

## MENTAL HEALTH COURT COMPLETION

### Examining Mental Health Court Completion: A Focal Concerns Perspective

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## MENTAL HEALTH COURT COMPLETION

### Abstract

Sociologists have long-raised concern about disparate treatment in the justice system. Focal concerns has become the dominant perspective in explaining these disparities in legal processing decisions. Despite the growth of problem-solving courts, little research has examined how this perspective operates in non-traditional court settings. This paper used a mixed-method approach to examine focal concerns in a mental health court. Observational findings indicate that gender and length of time in court influence the court's contextualization of noncompliance. While discussions of race were absent in observational data, competing-risk survival analysis finds that gender and race interact to predict mental health court termination.

## MENTAL HEALTH COURT COMPLETION

### INTRODUCTION

Problem-solving courts, also called specialty courts, are an alternative to traditional criminal court processing. These courts divert offenders out of the criminal justice system and link them with treatment, services and other community alternatives designed to alter the underlying problems associated with their criminal behavior (Miller and Johnson 2009; Porter, Rempel, and Mansky 2010; Castellano 2011a). Rather than emphasizing punishment, problem-solving courts focus on ways to reduce future criminal offending by using the authority of the court to hold an offender accountable for actions while also offering incentives that encourage positive changes in the offender's life.

The present analysis relies on Steffensmeier, Ulmer, and Kramer (1998) focal concerns perspective<sup>1</sup> to examine decisions about noncompliance and termination from a problem-solving mental health court (MHC). This framework has become the dominant perspective in explaining judicial decision-making in criminal court settings. The focal concerns framework posits that court actor's decisions are based on three concerns: (1) the defendant's blameworthiness, (2) the need to protect the community from dangerous offenders and (3) the practical constraints and consequences of the legal decision. However, because court actors encounter time and information constraints, they do not have full knowledge about defendants' blameworthiness, dangerousness or complete information about the consequences of their sentencing decisions. As such, when making sentencing decisions, court officials often rely on stereotypes associated with the offender's demographic characteristics, including the defendant's age, race and gender, thus legal decisions vary consistently and significantly by extra-legal factors (Albonetti 1991; Spohn and Holleran 2001; Steffensmeier et al. 1998; Steffensmeier and Demuth 2001; Steffensmeier, Kramer, and Streifel 1993; Ulmer and Johnson 2004).

## MENTAL HEALTH COURT COMPLETION

Examinations of focal concerns generally focus on investigating traditional criminal court settings (see Harris 2008, 2009 for exceptions). Given the unique organization of problem-solving courts we investigate the extent to which focal concerns vary in emphasis and interpretation to influence decision-making in this court context (Ulmer, Bader, and Gault 2008; Ulmer and Johnson 2004). The research presented in this paper employs a mixed-methods approach. First, we observed MHC team meetings for 12 months to examine how focal concerns were used when determining noncompliance and in decisions to terminate defendants from the process. We then used these observations to inform our competing-risk statistical analysis to predict termination from MHC. Below we review the extant literature on MHC completion and focal concerns perspective before presenting our findings.

### **Research on Mental Health Courts**

The MHC is a problem-solving court that diverts mentally ill offenders out of the cycle of arrest, incarceration, release and re-arrest by connecting them with treatment and services (Steadman et al. 2009; Watson and Angell 2007). Since the late 1990s, the number of MHCs in the United States has grown tremendously, with over 300 courts in operation today (Council of State Governments Justice Center 2011). The MHC maintains a separate docket and MHC officials select which cases are accepted (Wolff, Fabrikant, and Belenko 2011). Defendants accepted into the court must agree to follow a treatment regimen and be monitored by the court's personnel.<sup>2</sup> In exchange, the defendants may be required to plea to their charges or their criminal charges are held in abeyance depending on whether the court follows a post plea or pre plea model. If they successfully complete the program, the charges are dismissed or reduced.

## MENTAL HEALTH COURT COMPLETION

Participation in MHC is voluntary and the defendant can opt out at any time and return to traditional criminal court for adjudication.

