



Mental Health Courts in Ontario

A Review of the Initiation and Operation of Mental Health
Courts Across the Province

OCTOBER 2017

Acknowledgements

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We would also like to thank the Ministry of Attorney General and the Ministry of Health and Long-Term Care for their support.



Mental Health Courts Project Advisory Committee

We would like to express our gratitude to all of the members of the Mental Health Courts Project Advisory Committee for their advice and guidance throughout the project.

Nicole Adkin, ConnexOntario

Kashfia Alam, Human Services and Justice Coordinating Committee Secretariat

Uppala Chandrasekera, Canadian Mental Health Association, Ontario

Ryan Fritsch, Law Commission of Ontario

Chris Higgins, Ministry of Health and Long-Term Care

Seble Makonnen, Canadian Mental Health Association, Ontario and HSJCC Secretariat

Michele Murray-Smith, St. Leonard's Community Services London & Region

Crystal Sarault, Youth Services Bureau of Ottawa

Frank Sirotich, Canadian Mental Health Association, Toronto

Executive Summary

Mental health courts in Ontario are not specifically regulated in their operation. There is no existing ministerial mandate to determine where they should exist, and how they should operate. They have therefore been operating on an ad hoc basis. With increasing attention from many government bodies on the importance of addressing mental health issues, the Provincial Human Services and Justice Coordinating Committee (HSJCC), with support from the Canadian Mental Health Association Ontario (CMHA), initiated a project to examine the presence of designated mental health courts in Ontario. This project concluded with a Forum, jointly hosted by the Provincial HSJCC, CMHA Ontario and the Ministries of the Attorney General and Health and Long-Term Care, to facilitate a dialogue among a cross-section of stakeholders on mental health courts in Ontario.

This report will present the findings of the Provincial HSJCC Mental Health Courts Project and outcomes of the Forum. This report is the culmination of almost three years of input from various stakeholders and the collection of data from the mental health courts currently operating in Ontario. It is a cursory survey of how many designated mental health courts currently exist in Ontario, how they operate, and any similarities or differences that they may have.

Key findings of the Provincial HSJCC Mental Health Courts Project:

- All designated mental health courts have a date of initiation, when one or more stakeholders mobilized to create a separate space for addressing the needs of people with mental health issues in the criminal justice system.
- All designated mental health courts have designated days of operation, with regular frequency. This is one of the key defining features of designated mental health courts in Ontario.
- Most designated mental health courts have some form of eligibility criteria to determine which clients will be able to participate in the court's processes and programs.
- Designated legal staff (Crown, Judge, Duty Counsel) are often available in every mental health court ('designated' meaning trained or specifically assigned to that court), while designated Mental Health Court Support Staff are *always* available in every mental health court.
- Mental health diversion is one of the shared elements of designated mental health courts.

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Background

The members of the Provincial HSJCC determined a need for more availability of resources relating to mental health courts in Ontario. When this project was initiated in January 2014, there was a lack of cohesive information on the existence and operation of mental health courts in Ontario, due primarily to the fact that they are ad hoc courts that do not have a standardized process of operation across the province.

This project began with the intention of achieving the following objectives:

- To raise awareness and increase knowledge of specialized courts and mental health court support services available in Ontario.
- To build relationships and links between existing specialized courts and mental health court support services, as well as between Legal Aid Ontario (LAO) clinics and community mental health and addictions service providers across the province.
- To improve access to justice for clients with mental health and addictions issues, with a particular focus on low-income individuals, and Indigenous communities, by strengthening multidisciplinary teams and promoting the concept of ‘therapeutic jurisprudence.’

The second phase of this project was developed in March 2015. It narrowed the focus to an improved understanding of where mental health courts exist across the province and to providing a description of these courts - also referred to as community treatment courts or wellness courts. A key informant interview questionnaire was developed to capture the details of each court’s composition and operating practices.

The purpose of this phase of the project was:

- To provide a comprehensive snapshot of mental health courts currently operating in Ontario.
- To ascertain what similarities and differences may exist in their operation.
- To establish a network among mental health court professionals to facilitate communication and share best practices, with a view to improving the quality of service provided to the client population.

Methodology

Project Advisory Group

The Provincial HSJCC established a working group to inform and guide the project deliverables.

Key Informant Interview Questionnaire

The questionnaire was drafted with input from the Advisory Group. In its aim to capture the composition and operating practices of the courts, the questionnaire was divided into the following categories:

- 1) Identifying information – court name, location, year of establishment, etc.
- 2) General Information – how often does the court sit and for how long, what types of proceedings are included, etc.
- 3) The Eligibility Process – referral process, how eligibility is determined, etc.
- 4) The Pre-Court Process – pre-court meetings; who attends, purpose, frequency, etc.
- 5) Court Resources – designated staff (Crown, Duty Counsel, Judge, Psychiatrist, Mental Health Court Support Worker), available technology, specific funding, etc.
- 6) Diversion – how are diversion plans developed and by whom, rewards and sanctions used, etc.

The questionnaires were conducted by telephone interview, with two representatives from each court in most cases. In the majority of cases, there was one Assistant Crown Attorney and one representative from the court's mental health support office. In some cases, only one person was interviewed, which was either an Assistant Crown, Judge, or Executive Director of a local CMHA branch that provides mental health court support services to the court.

