered to hear and decide on cases involving offenses against criminal law.⁵

Criminal trial: A judicial proceeding before a court to determine the guilt of a party charged with a crime.⁶

Domestic violence courts: The common designation, within the judicial court system, for all specialized structures, processes, and practices that handle domestic violence cases. There are various models for such courts. Some have jurisdiction only in criminal domestic violence misdemeanors, some have jurisdiction only in criminal domestic violence felonies, and some have jurisdiction in both misdemeanors and felonies. Some are integrated, multi-jurisdictional courts, allowing one judge to oversee criminal and civil court proceedings. In domestic violence courts, the judge and court personnel are trained in the dynamics of domestic violence and consistently oversee all court appearances and proceedings related to a domestic violence case and defendant. These specialized domestic violence courts have incorporated victim advocacy and witness assistance into the court's structure.⁷

Mental health court participants: The term used in this guide to refer to individuals under the supervision of mental health courts (rather than defendants, offenders, or probationers), because the criminal justice status of individuals entering mental health court varies depending on the type of court model (see Mental Health Court Overview on p. viii for further discussion). However, regardless of this status, all individuals discussed in this guide *participate* in a mental health court.⁸

Pretrial intervention: A formalized procedure authorized by legislation, court rule, or, most commonly, informal prosecutorial consent, whereby persons who are accused of certain criminal offenses and meet preestablished criteria either have their prosecution suspended for a period of time or have their sentence lessened.⁹

System-based victim services: The services located in a criminal or juvenile justice agency, typically a prosecutor's office, but sometimes also in a paroling authority; state attorney general's office; or law enforcement, probation, or corrections department. System-based victim service providers generally serve as the primary contact between victims and a criminal justice agency. In addition to ensuring that victims are able to exercise their rights, these units offer a number of supportive services, including orientation to the criminal justice system, accompaniment to court, employer intervention services to help prevent a negative impact on employment during prosecution, and assistance in recovery of property held as evidence.¹⁰

Victim: For the purposes of this guide, the person against whom a criminal act has been committed—regardless of whether there has been a court finding to that effect—by an individual with mental illness who has either been referred to or is participating in a mental health court program. The victim may be an acquaintance, friend, or family member of the offender, as well as a stranger. The victim may also be a family member of a homicide victim.

Victim impact statements: Written, oral, audiotaped, or videotaped information about the impact of the crime on the victim and the victim's family, most commonly presented or read during criminal court sentencing. These statements offer a means for victims to participate in the criminal justice process.¹¹

NOTE: This guide does not address victims of crimes committed by people with mental illnesses who have been found by a traditional court to be “not guilty by reason of insanity” or “guilty but insane.” Furthermore, it does not discuss victims of crimes by people with mental illnesses who have not been diverted to a mental health court. For additional information on what happens to victims in these instances, please see the Council of State Governments Justice Center publication *Responding to People Who Have Been Victimized by Individuals with Mental Illnesses* (2008).

in related issues of criminal victimization may wish to consult the following publications.

- *Responding to People Who Have Been Victimized by Individuals with Mental Illnesses*. Examines the needs of victims of crimes committed by people in the custody of the state mental health system, key challenges mental health and criminal justice officials face in serving these victims, and approaches officials may take to address these challenges.
- *Violence against Women with Mental Illness*. Reviews existing literature on victimization and mental illness; provides information on relevant mental health or victim service programs and resources; and recommends elements of a federal agenda to improve resources for this population of women.

Comprehensive information about the emergence, design, and assessment of mental health courts also can be found in the following Justice Center publications, which are cited in this guide as resources to implement particular recommendations:

- *A Guide to Mental Health Court Design and Implementation*. Contains information on issues such as identifying stakeholders to plan and administer a court, screening defendants to participate in a court, and sustaining a court's operations.
- *Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court*. Describes commonalities among mental health courts and provides practitioners, policymakers, researchers, and others with the core elements that can be found among successful mental health courts. (See Appendix A for excerpts from the text of this publication.)
- *Mental Health Courts: A Primer for Policymakers and Practitioners*. Addresses a series of commonly asked questions about mental health courts.

Finally, the Justice Center has developed a number of resources about improving other types of responses to people with mental illnesses involved in the criminal justice system, including law enforcement, corrections, and community-based initiatives. To download the above publications or to view a complete list of related Justice Center publications, go to <http://consensusproject.org/resources/publications>.

About the Development of This Guide

TO DEVELOP THIS GUIDE, staff of the Council of State Governments Justice Center, with support from the Office for Victims of Crime (OVC), U.S. Department of Justice, interviewed representatives from mental health courts to discuss challenges to involving crime victims, as well as any policies and procedures for meeting their needs. Because few mental health courts have formalized how team members work with victims, Justice Center staff also conducted interviews with representatives from domestic violence courts, which typically have comprehensive protocols for working with victims. In addition, project staff solicited information from pretrial services program representatives about policies for working with victims, as these initiatives resemble certain aspects of the pre-plea mental health court model.

This guide does not draw on a scientific sampling of all relevant stakeholders, so readers are cautioned when generalizing the challenges and possible responses offered by a relatively small number of respondents. (See Appendix B for a detailed discussion of the methodology.)

This guide also includes information from VictimLaw (<http://www.victimlaw.info/victimlaw>), the National Center for Victims of Crime's online database of state and federal victims' rights statutes, tribal laws, constitutional amendments, court rules, and administrative code provisions. The chapter "How Can Victims' Rights Be Incorporated into Mental Health Courts?" includes excerpts from text on the VictimLaw Web site relating to different types of victims' rights. This site was created with funding from OVC.

Finally, this guide excerpts text from the Justice Center's 2008 publication *Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court*, which describes 10 elements identified by researchers, practitioners, the Bureau of Justice Assistance, and Justice Center staff as important in the development and sustainability of mental health courts. These elements are meant to provide background on various aspects of mental health court design, administration, and operations. Appendix A lists and summarizes the 10 essential elements.

I

Why Address the Role of Crime Victims in Mental Health Courts?

OVER THE PAST 20 YEARS, all 50 states, the federal government, the District of Columbia, many Native American tribes, and most U.S. territories have passed legislation that defines and protects the rights of crime victims in criminal proceedings. Additionally, 33 states have incorporated victims' rights into their constitutions, creating victims' bills of rights.* In response, criminal court systems across the country have adopted policies to ensure that prosecutors, court staff, defense attorneys, and others involved in criminal court proceedings act in accordance with victims' rights statutes, amendments, and related case law.

To be sure, many mental health court team officials and other key stakeholders involved in developing the specialized courts recognize the importance of these rights and associated policies. Yet an examination of mental health courts across the country reveals that few have instituted formal policies to clarify staff's obligations to crime victims. In addition, victims and their advocates, who might offer critical perspectives on whether court policies are responsive to victims' needs and rights, are often not engaged in planning or advisory groups.

*A map that depicts which states have amendments to state constitutions securing victims' rights with links to descriptions of the amendments can be found at <http://www.nvcap.org/stvras.htm>. In addition, see the Justice for All Act of 2004, retrieved at http://www.usdoj.gov/usao/de/vicwit/hr5107enrolled_version.pdf (accessed April 3, 2008).

Although mental health court team members do face significant challenges in developing victims' rights policies, there are good reasons to invest the resources needed to overcome these obstacles. In some cases, court programs may be seen as an extension of a criminal court and, as such, be *legally* required to comply with victims' rights laws. In other jurisdictions where mental health courts are considered specialty programs distinct from the criminal court, they may not be legally obligated to follow the same mandates.*

However, regardless of whether a mental health court program is legally bound by victims' rights statutes or other laws, there are compelling arguments for being more responsive to the needs of crime victims. Court staff should recognize that the proliferation of victims' rights laws reflects a broad, national consensus that victims' rights should be a priority in the administration of justice. So, too, as more mental health courts develop and begin to take on felony-level cases, criminal justice colleagues, community members, and others will expect courts to address victims' needs.