Like most problem-solving courts, the MHC uses case management and enhanced judicial supervision to monitor defendant's progress (Porter, Rempel, and Mansky 2010). Case management is part of a team process whereby judges, probation officers, social workers, community corrections, treatment service professionals and other justice system partners work together to develop treatment plans for each defendant. These treatment plans might include requirements such as attending a treatment program, meeting with a mental health professional, submitting to drug screenings, complying with medication requirements, or offering some form of restitution. The defendants are required to comply with the treatment plan for a designated period of time and attend court hearings. The MHC team meets regularly to make decisions about the eligibility of new participants, develop and modify treatment plans, and discuss participant's progress or lack thereof.

MHC proceedings are different than those in traditional criminal court proceedings (Frailing 2010; Ray, Dollar, and Thames 2011; Wales, Hiday, and Ray 2010). These courts are based on the principles of therapeutic jurisprudence, which suggests that the law can have a positive psychological outcome for offenders when it is used to encourage meaningful and positive changes (Wexler and Winick 1991). During MHC proceedings the judge interacts directly with the defendant, fosters personal relationships, offers words of encouragement or disapproval, or gives the defendant an opportunity to voice personal or legal situations they may be facing (Ray et al. 2011). If the defendant completes the process, s/he takes part in a graduation ceremony where the court publically congratulates her or him and dismisses or reduces any outstanding criminal charges. However, not everyone completes the process. If a defendant is

## MENTAL HEALTH COURT COMPLETION

noncompliant, then s/he is terminated from the MHC process and the defendant's charges are returned to traditional court for processing.

Evaluations of MHC participation conclude that defendants have fewer charges while under court supervision (Broner, Lang, and Behler 2009; Cosden et al. 2003; Hiday et al. 2005; McNiel and Binder 2007; Moore and Hiday 2006; O'Keefe 2006), and this trend continues once they exit the court (Dirks-Linhorst and Linhorst 2012; Herinckx et al. 2005; Hiday and Ray 2010; McNiel and Binder 2007; Moore and Hiday 2006). While the evidence suggests MHCs are reducing recidivism, it is less clear what factors are attributed to their success. Evaluation studies find that completing the MHC process is one of the most salient predictors of criminal desistance (Dirks-Linhorst and Linhorst 2012; Herinckx et al. 2005; Hiday and Ray 2010; McNiel and Binder 2007). Given this finding, it is important to explore the factors associated with completion. The authors are aware of only two studies that have done so.

A study by Redlich and colleagues (2010) analyzed data from over 400 MHC defendants from four different courts to examine which factors are associated with completion. Rates of completion varied significantly across the four different courts (from 31 percent to 81 percent) and across the entire sample whites and females were significantly more likely to complete the MHC process. However, once these measures were added to a regression analysis that included measures of compliance, judicial supervision, diagnosis and offense severity the authors found no significant differences by race or gender. In their analysis, higher compliance and lower supervision were associated with a greater likelihood of completion. Compliance was measured using MHC team members responses to a brief instrument that asked them to rate compliance, while judicial supervision was a ratio of the number of court hearings to the number of days in

## MENTAL HEALTH COURT COMPLETION

court. In a separate analysis predicting compliance, they found that being white was positively associated with being deemed compliant (Redlich et al. 2010).

The second study by Dirks-Linhorst and colleagues (2011) examined MHC termination using data from more than 600 defendants, over an eight-year period. These data included offender characteristics, noncompliant behaviors during MHC supervision, clinical variables, and legal variables on the arrest being handled in MHC. They found that after controlling for legal and clinical variables, racial minorities were more likely to be terminated and that time under court supervision, which was measured as the number of scheduled court appearances, was negatively related to termination (Dirks-Linhorst et al. 2011).

Both studies conclude that MHC outcomes vary by offender characteristics. Redlich et al. (2010) found that the court personnel were more likely to consider whites as compliant with the courts' orders, and Dirks-Linhorst et al. (2011) found that racial minorities were more likely to be terminated from MHC after controlling for a host of factors. Unfortunately, both of these studies are atheoretical and offer no explanation as to why demographic characteristics might be associated with outcomes.