Selection Process

The project leads consulted the Ministry of the Attorney General's Mental Health and Justice Survey (August 2015) and after some analysis confirmed that only 22 courts in the province were administering dedicated mental health courts. This number was further reduced to 19 after conducting key informant interviews and discovering that three of those courts in fact did not have dedicated mental health courts despite having mental health court supports available, or were no longer operating after having done so in the past. The selection process was determined by including courts that had a designated court room with a Judge presiding, sitting on a specified day and time, on a regular basis, with the specific purpose of addressing clients with mental health issues. A final list of the mental health courts is provided in Appendix II.

Key Findings

Overview

Mental Health Courts in Ontario have an informally shared mandate to address the needs of people with mental health issues entering the criminal justice system. Each court surveyed described a general intention to effectively address this client population and divert them out of the regular criminal justice stream as often as possible. Even when dealing with serious charges or other challenges, mental health courts across Ontario endeavour to provide the necessary medical and community supports for this client population, aiming to reduce recidivism and improve the wellbeing of each individual as well as society. Whether diversion is applied or whether a conviction is registered, the mental health courts all expressed an interest in making sure that each client received access to the appropriate services for their needs. This is integral to their efforts in seeing that this vulnerable client population does not languish unnecessarily in the criminal justice system and with the hope that once they have been helped they do not return.

All of the courts surveyed reported mostly favourable outcomes for clients such as withdrawal of charges following completion of a diversion program, or other non-custodial dispositions. The goal is often to find more productive outcomes for a client which can sometimes include finding creative solutions to individual issues. The key objectives stated for these courts included: reducing recidivism, improving the health and general well-being of clients, improving community safety, improving access to quality community services and supports, and offering diversion when possible.

General Information

Assistant Crown Attorneys were most often involved in initiating the creation of mental health courts, 68% of the time. Judges and Mental Health Court Workers were both reported to have done so 37% of the time, followed by Defence Counsel at 21%. There was often more than one person listed in this response (Fig 1).

Who initiated the creation of the mental health court?

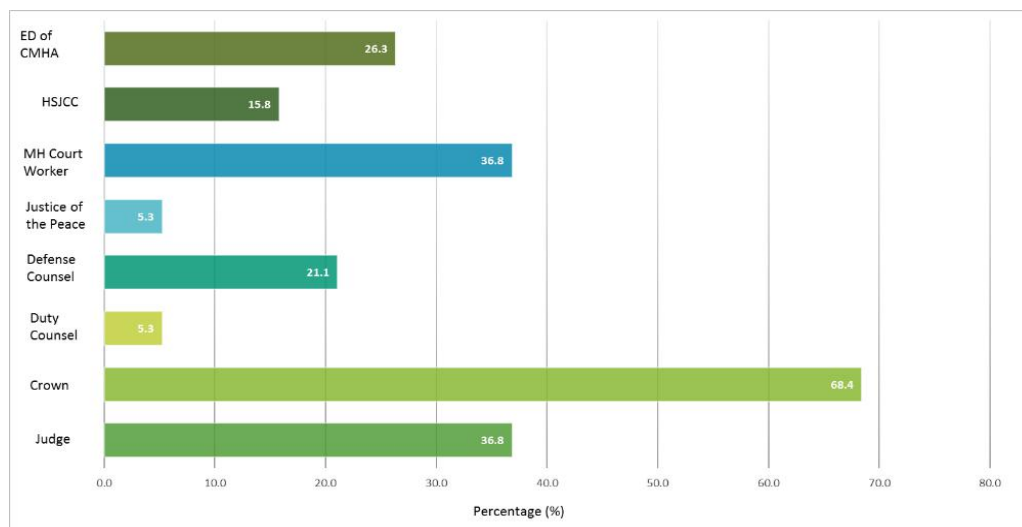


Figure 1

Proceedings most commonly dealt with are diversion, guilty pleas and sentencing hearings. Many courts also do fitness and NCR (not criminally responsible on account of mental disorder – s.672.34 of the Criminal Code of Canada) hearings, as well as treatment orders and consent bail hearings (when the Crown is consenting to the release on bail). Contested bail hearings (when the Crown is not consenting and a full hearing is required) are rarely dealt with in mental health courts.

Half of the courts surveyed reported sitting twice a month. 15% sit weekly and another 15% sit once a month. The remaining courts were outliers in their frequency: Peel court: twice a week; Ottawa court: three times per week; and Old City Hall court in Toronto sitting five days a week, full time.

Eligibility Process

The referral process can vary in terms of where it originates, but the Mental Health Court Support Worker (or other designated staff) is ultimately responsible in most courts for processing referrals. Mental health screening tools are used by many mental health court support organizations to assist with determining eligibility into the court. There is a team approach applied to the eligibility process in almost all of the courts, whether or not there is a firm protocol on sequence of screening performed (mental health court support first, then Crown, etc.).

The Crown and the Mental Health Court Support Worker (or other designated Mental Health Court Support Staff) are primarily responsible for determining eligibility into mental health courts. 68.4% of courts answered that a Mental Health Court Support Worker was involved in this process, and 94.7% answered that a Crown was. Other stakeholders such as Duty Counsel (21.1%) and Psychiatrists (10.5%) can also play a role, although not consistently (Fig 2). Most of the courts answered that the Crown makes the final decision on eligibility.