Finally, there are clear benefits to addressing the role of crime victims in the mental health court. This chapter discusses three such benefits in the sections that follow.

IMPROVING PUBLIC CONFIDENCE IN THE COURT

Most mental health courts employ a “problem-solving model”[†] that focuses court resources on participants' service needs in order to address the root cause of their criminal behavior—in this case, inadequately addressed serious mental illness. When participants are accepted into mental health court programs, they are required to participate in mental health or, in some cases, co-occurring substance

*The term “mental health court” actually can apply to a variety of legal entities because of the variability in the ways jurisdictions create these courts (see Mental Health Court Overview on p. viii for further discussion).

[†]As explained at http://www.courtinnovation.org/_uploads/documents/Principles.pdf, problem-solving courts, which include domestic violence, drug, and mental health courts, though often very different in focus, share a number of common principles: (1) enhanced information about issues and participants; (2) community engagement; (3) collaboration among justice officials and community organizations; (4) individualized justice; (5) accountability; (6) analysis of outcomes. See also Robert V. Wolf, *Principles of Problem-Solving Justice* (New York: Center for Court Innovation, 2007).

use disorder treatment in the community, or fulfill other requirements not normally associated with traditional case processing. Because court staff must devote time and energy to connecting participants to treatment, some victims, community members, and professionals in the criminal justice system may feel that the court prioritizes the participants' need for services over victims' rights and interests, offender accountability, and public safety. Such reservations may limit the ability of court staff to take on cases involving more serious types of crimes, such as felonies, and effectively coordinate with partners in other parts of the criminal justice system.

Court policies that elevate victims' rights and needs, however, can assuage some of these concerns, as can outreach to community members and criminal justice colleagues about the purpose and goals of the court. (Outreach efforts are discussed further in *Allowing Community Members to Be Heard* on p. 16.) These efforts can demonstrate to diverse audiences that the court also places the highest value on the safety of crime victims and the community as it serves participants. These steps are especially important for those courts that are in the early stages of development. Reaching out to victim advocates, experts, and crime victims to join court working groups early on will more likely result in policies that reflect the needs and concerns of crime victims. Staff of more established courts who invite them to join ongoing advisory groups will reap similar benefits when amending existing policies or initiating new ones that detail responsibilities to crime victims.

SUPPORTING BETTER RESPONSES TO INTERFAMILIAL/CAREGIVER CRIME

Interfamilial and caregiver crime is common, and family members, friends, and caretakers of people with mental illnesses are particularly vulnerable to victimization.¹² Mental health court teams confirm that they encounter a large number of victims who have a close relationship with or are related to participants, or who are their caregivers. Many individuals interviewed for this guide reported that court staff lacked established protocols as well as specialized training and resources to guide responses to interfamilial and caregiver

crime, which made such cases particularly challenging and time intensive.*

When clarifying the role of crime victims in the mental health court, court staff will likely discover resources for victims of interfamilial and caregiver crimes in particular. For example, in the course of developing policies, staff may reach out to community- or system-based victim service providers, who usually have materials or training information on specialized approaches to crimes committed against family members and caregivers.¹³ Court team members can request that providers assist staff in developing relevant policies and in identifying materials and training. Such steps will likely decrease the time and guesswork that often go into such cases.

A corollary benefit of formalizing how staff interact with relatives and caregivers who are victims is that resources on this subject will better equip them to navigate complicated relationship dynamics generally. Team members will be better prepared to enlist individuals closest to the participant in a positive way in the mental health court process. These individuals may be in a unique position to help keep the staff informed of how the participant is doing, promote participant compliance with the court's terms of participation, and increase the chances for long-term success. In addition, family member involvement may be a far more powerful influence on participants' behavior than formal criminal justice supervision.¹⁴ The section titled *The Right to Be Informed* on p. 19 details some specific policies and practices mental health courts can implement to address the needs of victims of interfamilial and caregiver crime.

ENHANCING SERVICES TO MENTAL HEALTH COURT PARTICIPANTS WHO HAVE BEEN VICTIMIZED

Mental illness is a major risk factor for victimization; people with mental illnesses are violently victimized at rates two to three times higher than the general population.¹⁵ This trend is even more pronounced for people with mental illnesses who are also homeless or

*For example, many court team members say they are unsure of appropriate responses when family members and caregivers request information about participants' mental health treatment that is legally confidential.

who have a co-occurring substance use disorder.¹⁶ Not surprisingly, many mental health court team members say they work with participants who have been victimized and that many of these cases involve cycles of abuse within families.

Mental health court participants may not recognize their victimization as a crime under the law, may not view themselves as victims, or may not want to share information with mental health court staff about their experiences. These incidents can affect the participant's success in the mental health court program, as the stress and trauma associated with victimization can provoke a crisis, which may in turn impede successful participation.

While most court team members are skilled in working with individuals with mental illnesses and connecting them to necessary services, they may need support to respond to participants who are also victims, particularly if the crime is recent enough to warrant prosecution. Court staff who are involved in formalizing victim-related policies will inevitably become more familiar with resources within the criminal justice system and community that may be helpful in serving participants who have also been victimized.

SUMMING UP

The bottom line is that some mental health courts will be legally obligated to adhere to victims rights' laws. Yet even if a court is not legally required to do so, staff should still attempt to uphold the principles behind such laws. The widespread adoption of these statutes and other legal authorities reflects the ubiquitous belief that victims' rights are of critical importance in justice settings. It is simply the right thing to do. Mental health courts that better integrate crime victims will also discover there are clear benefits to court operations, a few of which were highlighted in this chapter. Court staff who do decide to incorporate victims' rights into court policy and practice, however, may be unsure *how* to do so. The following chapter provides information they can use to engage victims by developing or enhancing mental health court policies and practices.

II

How Can Victims' Rights Be Incorporated into Mental Health Courts?

AS NOTED ABOVE, policymakers from all 50 states, the District of Columbia, and other U.S. territories have begun to integrate victims' rights into the routine operations of the criminal justice system. The state statutes, constitutional amendments, court rules, and an increasing body of victim-related case law that detail these rights were developed with a traditional criminal court framework in mind and provide obvious opportunities for victim involvement. For example, most states have some kind of legal provision allowing victims to attend preliminary hearings, motion hearings, arraignments, trials, and sentencing hearings.*

Mental health court team members interested in developing policies to protect victims' rights may assume that looking to the model of criminal courts to guide their efforts is of limited utility. Mental health courts operate differently from criminal courts. In addition to excluding the proceedings mentioned above, mental health courts do not include opportunities for witness testimony or submission of evidence or impact statements. Such differences can make it

This chapter draws heavily on resources provided by the National Center for Victims of Crime, VictimLaw, <http://www.victimlaw.info>, about widely accepted categories of victims' rights; these categories reflect the rights outlined in the 2004 Justice for All Act, which amended federal criminal code to grant crime victims specified rights. For more information on the Justice for All Act, visit <http://www.ojp.usdoj.gov/ovc/publications/factshts/justforall/content.html>.

*In some jurisdictions, mental health court participation may be a component of an individual's sentence.

challenging for mental health court staff members to conceptualize and implement victims' rights policies. This chapter seeks to alleviate some of this confusion by outlining core elements of victims' rights policies used in criminal courts and suggesting modifications for both new and established mental health courts that take into account their unique operations and mission.

This chapter is divided into subsections that provide more detailed information on the following standard victims' rights:

- the right to attend
- the right to be heard
- the right to be informed
- the right to reasonable protection
- the right to full and timely restitution

Several rights that are less applicable to mental health courts because of their nontraditional operations are discussed under Other Rights: the right to enforcement, the right to apply for compensation, the right to the return of property, and the right to a speedy trial.