### **Focal Concerns Perspective**

The focal concerns perspective as articulated by Steffensmeier and colleagues has become the dominant perspective in explaining judicial decision-making in traditional criminal court settings (Harris 2008; Hartley et al. 2007; Spohn and Holleran 2001; Steffensmeier and Demuth 2001, 2006; Steffensmeier et al. 1998; Ulmer and Johnson 2004). The perspective posits that judicial decisions reflect three primary concerns: offender blameworthiness, the court's desire to protect the community from dangerous offenders, and the court's concerns about the

## MENTAL HEALTH COURT COMPLETION

implications of judicial decisions, including the court's financial cost of case processing, the court's reputation of case handling and the social costs that decisions have on the defendant's life and family (Steffensmeier et al. 1998). These focal concerns may be captured in legally relevant factors such as the defendant's role in the crime, the severity of the offense, prior criminal or victimization history, or available correctional resources (Steffensmeier and Demuth 2001). The focal concerns perspective further appreciates that judicial decision makers rarely have full information about each focal concern; therefore, court personnel make decisions based on limited information about the offender's actual culpability, potential dangerousness, or consequences of decision (Albonetti 1991; Steffensmeier et al. 1998).

Given this uncertainty in the decision-making process, which is arguably exacerbated due to large caseloads, court personnel create "perceptual shorthand" to guide them in their decision-making processes (Steffensmeier et al. 1998:767). Perceptual shorthand involves attributing meaning to the offender's criminal behavior and explains the mechanism by which focal concerns produce disparities in case outcomes (Albonetti 1991; Farrell and Holmes 1991; Hawkins 1981; Steffensmeier et al. 1998). The meaning assigned relies largely on stereotypes associated with the defendant's demographic characteristics, including the age, race and sex of the offender. Defendants who have characteristics that are stereotypically defined as blameworthy, dangerous and having weak ties to other people and institutions (i.e., children, family, work) are expected to receive harsher punishment. As a result, status-based attributions are embedded in adjudication decisions (Ulmer and Johnson 2004).

Research examining components of the focal concerns perspective have been generally supportive. Studies have found that court personnel's perceptions of offender culpability (Albonetti 1991), offender dangerousness (Bridges, Crutchfield, and Simpson 1987; Bridges and



## MENTAL HEALTH COURT COMPLETION

Steen 1998; Daly 1994; Harris 2008; Kramer and Ulmer 2002; Spohn, Beichner, and Davis-Frenzel 2001; Ulmer and Johnson 2004), rehabilitative potential (Bowker, Chesney-Lind, and Pollock 1978), and perceived consequences for offenders (Daly 1987; Peterson and Hagan 1984; Steffensmeier et al. 1993) vary by race and gender.

While the direct effect of defendant's race, gender and age significantly effects perceptions, the focal concerns perspective highlights the fact that interactions among these characteristics are especially influential in predicting judicial decision-making. Specifically, research examining these interactions suggests that males receive less favorable sentencing outcomes than black and white females (Spohn and Beichner 2000; Steffensmeier and Demuth 2006), black males are given harsher sentences than white males (Albonetti 1991; Lin, Grattet, and Petersilia 2010; Kramer and Steffensmeier 1993; Steffensmeier and Demuth 2006; Steffensmeier et al. 1998; Hartley et al. 2007), and young, minority males receive harsh treatment because of the judge's perception of these defendants as especially blameworthy and dangerous (e.g. Spohn and Beichner 2000; Spohn and Holleran 2001; Steffensmeier and Demuth 2001; 2006; Steffensmeier et al. 1993; Steffensmeier et al. 1998).

Prior investigations of focal concerns have relied heavily on sentencing data from traditional criminal courts, but examinations in non-traditional court settings are needed to provide a more complete assessment of the generalizability of focal concerns (Hartley et al. 2007). We argue that MHCs provide a unique context in which to further examine the applicability of focal concerns. The analysis builds on the understanding of how focal concerns operate by observing the MHC team's decision-making process regarding noncompliance and using these observations to guide a statistical analysis of termination from the MHC process.