Who is involved in assessing eligibility into this Mental Health Court?

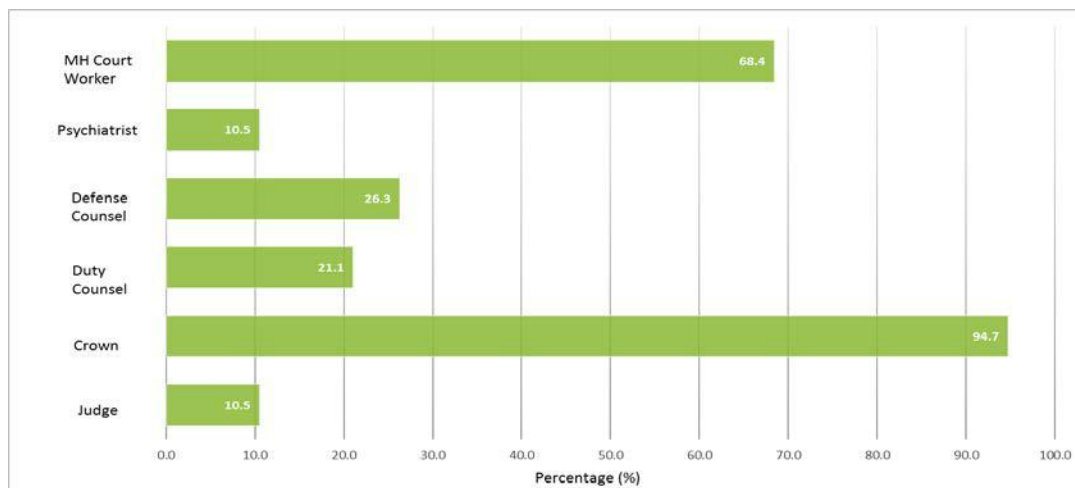


Figure 2

The only court that reported not having any formal or final screening processes to gain entry into their court was Windsor's "672 Court." In this court, the presiding Judge will perform a type of screening when determining whether to apply mitigating mental health factors to an individual's case. This speaks only to general eligibility into the court and not the determination of entry into diversion programs.

Most courts require that there be some nexus between the client's mental health issue and the offence in order to gain entry into the court (68.4%). Almost all of the courts require that the client be willing to participate and treated if necessary. Old City Hall's 102 court in Toronto was one of the only courts not to list this as a requirement. This court often receives very ill clients that other courts may have difficulty dealing with, which means that the client's willingness is not a factor in receiving the specialized services of the court (Fig 3).

Are any of the following criteria mandatory requirements for eligibility into this MH court?

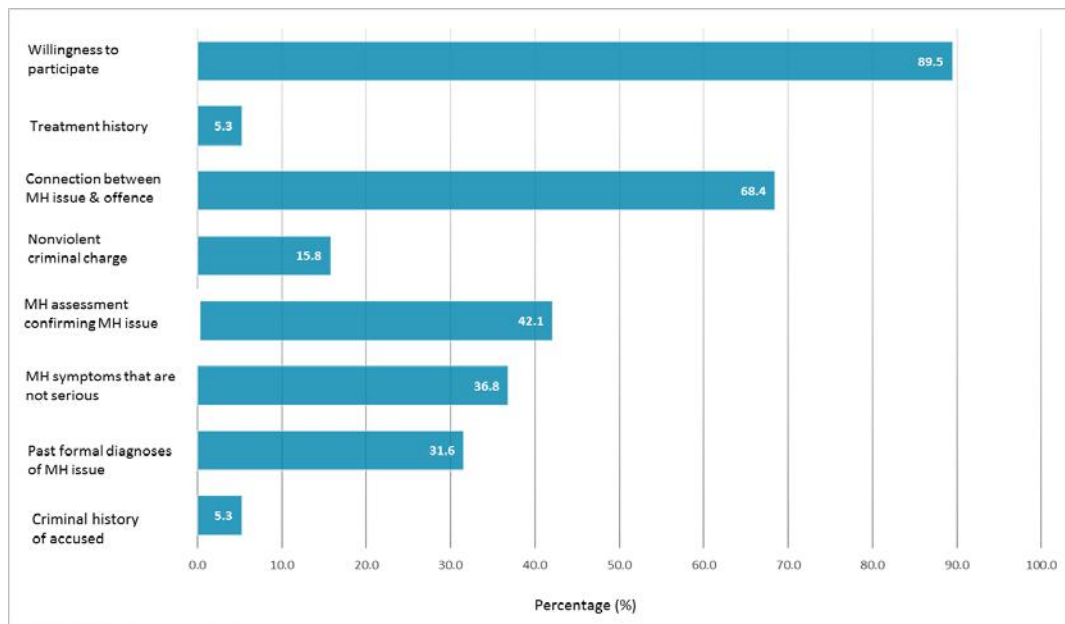


Figure 3

While most courts did not have firm policies on excluding serious offences, most would not service clients with class 3 offences¹ (57.9%). Discretion is applied on a case-by-case basis according to most courts, taking into account the facts presented in relation to the offence, as well as information regarding the client and their specific mental health issues (Fig 4).