Each section includes a brief overview of the policies and practices in place in most criminal courts to protect victims' rights and an accompanying chart that outlines key challenges to ensuring fidelity to these rights within mental health courts. The chart also suggests possible responses for court officials to consider in addressing these challenges and highlights written materials and state examples to guide implementation. Throughout, key elements from the Justice Center's 2008 report *Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court* provide additional context on various aspects of mental health court design. These elements could be particularly useful for officials in the early stages of developing a mental health court program, as well as for policymakers and victim advocates, who may have less familiarity with how mental health courts work.

The key challenges described in this section were identified through interviews with mental health court team members from across the country. Possible responses were also based on discussions with these experts and supplemented by interviews with staff

of domestic violence courts. The project team reviewed materials pertaining to domestic violence courts and pretrial intervention programs as well.

The challenges in this section may not apply to all mental health courts, particularly those in the early stages of development. Moreover, some proposed responses are based on approaches other non-traditional court programs have found useful in engaging victims, and they consequently may have varying levels of relevance to different types of mental health courts. Most court staff, however, should find sufficient overlap to initiate or improve a mental health court program. The possible responses also offer a framework for advancing the dialogue among planning groups or court team members about various options for addressing victims' rights. To implement successfully the ideas presented in this section, policymakers and

Icon Key

THE CHARTS IN THIS CHAPTER that outline adaptations to crime victims' policies for mental health courts include the following icons:



Indicates a resource for additional background on concepts, models, and policies mentioned in the recommendations. In particular, a number of Justice Center publications are cited, including *A Guide to Mental Health Court Design and Implementation* and *Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court*. More detailed descriptions of these resources can be found in the introduction to this guide.



Indicates an example of how various recommendations are implemented. Because few mental health courts have put formal policies and procedures into practice to address victims' rights, a number of the examples included in this section are from domestic violence courts and pretrial intervention programs.


practitioners involved in planning or running mental health courts should tailor the suggested responses to the unique needs of their jurisdiction.



THE RIGHT TO ATTEND

Criminal Courts

The right to attend ensures that crime victims, their families, legal representatives, and community-based victim advocates can be present during criminal justice proceedings. In most jurisdictions, victims can attend preliminary hearings, trials, presentencing and sentencing hearings, and probation and parole hearings, among other events. The purpose of this right is to enable victims and their supporters to witness the various stages of the traditional criminal justice system and to hear everything that is submitted into the court record.

Adaptations for Mental Health Courts

KEY CHALLENGE	POSSIBLE RESPONSES	ADDITIONAL RESOURCES
Mental health court staff may not be sure which mental health court events victims could or would want to attend because the proceedings are not the same as those that take place in traditional criminal courts.	<p>Invite victims to attend milestone events in the mental health court, such as</p> <ul style="list-style-type: none"> • initial hearings, when the prosecutor and judge are deciding whether to admit a person to the mental health court; • special hearings or portions of hearings to monitor compliance with terms of participation that relate to victims, such as adherence to no-contact orders (see Judicial Review Hearings on p. 12 for further discussion of one type of special hearing); 	 <p><i>A Guide to Mental Health Court Design and Implementation</i> provides detailed information on various types of status hearings in the chapter “Monitoring Adherence to Court Conditions.”</p>

KEY CHALLENGE	POSSIBLE RESPONSES	ADDITIONAL RESOURCES
	<ul style="list-style-type: none"> • hearings to determine whether the participant has failed the program and should be referred back to criminal court; • final hearings for mental health court participants who have successfully completed the program. 	
<p>Mental health court team members may be concerned that encouraging victims to attend court events where treatment appointments or case management is discussed could compromise the participant's privacy rights.</p>	<p>Invite victims to attend only proceedings held in open court, not evaluation sessions with service providers or private consultations with the judge or attorneys during which confidential matters may be discussed.</p>	<p> "Element 7: Confidentiality" from <i>The Essential Elements of a Mental Health Court</i> provides further discussion about the sharing of health and legal information within mental health courts.</p> <p> The National GAINS Center has developed a publication, <i>Dispelling the Myths about Information Sharing between the Mental Health and Criminal Justice Systems</i>, that provides guidance on navigating information-sharing rules between these two systems.¹⁷</p>

THE RIGHT TO BE HEARD

The right to be heard entitles crime victims to participate actively in the criminal justice process, to express their opinions about people who have committed crimes against them, and to articulate their concerns to different criminal justice professionals. The purpose of this right is to allow victims to provide information for the court record, either as witnesses or through victim impact statements. This right usually consists of three components: conferral with the prosecutor, communication with the court, and communication with the defendant.

Judicial Review Hearings

MENTAL HEALTH COURT OFFICIALS might consider instituting judicial review hearings in cases that involve a victim, especially if a crime is serious or violent. These hearings, which domestic violence courts often use, involve a judge evaluating the actions of individuals under criminal justice supervision toward victims. During these hearings, judges examine adherence to no-contact orders, terms of probation or parole, and other relevant information.

Holding separate hearings just for victims' issues may impress upon participants the severity of noncompliance with court terms while demonstrating to victims that their safety and well-being is of primary concern to the court. Alternatively, court officials can devote a portion of status hearings to assessing participants' behavior toward victims.





The Vera Institute publication *Judicial Review Hearings: Keeping Courts on the Case* describes how jurisdictions that received federal funding to improve coordinated community responses to domestic violence designed and implemented judicial review hearings. This publication can be retrieved at http://www.vera.org/publications/publications_2c.asp?publication_id=360.

Conferral with the Prosecutor


Criminal Courts

In some jurisdictions, the prosecutor is required by legislation or court rule to obtain the views of the victim before the outcome of any type of case is determined, whether this involves a plea agreement, dismissal of charges, or pretrial diversion program.

Adaptations for Mental Health Courts

KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
Prosecutors working with the mental health court may not know when it is appropriate to consult with victims and how, or if, victim input should affect mental health court proceedings.	Require prosecutors to <i>consult</i> with victims in cases involving non-violent crimes before accepting such cases into the mental health court; victim input can inform decisions about whether to accept certain individuals into the court. In addition, if applicable, require prosecutors to seek victim <i>consent</i> in cases involving violent crimes, before accepting such cases into the mental health court. Court staff may also consider developing guidelines on when it may be appropriate to waive these requirements.*	 The Therapeutic Intervention Program (TIP) Court in Rockford, Ill., requires written victim consent for individuals to participate in the mental health court in cases involving domestic violence. ¹⁸  The assistant prosecutor or assistant district attorney (ADA) for the Brooklyn Mental Health Court, in conjunction with the ADA assigned to prosecute the case, consults with all victims before agreeing to adjudication in the mental health court; without the victim's support, the case does not move forward there. > continued on next page

*The impact of victim input on decisions about whether or not to accept individuals into mental health court programs warrants detailed discussion among key stakeholders and court team members. The authors recognize that the options outlined in this guide may not be appropriate or possible in all jurisdictions. They simply illustrate practices used in some court programs that can be considered when crafting policies.


KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
		<p>In cases where the victim and the mental health court participants have a prior or ongoing relationship, the victim's input is considered on a continuous basis and helps form the strategy for long-term success.¹⁹</p> <p> In Ohio and Mississippi, the prosecutor is required by statute to consult with victims and obtain their views before referring potential participants to a pretrial diversion program.²⁰</p>

Communication with the Court

Criminal Courts

In traditional criminal courts, the formal communication between victims and the courts that is entered into the court record can take several forms. For example, victims may actually speak at sentencing or submit impact statements in written, audiotaped, or videotaped formats to the judge during the sentencing phase.