## MENTAL HEALTH COURT COMPLETION

### RESEARCH SETTING

The MHC examined in this study is located in a midsized town in the southeastern United States and was established in 2000 through collaboration with advocacy groups, treatment providers and local court personnel. This MHC uses deferred prosecution, meaning that the defendants are not required to plead guilty to enter the court and does not have any “phases” that defendants must complete prior to graduation. Both misdemeanor and nonviolent felony key arrests (i.e., the most serious arrest charge that resulted in a referral to MHC) are accepted into this court. Law enforcement, attorneys and treatment providers can refer a case to MHC, but most of the defendants are referred by a judge or the assistant district attorney (ADA). To be eligible for court participation, the defendant must have a criminal arrest and a mental health diagnosis. Most defendants have Axis 1 disorders such as schizophrenia, bipolar, anxiety or depression though the court also accepts some offenders with developmental disabilities and a “dual diagnosis” of mental illness and substance abuse. Acceptance into the MHC is initially determined by the ADA who decides whether the defendant is legally eligible and the history and type of services that might be needed. The defendant then has a diagnostic assessment at a community mental health center. If the defendant meets the eligibility criteria and agrees to participate, s/he is placed on the next MHC docket.

At the first court session the defendant must sign an agreement consenting to court monitoring. Defendants initially must agree to be monitored by the court for 6 to 12 months depending on the nature of the crime and perceived treatment needs. The defendant can choose, however, to opt-out and return to traditional criminal court at any time. If the defendant remains compliant with court orders—such as attending MHC hearings, keeping treatment appointments and following recommendations, taking prescribed medications, and avoiding new offenses—for

## MENTAL HEALTH COURT COMPLETION

the length of time deemed necessary by the court, s/he graduates from the court and charges are dropped. If the MHC team is concerned about the defendant's noncompliance, the team may sanction the defendant. The sanctions may include incarceration (although rare) or additional court time and services. In our research setting, the sanctions varied because no formalized sanctions policy was in place. The most serious sanction is expulsion from the program. In these cases, the defendant is returned to traditional court for adjudication

Prior to each MHC session there is a "team meeting." Nine court personnel make up the MHC team and attend each monthly audit: the presiding judge, a designated assistant district attorney (ADA), a public defender (PD), one private defense attorney who is contracted to MHC defendants through an indigent assistance assignment program, two assigned mental health case managers, two dedicated probation officers and the court administrator. During the meeting, the MHC team discusses each defendant separately to determine whether s/he has remained compliant with court mandates. Given the content of these meetings, we refer to them as "compliance audits." Generally, the defendant's assigned case manager begins the discussion by reporting on treatment compliance. The team members share their comments by either validating information that supports the case manager or offering a contrary opinion. If compliant, the case manager may highlight some of the defendant's progress, such as obtaining new employment or housing, avoiding illicit drug use, or completing a treatment program. If noncompliant, the case manager may dismiss the noncompliance as trivial or temporary, request for the judge to verbally warn the defendant in open court, suggest sanctions, including jail detention or increased court supervision or suggest the defendant be sent back to traditional court (Castellano 2011b). Determinations of noncompliance can result from not attending scheduled mental health treatment, refusing to take prescribed medications, using illicit drugs or obtaining additional

## MENTAL HEALTH COURT COMPLETION

criminal charges. Although it is grounds for dismissal from MHC, noncompliance does not always result in expulsion.

The authors were able to gain access to attend the meetings because of the rapport they had built with several court members after having observed the court's public proceedings for more than 12 months. The authors signed a confidentiality agreement with the court administrator and received approval for research from the university Institutional Review Board (IRB). The rapport and confidentiality provisions helped to ensure an atmosphere of trust so that court personnel were free to speak candidly about the defendants throughout the compliance audits.

The compliance audits offer a unique opportunity to observe the decision-making processes in action because MHC team members verbally communicate their knowledge and opinions about the defendants. Audits last approximately three hours and are held in the judge's chambers. Approximately 30 to 40 defendants are monitored in MHC each month. After discussing a defendant the MHC administrator verbally confirms that team has reached a consensus by reading aloud the decision (compliant or noncompliant) before the team proceeds to discussing the next defendant. Both authors observed the MHC compliance audits and took detailed field notes on the team's discussions about defendant's compliance and progress for 12 months. After exiting the field, the authors individually coded field notes for themes that appeared during these discussions. Our initial observations followed a grounded theory approach (Strauss and Corbin 1998; Charmaz 2001) in which we looked at general patterns among the team's behaviors when discussing noncompliance. After two months of observations, we found that patterns consistent with a focal concerns framework were apparent and pervasive. Specifically, the team would make generalizations regarding the defendant's culpability, dangerousness and potential to change given particular rewards and sanctions. Following this

## MENTAL HEALTH COURT COMPLETION

finding, we focused on the focal concerns as a guiding framework in creating memos (Harris 2008). Both observers examined memos to identify the presence and context of focal concerns employed in the MHC team's depiction of noncompliance. Prior to each MHC team meeting, we would discuss our earlier observations. Within the first few months both observers noted that there was a high degree of subjectivity in what was considered noncompliant. We discuss these patterns of subjective appraisals below.