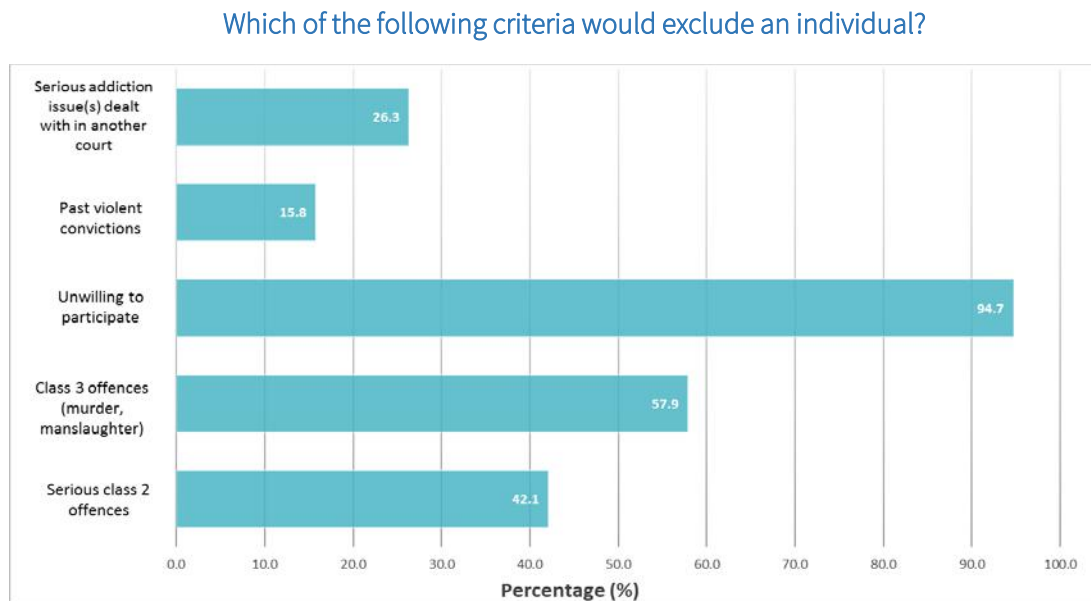


Figure 4

¹ According to the Ministry of the Attorney General's diversion policy and practice memorandum for individuals with mental disorders and developmental disabilities, Class I offences are presumptively eligible for diversion, Class II offences are eligible at the discretion of the Crown Attorney, and Class III offences are not eligible for diversion, treatment plans or supervisory programs as an alternative to prosecution.

Pre-court Process

The majority of courts (73.7%) always have pre-court meetings, usually to discuss the progress and care of existing clients, and to consult on eligibility and diversion plans for new clients. They also serve as a useful time to discuss how best to manage complex cases as a team. The Crown and the Mental Health Court Support Worker always attend these meetings, and are often joined by Duty Counsel (73.7% of the time) and Defence Counsel (78.9%) (Fig 5).

Who typically attends these meetings?

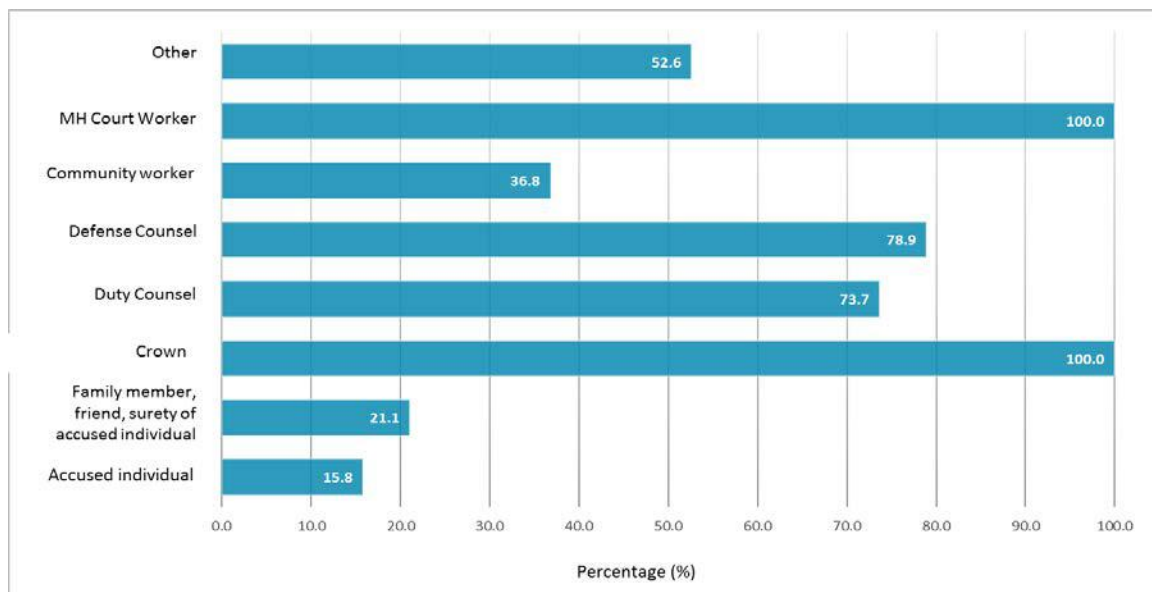


Figure 5

Court Resources

While 94.7% of the courts surveyed always have a designated Crown, there is not always a designated Judge (42.1%). There is always a designated Duty Counsel in 42.1% of the mental health courts surveyed (Fig 6). Designated meaning specifically assigned to that court, perhaps with special training.