Adaptations for Mental Health Courts

KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
Victims cannot provide formal input into sentencing decisions because sentencing is either bypassed or imposed by the time individuals enter a mental health court.	<ol style="list-style-type: none">1. Allow victims to submit impact statements to the court or to speak during the initial hearing when the court team is considering whether to accept an individual into the program.2. Hold judicial review hearings (described on p. 12) or other regularly scheduled status hearings that consider verbal or written information victims have provided to the court to help determine if the participant is adhering to terms of participation that relate directly to the victim, such as compliance with no-contact orders.	 <p>Three domestic violence courts—in Dorchester, Mass.; Milwaukee, Wis.; and Washtenaw County, Mich.—have instituted judicial review hearings. Victims can provide feedback to the court about participants' behavior by speaking directly in court to the judge, communicating via victim advocates, or speaking with probation officers.²¹</p>

Allowing Community Members to Be Heard

MENTAL HEALTH COURTS COMMONLY accept cases involving what are widely considered “victimless” crimes, such as vandalism of public property, public intoxication, causing a disturbance, loitering, solicitation, and panhandling. Even so, such crimes can have a significant impact on communities, particularly those where such crimes are considered chronic.

By facilitating discussion in the community about the court, mental health court teams can (1) formally recognize the impact of these types of crimes and (2) create opportunities to educate community members about the purpose and goals of the mental health court. In so doing, team members may preempt concerns from community members about the priorities of the court (see *Improving Public Confidence in the Court* on p. 2 for further discussion).

One approach some criminal courts have used to engage community members, which could be adapted for the mental health court setting, is community justice councils. These councils, sometimes also called criminal justice or restorative justice councils, are community organizations that include victims, victim representatives, individuals who have committed crimes, criminal justice officials, community members, and others. These councils provide a forum for diverse representatives to discuss various types of crimes and potential community-based responses.

Mental health court team members could consider joining such councils, if they already exist in the jurisdiction, or initiating community justice councils in order to allow community members to relay questions about mental health courts to staff. These councils would also provide an opportunity for discussion about community resources for individuals with mental illnesses returning from jail or prison or other topics related to criminal justice and mental health issues.





For additional information on community justice councils, as well as other types of community-related initiatives, see chapter 4, “Restorative Justice/Community Justice,” in the *National Victim Assistance Academy Textbook* (Washington, D.C.: U.S. Department of Justice, Office for Victims of Crime, 2002).

Communication with the Defendant



Criminal Courts

Many states' criminal justice systems allow victims to communicate with defendants in a structured fashion through victim–offender dialogue or mediation programs. In such programs, an impartial trained third party arranges a meeting between a victim and the defendant to allow the victim to express how he or she has been affected by the crime and to seek specific answers to questions about the circumstances of the offense. Some jurisdictions also give victims the opportunity to serve on a “victim impact panel” to educate convicted individuals about the impact of their crimes on their victims, their community, their families, and themselves.

Adaptations for Mental Health Courts

KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
Mental health court team members may be unsure how to facilitate communication between victims and program participants without violating participants' medical privacy rights.	1. Establish a mechanism for referring participants and victims to service providers in the community who offer mediated communication programs, to enable participants and victims to discuss issues, such as family member dynamics, in a productive manner and without violating the medical privacy of participants.*	 “Element 7: Confidentiality” from <i>The Essential Elements of a Mental Health Court</i> discusses procedures for maintaining the medical privacy of participants.  <i>Federal Confidentiality Laws and How They Affect Drug Court Practitioners</i> from the National Drug Court Institute (NDCI) recommends procedures that drug court staff can implement to guarantee compliance with federal substance > continued on next page

*Court staff should determine whether communication between a participant and victim is appropriate on a case-by-case basis with attention to the benefit and risk to both victims and participants.

KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
	<p>2. Offer to train community providers overseeing mediated communication programs on how the mental health court works, the issues that could arise as a result of individuals' mental illnesses, and medical privacy rules that should be adhered to during mediated discussions.</p>	<p>abuse treatment confidentiality regulations. Information in this guide could be adapted for the mental health court setting to ensure that when participants and victims communicate, the medical privacy of participants is maintained.²²</p> <p> At the mental health court in San Francisco, family members (who are sometimes victims) are allowed to participate in support group sessions with participants hosted by a local behavioral health treatment provider, provided participants agree to their family members' involvement. These forums provide an opportunity for family members to communicate with participants in a structured setting.²³</p>
<p>Mental health court team members may be concerned that some participants are not sufficiently stable to communicate directly with the victim.*</p>	<p>Offer victims the option to participate in classes on the impact of crime on victims[†] or in a victim impact panel, if either exists in the jurisdiction, in lieu of a mediated</p> <p>> <i>continued on next page</i></p>	<p> <i>A Healing Impact</i> describes the purpose and effect of victim impact panels, both on victims and on individuals who have committed crimes.²⁴</p> <p>> <i>continued on next page</i></p>

*While legal competency is typically a prerequisite for participation in the mental health court (see “Element 5: Informed Choice” from *The Essential Elements of a Mental Health Court*), the participant may still not be stable enough for mediated discussions with the victim.

[†]For more information about classes that examine the impact of crime on victims, see http://www.justicesolutions.org/art_pub_victim_listenlearn_intro.htm.

KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
	communication program. Participation on such panels allows victims to provide input into the criminal justice system without direct contact with the participant.	This publication comes from Mothers against Drunk Driving, the organization that created one of the first victim impact panels in the country.

THE RIGHT TO BE INFORMED

The right to be informed guarantees victims that the prosecutor, court, or corrections staff will provide them with information about various criminal justice proceedings and connect them to useful victims’ resources and services. This right usually consists of two components: notification and general information and referrals.


Notification

Criminal Courts

Some jurisdictions require that victims of any type of crime be notified about every change in the legal status of the person who has committed the crime against them. This can include notifying the victim about the arrest, bail or other pretrial hearings, plea agreement hearings, date of trial, presentencing or sentencing hearings, final sentencing, probation conditions, prison or jail terms, parole hearings, or even the death of the defendant or escape from confinement. In addition, victims also have the right to be informed of their various legal rights, such as the right to submit a victim impact statement, the right to seek restitution and other legal or financial obligations (such as child support and housing payments) or damages in civil court, and the right to apply for victim compensation in violent crime cases (see Other Rights on p. 28 for further discussion).


Victims of violent crimes are usually notified during the pretrial process by staff of victim or witness units, which are typically part of the prosecutor’s offices. After sentencing, corrections-based victim advocates or probation/parole officers may provide notification. In the case of nonviolent crimes, notification may be offered either by these same staff or through automated systems such as Victim Information and Notification Everyday (VINE) and Statewide Automated Victim Information and Notification (SAVIN).*

Adaptations for Mental Health Courts†


KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
<p>Mental health court team members may be unsure which team members, if any, are responsible for notifying victims of participants’ status changes, what types of court events victims should be notified about, and how to inform them about available resources and services.</p>	<p>Assign specific mental health court team members to notify victims of the participants’ legal status changes and the proceedings or key court decisions that are of concern to victims, such as those referenced in the Right to Attend section on p. 10.</p>	 <p>In Milwaukee County, Wis., there are three domestic violence courts, each with dedicated judges and staffs. The local prosecutor’s office assigns two full-time “victim/witness specialists” to each court, and they notify victims about court proceedings, provide service referrals, and facilitate participation in court and probation review hearings if victims desire.²⁵</p>

*For more information about VINE and SAVIN, including states and counties that use these programs, see VINE: The National Victim Notification Network, at <http://www.appriss.com/VINE.html>. For a detailed discussion of the potential limitations of automated systems like VINE in providing notification to victims about events taking place outside the traditional criminal court system, see the Justice Center publication *Responding to People Who Have Been Victimized by Individuals with Mental Illnesses* (2008). In addition to VINE and SAVIN, some state agencies or counties may use their own automated notification systems, such as the Kansas Adult Supervised Population Electronic Repository.