### **OBSERVATIONAL FINDINGS**

Our observations reveal two discernible patterns. First, the MHC team often relies on the defendant's gender to emphasize and interpret focal concerns. Second, the length of time the defendant has been in MHC plays a role in how noncompliance is perceived.

#### *Noncompliance and Gender*

Discussions of blameworthiness, dangerousness and consequences of sanctions occurred at three points in the compliance audit: (1) when the defendant is initially introduced to the MHC team as new to the docket, (2) when the team was determining compliance, and (3) when the team was making decisions about termination. While we did not explicitly record the time spent on each defendant's compliance audit, our field notes revealed that the MHC team spent more time contextualizing (i.e., discussing the reasons and consequences) noncompliance for females at each of these points.

When introducing the defendant to the docket, the team members have an opportunity to share information about the defendant's personal and medical history. This information often came from discussions the defendant had with the ADA or case manager. For male defendants,

## MENTAL HEALTH COURT COMPLETION

after the court administrator read the defendant's name, case managers would simply indicate whether the defendant was suitable for MHC based on the mental health screening (e.g., "he's a good fit"). In contrast, female defendants were generally discussed at greater length and with more detail. Case managers used narratives to indicate how the defendant was referred to MHC and in doing so would contextualize her key arrest. In telling these introductory stories, case managers consistently included information about family and economic situations (e.g., "she's living with a boyfriend," "she has a child that she has to care for," "she's been struggling since she lost her job").

In one case the introduction of a female defendant resulted in preferential treatment throughout her time in MHC. The case manager informed the team that a new female defendant was uncomfortable standing in front of the other defendants in open court. The case manager informed the team that the defendant had formal training as a registered nurse, had worked in a hospital for several years, and was embarrassed by her recent arrest. In order to make the defendant feel comfortable in court, the team agreed that the judge would not identify her by name in open court and would excuse all defendants from the courtroom before having her approach the bench.

As defendants proceeded through the MHC process the team members became more familiar with their personal lives and this information could be used when determining noncompliance. It was not uncommon for team members to report "concern" for a female defendant's personal or family relationships. For example, in discussing a female charged with unauthorized use of a motor vehicle, the defense attorney contextualized the key offense by saying "It's just a Class 1 [misdemeanor]" and then turned her focus on the relationship between the female defendant and her father as mitigating her culpability for the crime. "Her dad dictates

## MENTAL HEALTH COURT COMPLETION

everything this girl does. He uses the legal system to raise his kids. He wants the charges dropped [in regular court], but I think she needs to be in here.” In another example the team discussed their collective concern about a potentially abusive relationship during an introduction. The defense attorney closed the discussion stating that “The dad has her on [a predominantly male sports team] for God’s sake, and I’m not trying to say anything, but I get a really bad feeling about inappropriate things going on in the house.”

There was much less contextualization of noncompliance when the defendant was male. For example, a case manager reported that a male defendant, who had been in the court for seven months, "has been doing great and making it to all of his group sessions;" however, the ADA informed the team he was arrested during the prior weekend. The team reexamined the MHC docket and noted that he had had two prior months of noncompliance. The second case manager stated, "He just doesn't want to stay out of jail, and I think we may have done all we can do for him here." The probation officer suggested they sanction him by putting him in a holding cell during court (a punishment that the court rarely uses) to which the judge responded, "That's not going to work. Jail obviously doesn't have an effect on him." After a brief discussion, the team decided to terminate the male defendant from MHC despite the original positive feedback from the case manager. Unlike the female example noted above there was never any description of the arrest or any attempt to contextualize his noncompliance.