Is there a designated Crown experienced in mental health cases available in your Mental Health Court?

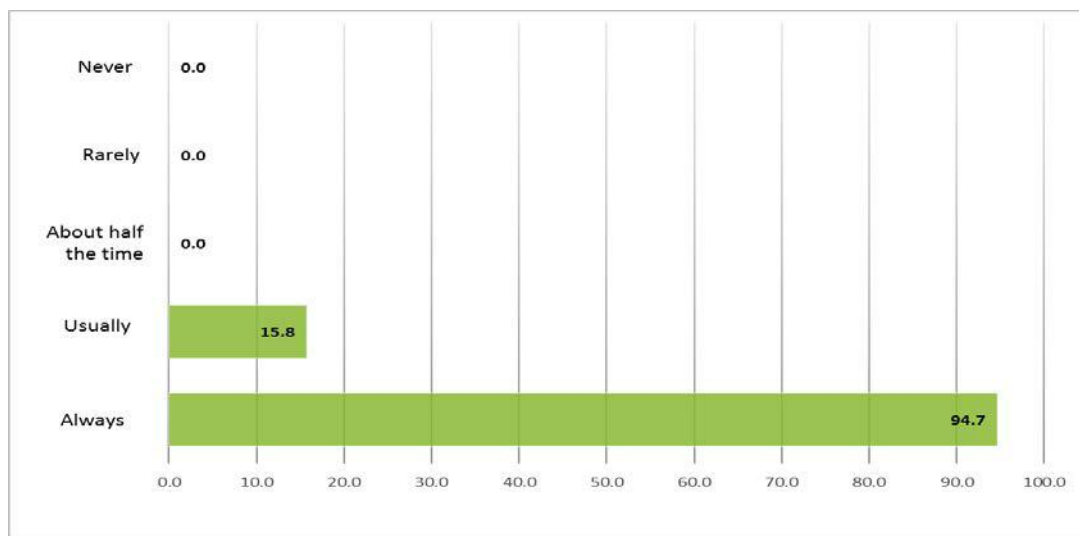


Figure 6

74% of courts do not have a Psychiatrist in regular attendance. Of the 26% that do, it corresponds to the day and time that their respective courts operate.

Most courts (63%) do not use technology. The remainder use some forms of technology for specific purposes, such as video link used for fitness assessments when a psychiatrist is not available in person. The Kenora court uses Ontario Telemedicine Network (OTN) for intake and assessment for Indigenous communities, to avoid removing individuals from their communities unnecessarily. OTN is also used when a client has been removed from their community, to connect them to family members and facilitate visits, or to discuss their case with community service providers (medical, mental health, addictions, etc.).

None of the courts surveyed reported receiving any designated funding specifically for court operations.

Diversion

Mental Health Court Support Workers were reported 100% of the time as responsible for developing the diversion plans. The Crown was noted 68% of the time, followed by the client (58%), and family members or supportive friend(s) of the client (42%) (Fig 7).

Who develops the mental health diversion plan?

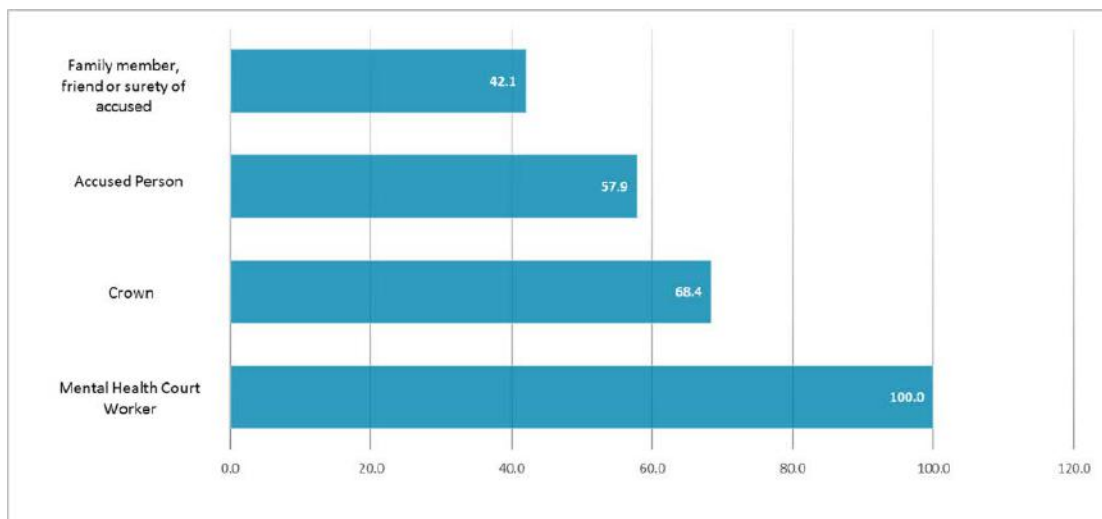


Figure 7

In most courts, the Mental Health Court Support Worker performs the initial screening and then develops the plan with input from the client as well as other service providers if needed. In some cases, the Crown may be engaged during the development of the plan, or only at completion for the purpose of review or feedback on specific elements.