†This section discusses general information that courts should provide to all types of crime victims. However, when crime victims are family members or caregivers, as often occurs in cases seen in the mental health court, court staff may provide additional information to these victims, not because of their status as victims, but because of their

KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
		<p data-bbox="720 249 984 539">  In Ohio, the prosecuting attorney is required by statute to notify victims (and arresting officers) of the prosecution's intent to permit the accused to enter a pretrial diversion program.²⁶ </p> <p data-bbox="720 557 984 1166">  At the mental health court in Tempe, Ariz., when a person is arrested for any type of crime involving a victim (including non-violent crimes), the victim fills out a form providing all of his or her contact information. On this form, the victim indicates if he or she would like to be notified of court events. The prosecutor is then responsible not only for keeping victims notified but also for informing them of other rights, such as the right to attend and the right to be heard.²⁷ </p>

relationships to the participants. For example, in some cases, it may make sense for court staff to provide limited types of clinical information about the participant to family members or caregivers so that these individuals will be better equipped to provide ongoing support after the end of the mental health court program. Mental health court team members should, however, recognize that information given to relatives and those with close relationships to participants must still fall within the parameters of permissible information sharing governed by medical privacy laws.



KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
<p>Automated notification systems, such as VINE or SAVIN, may not allow victims to request information about individuals within mental health courts.</p>	<p>Assign team members either to work directly with authorities overseeing automated notification systems, or to enlist the assistance of system- or community-based victim service providers to coordinate with authorities to expand automated notification systems to include information about events in the mental health court.</p>	
<p>Team members may have few opportunities to notify victims of their rights during routine court proceedings.</p>	<p>Request that judges read the state victims' bill of rights or selected state statutes or court rules pertaining to victims during an initial hearing at which an individual is being considered for inclusion in the mental health court as a means of informing victims of their rights.</p>	<p> State superior court judges in both Arizona and Connecticut are required by statute to read their respective state's victim rights at the beginning of any court proceedings to ensure that victims are informed.²⁸</p>

GENERAL INFORMATION AND REFERRALS

Criminal Courts

Victims in most states are also entitled to receive information from criminal justice system or allied professional officials about services that are available to them. This information may include referrals to victim treatment and support services, such as rape crisis centers, battered women's shelters, homicide support groups, and programs for victims of drunk driving crashes. In some cases, officials also provide victims with general information about the steps involved in criminal prosecution and their related rights.

Adaptations for Mental Health Courts



KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
Mental health court staff may have limited familiarity with resources in the community to which they could refer victims.	Develop relationships with system-based and community-based victim advocates, and either refer victims to these staff members directly or request that they create a listing of available resources in the community (for example, counseling centers or shelters) that can be distributed to victims.	 The St. Louis County, Mo., Mental Health Court works with a local victim service provider that offers services to victims of individuals participating in the mental health court. ²⁹  At the mental health court in Bernalillo County, N.Mex., the prosecutor will refer victims to an on-staff advocate to connect victims to needed services in the community. ³⁰

THE RIGHT TO REASONABLE PROTECTION

Criminal Courts




Traditional criminal courts must provide various types of reasonable protection to victims of violent crime during the criminal justice process. Many states require that court officials in the criminal justice system notify victims of these protections, which can include establishing secure waiting areas in the courthouse, providing law enforcement escorts to and from the courthouse, and enforcing orders of protection.

Adaptations for Mental Health Courts

KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
<p>Mental health court staff may not have instituted protocols to minimize contact between victims and participants who could be present at the mental health court at the same time.</p>	<ol style="list-style-type: none"> 1. Arrange for victims' access to secure waiting areas in courthouses where mental health courts are located.* 2. Consider other ways for victims to attend court events in a secure fashion, either by telephone or video conference. 	<p> The Mental Health Court in Anchorage, Alaska,³¹ allows victims to listen to or participate in court proceedings via telephone if they do not feel comfortable being present in the courtroom.†</p> <p> The Bronx Misdemeanor Domestic Violence Court, in New York City, has a separate safe waiting area in the victim services office. The waiting area is staffed by victim advocates who escort victims to and from the courtrooms when they need to testify.³²</p>

*Most courthouses include some type of secure waiting area for victims during criminal justice proceedings to reduce contact between victims and defendants, including the defendant's family, friends, and attorneys. However, unless special arrangements are made, victims involved in cases before a mental health court may not have access to these secure waiting areas.

†Staff may also enable victims to listen or participate in court via telephone if there are logistical barriers to their attendance.

KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
<p>Typical terms of participation for mental health court participants do not include requirements directly related to victim safety.</p>	<ol style="list-style-type: none"> 1. Make compliance with an order of protection a term of participation for individuals being considered for acceptance into a mental health court program who have committed a violent crime. 2. Develop terms of participation that include more restrictive supervision strategies for cases involving violent crimes. 3. Employ more stringent sanctions when mental health court participants violate their terms of participation in cases involving violent crimes.* 4. Require participants to take part in violence intervention programs in cases involving domestic violence. 	<p> “Element 4: Terms of Participation” from <i>The Essential Elements of a Mental Health Court</i> outlines the type of legal requirements potential mental health court participants usually must meet for entry into mental health court programs.</p> <p> The National Institute of Justice publication <i>Batterer Intervention: Program Approaches and Criminal Justice Strategies</i> discusses different types of batterer intervention models.³³</p> <p> In 1999, the Office on Violence against Women selected three jurisdictions to participate in the Judicial Oversight Demonstration Initiative (JODI) to improve coordinated community responses to domestic violence. Each of the JODI sites mandated > continued on next page</p>

*Typical mental health court sanctions might include judicial reprimands, increased frequency of status hearings, community service, and jail. Some courts use graduated sanctions that increase in severity after the first or multiple infractions. In cases involving violent crimes, mental health court team members may wish to use only the most punitive sanctions when individuals violate terms of participation (Council of State Governments Justice Center, *A Guide to Mental Health Court Design and Implementation*, New York: Council of State Governments, 2005).

KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
		participation in batterer intervention programs (BIPs) for offenders as a component of criminal justice supervision. Staff of the BIPs provided probation agents with information about individuals' enrollment, attendance, participation, progress, and behavior in group sessions to monitor participants' overall compliance. ³⁴



THE RIGHT TO FULL AND TIMELY RESTITUTION

Criminal Courts

The term “restitution,” in the context of the criminal justice system, generally refers to compensation for a harm caused by a defendant, most commonly in the form of monetary payment for expenses incurred as a result of the crime. Restitution can also entail the return or repair of property that has been stolen or damaged in a crime. Common forms of restitution include payment for the cost of treatment expenses, lost wages, insurance deductibles, and even expenses related to participation in the criminal justice system, such as the victim’s travel or child care costs. In addition, in many states, restitution may also be ordered to cover victims’ lost wages as well as financial obligations that victims were unable to meet as a result of lost wages, such as child support, insurance, or house or rental payments.

Court officials have the authority to order individuals convicted of crimes to pay restitution as a part of their sentence or as a condition of their probation. A parole board may also order individuals convicted of crimes to pay restitution as a condition of parole.

Adaptations for Mental Health Courts

KEY CHALLENGE	POSSIBLE RESPONSES	EXAMPLES
<p>Mental health court officials could be uncertain how and when restitution is ordered in cases accepted into mental health courts.</p>	<ol style="list-style-type: none"> 1. Ensure that when individuals are placed into the mental health court, that does not hinder the court's obligation to order appropriate restitution.* 2. Consider making payment of restitution a term of participation in the mental health court, so court staff can use appropriate sanctions if a participant does not comply with a restitution payment schedule. 	 <p>"Element 4: Terms of Participation" from <i>The Essential Elements of a Mental Health Court</i> offers an overview of the typical components of terms of participation in mental health court programs.</p>
<p>Mental health court staff may not be able to offer guidance to participants on how to prioritize restitution among various financial obligations or to address situations in which participants do not have resources with which to repay all debts.†</p>	<p>Designate a staff member from the mental health court team to act as a liaison to authorities collecting restitution to discuss how to prioritize various obligations and any available options if participants are unable to pay.</p>	 <p>Justice Center publication <i>Repaying Debts</i> provides an in-depth discussion of the various ways those ordered to pay restitution and other costs associated with the criminal justice system can meet their financial obligations.³⁵</p>

*In some cases participants enter mental health courts prior to sentencing (when restitution is typically ordered). See the section "Mental Health Court Overview" (p. viii) in the introduction for more information.