Most courts employ a flexible schedule in determining how often a client shall attend court throughout the process. This is based primarily on the client's progress, taking in to account other needs, and goals of the plan (Fig 8).

How often are individuals in mental health diversion required to attend court?

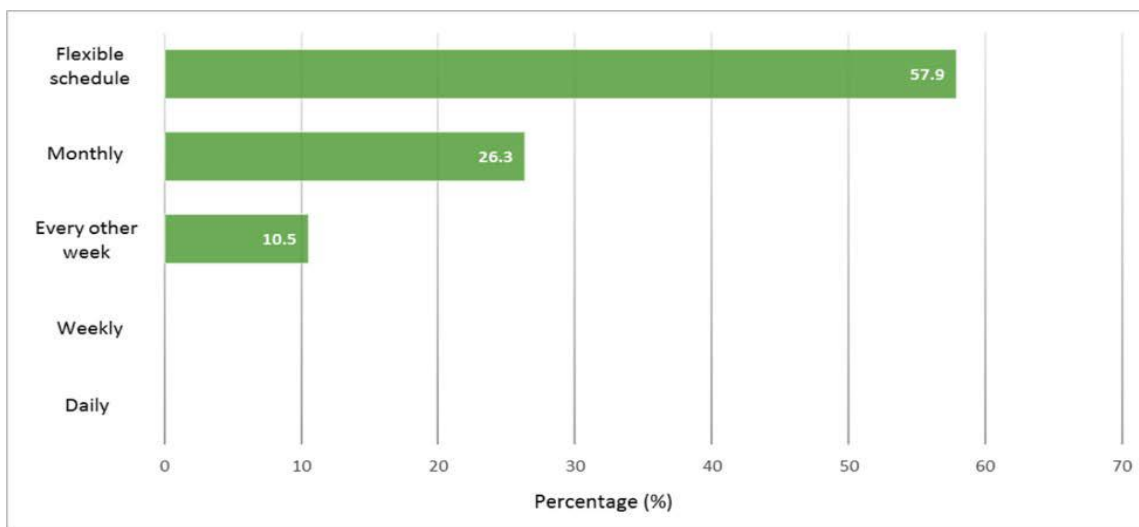


Figure 8

The most common reasons cited for clients opting out of diversion plans include: lack of insight into their mental health issue, wanting to take their case to trial, or feeling that the diversion process is too onerous and would take too long. Many courts noted, however, that this was very rare and could only recall a handful of clients opting out of diversion. Reasons for not completing a diversion program included: uncooperative/non-compliant with treatment plan, not complying with medication regimen, relocated or otherwise stopped appearing.

Rewards used most often include: certificate of completion, gift cards, praise from the Judge and Crown. Sanctions include: expulsion from diversion program or diversion revoked and charges not withdrawn.

Summary of Key Features/Characteristics of Mental Health Courts

Most mental health courts in Ontario operate in a very similar fashion, with shared values and goals in serving their client populations. Eligibility criteria, screening methods, and effective communication between all participating stakeholders, from Crowns to Mental Health Court Workers to Defence Counsel to court officers, are the most notable shared characteristics of these courts. When operating with the shared goal of helping vulnerable clients with mental health issues navigate and exit the criminal justice system, there appears to be a high level of cooperation among stakeholders and resulting success for clients involved. This speaks to a common recognition among justice professionals that a more holistic and therapeutic approach should be pursued in addressing the needs of people with mental health issues in the criminal justice system.

The following were found to be defining features of mental health courts in Ontario:

1. Initiation of the mental health court

Although these courts are struck on an ad hoc basis within existing criminal courthouses, they are recognized as distinct operations from the traditional court stream.

2. Fixed Schedule

All of the courts surveyed were found to operate on a fixed schedule with varying degrees of frequency. A fixed schedule, separate and distinct from any traditional criminal court operation, was a determining factor in establishing the existence of a mental health court. Having a fixed schedule ensures that every mental health court in Ontario is specifically dedicated to addressing the needs of persons with mental health and addictions concerns in addition to criminal charges before the court.

3. Eligibility Criteria

All of the courts surveyed had at least one eligibility requirement, indicating that these are specialized courts and not conventional criminal courts. Even if the eligibility criteria rested solely on the individual's choice and willingness to be in that court, it is a distinguishing factor from mainstream courts.

4. Designated Staff

The presence of legal, medical, and mental health support staff in these courts contributes to defining the specific intent of mental health courts. All of the stakeholders (Crown, Judge, Duty Counsel, and Mental Health Court Support Workers especially) provide the court's structure and carry out its intended purpose.

5. Common Purpose

Common purposes include: care for the individual and their health, easing the administrative burden on the criminal justice system, reducing recidivism by properly addressing mental health issues and connecting the client to appropriate community services, and achieving the most ideal outcomes, particularly in avoiding custodial dispositions upon sentencing.

Challenges Faced by Mental Health Courts

A lack of dedicated funding was the main challenge faced by all of the mental health courts surveyed. None of the courts receives dedicated funding and are thereby operating on existing resources, and on the initiative of a small core group of stakeholders. While this model has achieved great success across the province, more can be done to ensure that a lack of resources does not hinder future progress.

The lack of availability of a Psychiatrist was also listed as a common challenge, which relates to a lack of dedicated resources.

Mental Health Courts Forum

Together with the Canadian Mental Health Association Ontario, the Ministries of the Attorney General and Health and Long-Term Care, the Provincial HSJCC hosted a Forum on April 24, 2017 to gather the key informants interviewed for the Mental Health Courts Project, along with other justice sector stakeholders, and members of mental health and addictions court support networks, to discuss the project findings (see Forum agenda in Appendix III).

The Forum also presented an opportunity for these groups to develop more a formal network of mental health court providers in the province and share best practices of current models. Almost 100 individual stakeholders attended, representing many jurisdictions across Ontario, from a variety of agencies and organizations such as: Crown Attorneys, Duty Counsel, Defense Counsel, Judges, Mental Health Court Support Workers and members of the HSJCCs across the province.

A graphic artist from ThinkLink Graphics was present and visually recorded all of the presentations and discussions throughout the day (see Appendix IV).

Forum Evaluations

Participants were asked to fill out evaluation forms and the following feedback was noted:

Most participants enjoyed attending the Mental Health Courts Forum and felt it was informative. There was a consensus that the Forum provided content and discussion that was useful to strengthening Mental Health Courts in each region. There was one comment noting that service providers from more isolated regions (e.g. a sole Mental Health Court Worker) especially benefit from this type of Forum as a valuable opportunity to connect with peers and stakeholders.

Most participants felt that more deliberate and dedicated networking time was needed to facilitate relationship building and information sharing among stakeholders present. One participant felt that the Forum was “preaching to the converted”, and that it would have been more useful to have small group discussions to generate ideas and share information across jurisdictions.

Many participants commented that such a Forum should be held regularly, either annually or semi-annually. There was also a suggestion to address issues facing clients in custody with severe mental health issues who do not make it into Mental Health Courts.

Group Discussion Questions:

The following three questions were posed to groups seated at each table, and themes emerged during the group discussions.

- 1) What are the strengths of Mental Health Courts in Ontario? What is working?
- 2) What are the gaps and barriers? What is *not* working?
- 3) What are the next steps in improving Mental Health Courts in Ontario?

1) Noted Strengths of Mental Health Courts in Ontario:

- Consistency of having a designated Crown, Duty Counsel and Judge
- Flexibility in approach within each court
- Collaboration among stakeholders – the importance of information sharing
- Individualized and specialized mental health services for clients
- A less formal setting allows for more creativity in therapeutic approaches and results in better outcomes
- Reducing criminalization of clients and aiming to reduce recidivism – getting and keeping clients out of jail
- Addition of Aboriginal court worker
- Other stakeholders that will visit clients in custody
- Consistency maintained when all referrals are coming through one agency, such as CMHA

2) Noted Gaps and Barriers:

- Lack of resource consistency across the Local Health Integration Networks (LHIN) and regions
- Inconsistency in application of Crown Policy Manual and inflexible guidelines with respect to screening and diversion
- Lack of consistency in how mental health courts apply the law and ministry guidelines – no unified training for stakeholders or established best practices
- Lack of stable housing/shelter options for clients who require it
- Wait lists for community-based mental health and other social services are long and impractical given court timelines
- Lack of psychiatric services – impacts when a diagnosis is required for acceptance into the courts
- Lack of pre-charge diversion
- Legal professionals may use Mental Health Court inappropriately

3) Next Steps Identified:

- More training and education for all stakeholders, including Judges – creating a community of practice
- Better integration between community-based services and Mental Health Courts
- Expanding care and support for seniors (e.g. for people with dementia, Alzheimer's)
- Adopt best practice guidelines that are flexible depending on community needs
- Greater access to psychiatric assessment and treatment services, including follow-up care after discharge
- Increased funding for pre-charge diversion, including police education – to reduce the need for Mental Health Courts
- Using restorative justice methods more frequently – include the client voice, for example in surveying past participants

Appendices

Appendix I: Overview of Mental Health Court Questionnaire

Identifying Features

- Court name
- Year it was established
- How often does the court sit and for how long?
- What are the main goals of the court?

Eligibility and other processes

- What is the eligibility criteria for acceptance into this mental health court?
- What is the custody status of clients (in/out of correctional custody, form of release)?
- Who primarily makes referrals?
- Who (if anyone) screens clients in or out?
- Are there regular pre-court meetings? If so, who attends and what is the main purpose?

Resources

- Is there any dedicated funding for this court?
- Is there a Psychiatrist available to this court? If so, how often do they attend?
- Does the court use any technology such as video link?

Post-Court

- What does the follow-up or reporting process look like?
- What are the most common outcomes?