†People released from prisons and jails typically have insufficient resources to pay their court-ordered debts to their children (child support), victims (restitution), and the criminal justice system (fines, fees, and surcharges). See *Repaying Debts* for a full discussion of the related problems and the opportunities for addressing them. It is important for courts to consider all options that will support the repayment of debts and the successful reintegration of these individuals back into the community, which may be of particular concern for participants in mental health courts who have difficulty meeting their financial obligations.

OTHER RIGHTS

A number of other victims' rights either do not require any significant adaptation for the mental health court setting or are simply not applicable to mental health courts.

The Right to Enforcement

Many states provide victims with the means to pursue legal redress if their rights in traditional courts are not enforced. Because mental health courts are not always legally bound to enforce these rights, it is often unclear whether victims could pursue legal remedies if they believed mental health court staff members were not acting in accordance with victims' rights statutes, bills of rights, or other criminal court rules. Even if mental health courts were found to be legally accountable for compliance with victims' rights, enforcement mechanisms would likely be employed outside the mental health court (for example, in criminal or civil courts).

The Right to Apply for Compensation

Crime victim compensation programs are administered by individual states, the District of Columbia, and U.S. territories, with significant funding provided by the Victims of Crime Act (VOCA) fund administered by the Office for Victims of Crime, U.S. Department of Justice. Compensation programs reimburse individuals for their out-of-pocket expenses relating to their victimization. Victims can access compensation even if no one is arrested for, or convicted of, the crime. Typically programs have two basic requirements for compensation eligibility: the victim must report the crime in a timely manner and must cooperate with law enforcement and justice officials.

While the law may require prosecutors' offices to provide verbal notification to victims about the availability of compensation, the compensation itself (unlike restitution) is rarely awarded through the court system.* And because no criminal conviction is necessary

*All 50 states and the District of Columbia provide crime victim compensation. Nearly a third of those are affiliated with departments of public safety or criminal justice planning, and another fifth function within offices of attorney generals. Eight are independent agencies; workers' compensation bureaus house four of the programs; and other affiliations include corrections departments, social services agencies, and finance and management departments. Five states operate their programs within courts or claims courts. ("Crime Victim Compensation: An Overview," National Association of Crime Victim Compensation Boards, retrieved at http://www.nacvcb.org/articles/Overview_prn.html [accessed April 15, 2008]).

for an award, no significant adaptation is needed to ensure that victims of mental health court participants receive compensation. Prosecutors' staff, however, should make sure to notify victims of people entering mental health courts about the existence of compensation for victims of violent crime.

The Right to Return of Property

In most states, property may be returned to crime victims when it is no longer needed as evidence in a criminal prosecution. All 50 states and the District of Columbia have passed laws outlining procedures for the return of stolen or personal property seized for evidentiary purposes. Because mental health court proceedings do not typically include trials, issues involving evidence do not arise. As a result, return of property would not be overseen by a mental health court team. (But see *The Right to Full and Timely Restitution* on p. 26, for a discussion of what restitution victims may receive for property damage, among other crimes.)

The Right to a Speedy Trial

A number of jurisdictions give crime victims the right to a speedy trial or "disposition of the case free from unreasonable delay." Because mental health court proceedings typically do not involve trials and often individuals are placed into mental health court programs in lieu of a trial or other case processing, the need for a speedy trial does not arise. In addition, the obligation for a speedy mental health court disposition does not apply because mental health court programs can only last for a prescribed amount of time and cannot continue indefinitely. Usually the duration of an individual's participation in a mental health court program will not extend beyond the maximum period of incarceration or probation a defendant could have received if found guilty in the traditional court. Most programs last between one and two years, but some are as short as six months or as long as three years.³⁶

Funding Sources

MANY OF THE RECOMMENDATIONS outlined in this guide are low- or no-cost methods of incorporating crime victims into mental health court processes. However, conceptualizing and actually implementing various recommendations still require staff time and careful planning, and officials might need to seek out additional funding to support efforts to engage victims. Listed below are possible sources of funding for resource-intensive approaches.

- **The Justice and Mental Health Collaboration Program (JMHCPC)** is a grant program administered by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. This program, for which the Council of State Governments Justice Center is a technical assistance provider, is designed to increase public safety by facilitating collaboration among the criminal justice, juvenile justice, mental health treatment, and substance abuse systems and to improve access to effective treatment for people with mental illnesses involved with the criminal justice system. This program was authorized by the Mentally Ill Offender Treatment and Crime Reduction Act and provides funding to plan, plan and implement, or implement and expand collaborations to improve responses to people with mental illnesses involved in the criminal justice system. Mental health court team members who are interested in expanding their ability to serve victims could consider integrating funding for a victim advocate or liaison into grant proposals. For more information on this program, see <http://www.ojp.usdoj.gov/BJA/grant/JMHCprogram.html>
- **The STOP (Services • Training • Officers • Prosecutors) Violence against Women Formula Grants Program**, administered by the Office on Violence against Women, U.S. Department of Justice, promotes a coordinated, multidisciplinary approach to improving the criminal justice system's response to violent crimes against women. The STOP program encourages the development and strengthening of

effective law enforcement and prosecution strategies, and victims services, to address violent crimes against women. This funding could be used to support victim liaisons to the mental health court to serve victims of violent crimes committed by mental health court participants. For more information on this program, see http://www.usdoj.gov/ovw/stop_grant_desc.htm.

- **The Victims of Crime Act (VOCA) Program**, administered by various state agencies, provides funding to grassroots, nonprofit, community, and faith-based victim organizations and coalitions to improve outreach and services to victims of crime. Mental health court team members could encourage local, community-based victims' organizations to apply for VOCA grants and use the money to support a community-based victim advocate to act as a liaison to the mental health court. This person would coordinate the various community- and system-based victim service providers and the mental health court team to improve communication with, and the provision of services to, victims of mental health court participants. For more information on this program, see <http://www.ojp.usdoj.gov/ovc/help/links.htm> or <http://www.navaa.org>.

Conclusion

THE NUMBER OF VICTIMS OF CRIMES committed by individuals who are accepted into mental health courts is most likely small in comparison with other types of victims, and consequently this issue has received relatively little national attention to date. Nonetheless, mental health court officials should not discount the importance of developing coordinated and thoughtful responses to crime victims. As mental health courts continue to multiply across the country, this issue will only increase in importance.

This growth provides a justification for increased attention to the issue, but it is only one of many reasons for mental health court officials, policymakers, and victim advocates to consider the role of crime victims in mental health courts. This guide highlights several positive impacts crime victims' policies can have on mental health court operations. In particular, these policies may enable staff to better uphold principles outlined in victims' rights regulations, increase public confidence in the court as a justice-serving institution, support better responses to interfamilial crime, and enhance services to participants with previous trauma.

Indeed, there are many ways for both new and established courts to successfully and positively involve victims in court design, administration, and operations. It is hoped this guide will be a starting point for such discussions among stakeholders of courts in every stage of development and will shed light on approaches some mental health courts and other specialized courts have found useful to achieve this objective.

Appendix A

Essential Elements of Mental Health Court Design

THIS APPENDIX PROVIDES EXCERPTS from the Council of State Governments Justice Center publication *The Essential Elements of a Mental Health Court* (funded by the Bureau of Justice Assistance). These elements are referenced throughout this guide for more information on various aspects of mental health court design, administration, and operations into which crime victims' rights could be incorporated. To view the entire publication, see <http://www.consensusproject.org/mhcp/essential.elements.pdf>.