Appendix II: Mental Health Courts in Ontario

Location	Name of Court	Year Established
Barrie	Barrie & Orillia Mental Health Courts	2012
Belleville/Hastings	Belleville Community Treatment Court	2007
Burlington	Burlington Community Treatment Court	2012
Kawartha Lakes	City of Kawartha Lakes Community Court	2010
Kenora	Kenora Mental Health Court	2010
London	Adult Therapeutic Court	1997
Newmarket	The Community Treatment Court	2001
Ottawa	Ottawa Mental Health Court	2005
Owen Sound	Owen Sound Courthouse	2004
Oxford (Woodstock)	Woodstock Community Treatment Court	2014
Peel	Alternative Resolution Court (ARC)	1999
Peterborough	Peterborough Community Support Court	2012
Sault St. Marie	Sault Community Court	2010
St. Catharines	Robert S.K Welch Court	n/a
Sudbury	Sudbury Community Wellness Court	2014
Toronto	102 Court, Old City Hall	1998
Walkerton (county of Bruce)	The 672 Court	2011
Waterloo	Region of Waterloo Courthouse	2005
Windsor	672 Therapeutic Court	2006
Total: 19		

***NB:** Following the Mental Health Court Forum, it was brought to our attention that St. Catharines does not in fact have a dedicated mental health court. The specialized court operates primarily as a drug treatment court, also serving clients with mental health issues. We have since learned that the stakeholders in St. Catharines/Niagara are currently engaged in efforts to initiate a dedicated mental health court. This is an example of the diversity and nuances of specialty courts in Ontario and variability in definitions.

Appendix III: Mental Health Courts Forum Agenda

Mental Health Courts Forum Agenda
 April 24, 2017
 Chestnut Residence and Conference Centre

Item	Time	Presenter
Registration & Breakfast	9:30-10:30am	
Welcome & Introduction	10:30-10:40am	Joan Barrett & Uppala Chandrasekera
Guest Speaker I	10:40-10:55am	James Cornish
Guest Speaker II	10:55-11:10am	Shelly Schneider
Overview of Mental Health Courts in Ontario	11:10am-12:00pm	Seble Makonnen & Kashfia Alam
Lunch	12:00-12:30pm	
Introduce Moderator	12:30-12:40pm	Joan Barrett
Panel Discussion	12:40-2:10pm	Moderator Chris Higgins Panelists Justice Kathy Caldwell Patrick Moeller Shirley Gilpin Jessica Gilbertson Jocelyne Boissonneault
Break	2:10-2:25pm	
Group Discussion	2:25-3:15pm	Everyone
Closing	3:15-3:30pm	Joan Barrett & Uppala Chandrasekera



Appendix IV: Graphic Recordings of the Mental Health Courts Forum



MENTAL HEALTH COURTS FORUM—APRIL 24 TH, 2017





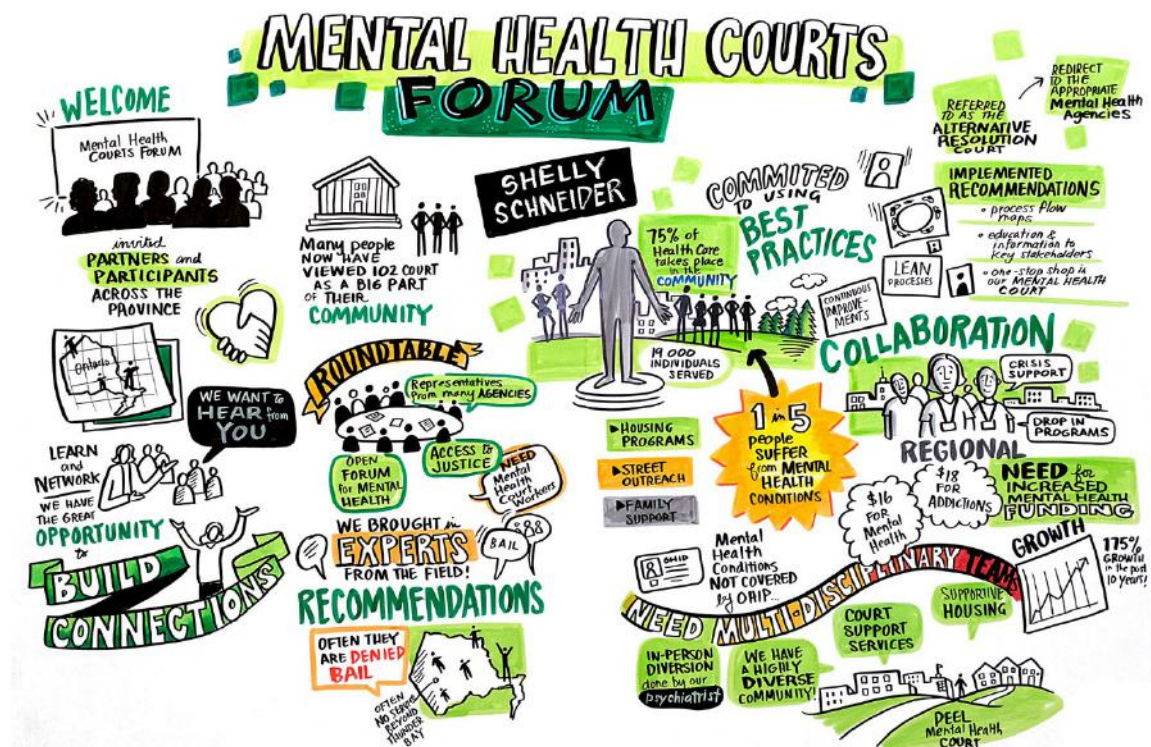
MENTAL HEALTH COURTS FORUM—APRIL 24TH, 2017





MENTAL HEALTH COURTS FORUM—APRIL 24 TH. 2017





MENTAL HEALTH COURTS FORUM—APRIL 24TH, 2017