Element 1—Planning and Administration: A broad-based group of stakeholders representing the criminal justice, mental health, substance abuse treatment, and related systems and the community guides the planning and administration of the court.

Element 2—Target Population: Eligibility criteria address public safety and consider a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses. Eligibility criteria also take into account the relationship between mental illness and a defendant's offenses, while allowing the individual circumstances of each case to be considered.

Element 3—Timely Identification and Linkage to Services: Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.

Element 4—Terms of Participation: Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualized to correspond to the level of risk that the defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.

Element 5—Informed Choice: Defendants fully understand the program requirements before agreeing to participate in a mental health court. They are provided legal counsel to inform this decision and subsequent decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant’s competency whenever they arise.

Element 6—Treatment Support and Services: Mental health courts connect participants to comprehensive and individualized treatment supports and services in the community. They strive to use—and increase the availability of—treatment and services that are evidence based.

Element 7—Confidentiality: Health and legal information should be shared in a way that protects potential participants’ confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants’ court-ordered treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.

Element 8—Court Team: A team of criminal justice and mental health staff and service and treatment providers receives special, ongoing training and helps mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.

Element 9—Monitoring Adherence to Court Requirements: Criminal justice and mental health staff collaboratively monitor participants’ adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants’ recovery.

Element 10—Sustainability: Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically (and procedures modified accordingly), court processes are institutionalized, and support for the court in the community is cultivated and expanded.

Appendix B

Methodology

THE COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER

received a grant from the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, to help state and local government officials better serve victims of crimes committed by individuals with mental illnesses, including those participating in mental health courts. This section describes the research that the Justice Center conducted between June 2006 and September 2007 to determine how mental health courts across the country currently engage victims and address challenges to involving victims; what policies and practices are used in other specialty courts, such as domestic violence courts, related to crime victims; and how these policies and practices could be adapted for the mental health court setting.

PLANNING MEETING

In June 2006, Justice Center staff convened a meeting with Trudy Gregorie, senior director, Justice Solutions, a D.C.-based nonprofit focused on victims' rights policies; Anne Seymour, senior advisor, Justice Solutions; and Carol Shapiro, founder and president, Family Justice, Inc., a national nonprofit organization that provides training and technical assistance related to the incorporation of strength-based, family-focused approaches to criminal justice practices and related health issues. During this meeting, participants devised a research strategy for the guide that included identifying examples of mental health courts and other specialty courts that had already implemented methods of incorporating crime victims into policy and practice.

COURT RESEARCH

In August 2006, the Justice Center released its third national survey of mental health courts, which was sent to hundreds of staff of mental health courts across the country. This survey included a number of questions related to crime victims, including the following:

23. In cases involving a crime victim, to what degree are victims involved in court processes? [select one]

- Victims are not involved in court processes
- Victims are notified when individuals enter the court program
- Victims are notified about a range of court events (e.g., admission, court proceedings, case disposition, etc.)
- Victims are notified about a range of court events and are allowed to participate in court processes (e.g., provide consent in order for individuals to enter the court program, attend or participate in court proceedings, provide input on an individual's terms of participation or sanctions, etc.)
- Victims are notified about victims' services available in the community
- Other

The Justice Center received 53 responses to this survey between August 15, 2006, and October 31, 2006.³⁷ Staff then reviewed these responses to identify courts that indicated some level of victim involvement. The majority of those surveyed, however, indicated that victims were not involved in court processes. With the assistance of consultants Trudy Gregorie, Anne Seymour, and Carol Shapiro, project staff developed a set of questions on the origins of victim involvement, court procedures to involve victims, and challenges and benefits of victim involvement, to guide interviews with those mental health court personnel who had indicated some level of victim involvement, as well as for interviews with specialty court staff. Project staff then interviewed court team members from

approximately nine mental health courts about these issues. These interviews yielded only minimal information, however, because in some cases victim involvement was limited to court staff seeking out victim input before an individual was accepted into the court.

Given the limited availability of information on what, if any, processes mental health courts across the country had implemented to engage victims, project staff refocused efforts on investigating processes and procedures to involve victims used by other specialty courts and programs, such as domestic violence courts and pretrial intervention programs. Staff examined these types of courts and programs because, like mental health courts, most employed elements of nontraditional case processing and some—such as domestic violence courts—had developed extensive resources, policies, and procedures to respond to the needs of crime victims. Project staff interviewed victim advocates, attorneys, and judges from three domestic violence courts, identified with assistance from expert consultants. Staff also reviewed extensive materials on domestic violence courts, particularly those involved in the Judicial Demonstration Oversight Initiative, to gather this information.*

Finally, staff conducted two site visits to the Brooklyn Mental Health Court and the St. Louis Mental Health Court to research procedures that mental health court teams had developed related to crime victims, as well as challenges some staff members of these courts had encountered in engaging victims.

MEETING WITH BUREAU OF JUSTICE ASSISTANCE MENTAL HEALTH COURT LEARNING SITES

To ensure that the guide accurately reflected the concerns and priorities of mental health court practitioners, Justice Center staff met with representatives from the Bureau of Justice Assistance (BJA) Mental Health Court Learning Sites in June 2007 to discuss current practices used in mental health courts to work with victims, and to

*The Judicial Demonstration Oversight Initiative was a five-year initiative begun in 1999 to support efforts in three jurisdictions to develop coordinated community responses to domestic violence, with a focus on efforts overseen by judiciaries. For more information on this initiative, see <http://www.ovw.usdoj.gov/jodi.htm>.

garner reactions to the organization and utility of the guide.* Various staff members from these sites—including Julie Clements, a pretrial services officer, Washoe County (Nev.) Mental Health Court; Eric Olson, court coordinator, Bonneville County (Idaho) Mental Health Court; and Charles Amrhein, clinical director, Bronx County (N.Y.) Mental Health Court—reviewed the complete draft of the guide. The feedback from all of these experts helped make the resulting guide more useful to the field.

*To facilitate peer-to-peer assistance among mental health courts, BJA designated five mental health courts as learning sites in 2006. Located across the country, these learning sites represent a diverse cross section of perspectives and court models. For more information on these sites, see <http://consensusproject.org/mhcp/info/mhc-learning-sites>.

Notes

1. According to a 2005 Justice Center survey, 56 percent of the representatives polled from 90 adult mental health courts reported that they took felonies in addition to misdemeanors on a case-by-case basis. *Mental Health Courts: A National Snapshot*, retrieved from <http://consensusproject.org/mhcp/info/mhresources/conf/mhconf2005> (accessed April 3, 2008).
2. Minimal data exist to measure how frequently mental health courts nationally are accepting cases involving violent crimes. However, staff from several courts interviewed for this guide indicated that they accept cases involving violent crimes, often only with the prior consent of the victim. *The Brooklyn Mental Health Court Evaluation* from the Center for Court Innovation (2006) also indicates that “the court opened with official criminal justice eligibility limited to nonviolent felony charges. Nonetheless, approximately 40 percent of each quarter’s referrals were *violent* felony offenders. As the court grew in experience and size, the stakeholders expanded from nonviolent felony charges to include violent felony charges on a case-by-case basis. As of June 2004, 39 percent of all enrolled participants were violent offenders” (Kelly O’Keefe, *The Brooklyn Mental Health Court Evaluation*, New York: Center for Court Innovation, 2006, p. v).
3. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington, D.C.: American Psychiatric Association, 2000).
4. Trudy Gregorie (senior director, Justice Solutions), personal communication with Hope Glassberg, February 2, 2007.
5. Free Dictionary, “Criminal court,” retrieved at <http://www.thefreedictionary.com/criminal+court> (accessed February 20, 2008).
6. National Center for Victims of Crime, “Criminal trial,” retrieved at <http://www.victimlaw.info/victimlaw> (accessed February 7, 2008).
7. Kristen Littell, “Specialized Courts and Domestic Violence,” *Issues of Democracy* 8 (2003), retrieved at <http://usinfo.state.gov/journals/itdhr/0503/ijde/littel.htm> (accessed September 20, 2006).

8. Tim Murray (executive director, Pretrial Justice Institute), e-mail message to Hope Glassberg, April 11, 2008.
9. “Pretrial Diversion from the Criminal Process,” *Yale Law Journal* 83 (1974): 827–854.
10. Trudy Gregorie, personal communication with Hope Glassberg, February 2, 2007.
11. National Center for Victims of Crime, “Victim Impact Statements,” retrieved at www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32515 (accessed February 20, 2008).
12. Henry J. Steadman, E. Mulvey, J. Monahan, P. Robbins, P. Applebaum, T. Grisso, L. Roth, and E. Silver, “Violence by People Discharged from Acute Psychiatric Inpatient Facilities and by Others in the Same Neighborhoods,” *Archives of General Psychiatry* 55 (1998): 393–401. Researchers identified individuals with serious mental illnesses, utilizing *DSM-IV* Axis I criteria, from among individuals within acute care facilities and then analyzed rates of violent behavior within this group.
13. For more information, see *Victims of Mentally Ill Offenders: Helping Family Caregivers and Strangers at Risk of Assault* (New York: New York University, Ehrenkranz School of Social Work, Institute against Violence, 2000).
14. Tina Bogart and Phyllis Solomon, “Procedures to Share Treatment Information among Mental Health Providers, Consumers, and Families,” *Psychiatric Services* 50 (1999): 1321–1325. This article describes ways in which some jurisdictions have dealt with information sharing between mental health providers and families of patients, with recommendations for the most effective methods of doing so. The authors report that in some cases, family and caregiver monitoring of a treatment plan can carry more weight with a participant and thus be more effective than formal court supervision. In addition, “Informal social controls exerted by family, peers, and community have been shown in some studies to have a more direct effect on offender behavior than formal controls, such as supervision or law enforcement,” according to the Council of State Governments, Re-entry Policy Council, *Report of the Re-entry Policy Council* (New York, Council of State Governments, 2005), 366.

15. V. A. Hiday, M. Swartz, J. Swanson, R. Borum, and H. R. Wagner, "Criminal Victimization of Persons with Severe Mental Illness," *Psychiatric Services* 50 (1999): 62–68.
16. A. Nyamathi, S. Wenzel, J. Lesser, J. Flaskerud, and B. Leake, "Comparison of Psychosocial and Behavioral Profiles of Victimized and Nonvictimized Homeless Women and Their Intimate Partners," *Research in Nursing and Health* 24 (2001): 324–335; L. A. Goodman, M. P. Salyers, K. T. Mueser, S. D. Rosenberg, M. Swartz, S. M. Essock, F. C. Osher, M. I. Butterfield, and J. Swanson, "Recent Victimization in Women and Men with Severe Mental Illness: Prevalence and Correlates," *Journal of Traumatic Stress* 14 (2001): 615–632.
17. John Petrila, *Dispelling the Myths about Information Sharing between the Mental Health and Criminal Justice Systems* (Washington, D.C.: CMHS National GAINS Center for Systemic Change for Justice-Involved People with Mental Illness, 2007), retrieved at http://gainscenter.samhsa.gov/text/integrated/Dispelling_Myths.asp (accessed April 3, 2008).
18. In rare circumstances, the consent requirement may be waived if the mental health court team and the presiding judge find good cause to allow the participant to take part in the TIP Court without the consent of the victim. Marci Raiber and Michelle Rock (program coordinators, Therapeutic Intervention Program, Rockford, Ill.), in discussion with Hope Glassberg, August 18, 2006.
19. Assistant Prosecutor David Kelly (Prosecutor's Office, Brooklyn, N.Y.), in discussion with Hope Glassberg, January 3, 2007.
20. *Ohio Revised Code*, Title 29, Chapter 2930.06 (Lawriter, 2006); *Mississippi Revised Code*, Title 99, Chapter 43.11 (Lexis-Nexis, 1998).
21. Vera Institute of Justice, *Pretrial Innovations: Supporting Safety and Case Integrity* (Washington, D.C.: U.S. Department of Justice, Office of Violence against Women, 2006).
22. Jeffrey Tauber, Susan Weinstein, and David Taube, *Federal Confidentiality Laws and How They Affect Drug Court Practitioners* (Alexandria, Va.: National Drug Court Institute, 1999), retrieved at <http://www.ndci.org/admin/docs/confid.pdf> (accessed April 2, 2008).
23. Jennifer Johnson (public defender, San Francisco Municipal Court), in discussion with Hope Glassberg, December 20, 2006; Kathleen Lacey, (program director, San Francisco Citywide Case

Management Forensics), e-mail message to Elizabeth Dodd, January 25, 2008.

24. Michelle Parker, "A Healing Impact," *MADDvocate* (Summer 2003), retrieved at <http://www.madd.org/getdoc/75b72b4f-62ea-49dd-b5eb-22cf48e19ff7/MADDvocate-A-Healing-Impact.aspx> (accessed April 3, 2008).
25. Danielle Basil Long (policy analyst, Director of State Courts Office, Milwaukee, Wis.), in discussion with Hope Glassberg, November 9, 2006.
26. *Ohio Revised Code*, Title 29, Chapter 2930.06 (Lawriter, 2006).
27. Judge Louraine Arkfeld (Tempe, Ariz., Municipal Court presiding judge), in discussion with Hope Glassberg, August 23, 2006.
28. For the text of the Arizona statute (AZ revised statute §13-4438), see <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/13/04438.htm&Title=13&DocType=ARS> (accessed April 3, 2008). For the text of the Connecticut statute (CT general statute §54-85g), see <http://www.cga.ct.gov/2005/pub/Chap961.htm#Sec54-85g.htm> (accessed April 3, 2008).
29. Steve Stiffelman (superintendent of community corrections, St. Louis County, Mo., Mental Health Court), in discussion with Hope Glassberg, February 20, 2007.
30. Judge Kevin Fitzwater (Bernalillo County, N.Mex., Mental Health Court presiding judge), in discussion with Hope Glassberg, August 23, 2006.
31. Kate Sumey (project coordinator, Anchorage, Alaska, Mental Health Court), in discussion with Hope Glassberg, September 19, 2006.
32. Liberty Aldrich and Robyn Mazur, "What Makes a Domestic Violence Court Work? Lessons from New York," *Judges' Journal* 2 (2003): 5-9, 41-42.
33. Kerry Healy, Christine Smith, and Chris O'Sullivan, *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, NCJ 168638 (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 1998), retrieved at <http://www.ncjrs.gov/pdffiles/168638.pdf> (accessed April 3, 2008).

34. Vera Institute of Justice, *Pretrial Innovations*.
35. Council of State Governments Justice Center, *Repaying Debts* (New York: Council of State Governments, 2007).
36. Rachel L. McLean and Michael D. Thompson, *A Guide to Mental Health Court Design and Implementation* (New York: Council of State Governments Justice Center, 2005).
37. At the time of the survey, according to a 2006 Council of State Governments publication, there were 125 known mental health courts operating throughout the nation (*Mental Health Courts: A National Snapshot*, New York: Council of State Governments, 2006).

**Council of State Governments
Justice Center**

100 Wall Street
20th Floor
New York, NY 10005
tel: 212-482-2320
fax: 212-482-2344

4630 Montgomery Avenue
Suite 650
Bethesda, MD 20814
tel: 301-760-2401
fax: 240-497-0568

504 W. 12th Street
Austin, TX 78701
tel: 512-482-8298
fax: 512-474-5011

www.justicecenter.csg.org