Team members commonly contextualized female noncompliance that would result in a decision to retain the defendants in MHC. For example, in discussing the noncompliance of a male defendant who had missed a court session and a meeting with his treatment provider the judge firmly stated, “I’ll give him one more chance, but I’m going to explain that he is out of here if he’s noncompliant again.” The following month this same male defendant missed another

## MENTAL HEALTH COURT COMPLETION

treatment meeting and was subsequently terminated and sent back to traditional court. In discussing the decision the judge reminded the team of his earlier warning.

During this same team meeting one of the case managers reported that one of the female defendant has missed two of the past court sessions and several group sessions over the past two months and reminded the team that she also missed one of the court sessions to take an unannounced trip with her boyfriend. While the case manager reported this noncompliance, the defense attorney added that the female defendant was having financial troubles. Reading through her notes, the attorney stated that the defendant was in danger of eviction from her residence and was planning to move in with her boyfriend, who is terminally ill. After several minutes of conversation about the defendant's personal issues, the team decided that the judge would "have a talk with her" in open court and remind her that she needs to attend all of her scheduled appointments. Interestingly, in reviewing our field notes on this particular defendant we found that this was not the first time a team member had used this defendant's relationship with her boyfriend to diminish her culpability. Five months prior, the defendant has also been noncompliant for missing court. During this month the attorney told the team that she missed court because her boyfriend would not let her use his car to travel to court, stating that "he only lets her use the car to take him to the doctor."

Although we have only outlined a few examples of differential treatment by gender, we observed many. Our observations are consistent with the chivalry hypothesis in that the team member's contextualization was often tied to paternalistic attitudes (Bishop and Frazier 1984; Pollak 1950; Steffensmeier 1980). Personal and familial relationships were common and acceptable explanations for noncompliance for females but were rarely invoked for males. Other examples of contextualizing noncompliance for female defendants included prior victimization,



## MENTAL HEALTH COURT COMPLETION

difficulty dealing with roommates (for both adults and younger female defendants), and time management issues with employment and school.

### *Time in Mental Health Court*

Extensive knowledge about a defendant's legal case or personal history might result in court personnel relying less on the attributions of the defendant (see Farrell and Holmes 1991). As noted above, our observations revealed a similar pattern. Through the sharing of extensive information about the defendants each month the MHC team become familiar with the defendant and used that personal knowledge to explain exhibitions of noncompliant behaviors (although this happens significantly more often for female defendants). In effect, the MHC personnel had established a relationship with the defendant, thus reducing the reliance on perceptual shorthand. This also meant that the team had invested considerable resources in the defendant's success resulting in changing the team's expectations for compliance.

The ability to develop these relationships is the result of extensive judicial supervision within the problem-solving court approach. However, the information from these relationships only helps to contextualize noncompliance up to a certain point. Our observations suggest that as the length of time for each defendant in the MHC exceeds the acceptable time to complete the court process the team's discussions shift to concerns about the practical constraints and consequences of keeping the defendant on the docket. According to the focal concerns perspective, practical implications reflect concerns about the individual and organizational costs and consequences of punishment (Steffensmeier et al 1998). When considering these consequences decision-makers reflect on the financial costs and the court's reputation.

## MENTAL HEALTH COURT COMPLETION

Once a defendant has been in the MHC for over a year, the team starts to expect consistent compliance, and even a minor instance of noncompliance can result in termination. In such cases of termination the team would often invoke discussions about the court's limited resources and heavy caseload. For example, in discussing a defendant who had recently missed a group meeting, the ADA said "Twenty-one months! This guy has been in here almost two years. If we haven't gotten to him by now... I just think we've done all we can do and have to let him go." At another compliance audit the judge started the session by expressing his concern that the docket contained too many cases to handle effectively and efficiently: "This guy is always noncompliant. The calendar is overwhelming. We should just get rid of him. I'm just looking at this docket and don't see how I can talk to these people if I have 50 of them here."

Our observations are consistent with the organizational constraints found in traditional court settings (Kramer and Ulmer 2002; Steffensmeier et al. 1993; Ulmer 1997). Although the MHC organizational constraint means expulsion for some defendants, it can mean early completion for others. During one of the compliance audits when the judge lamented about the caseload, he suggested (and the team agreed) to graduate two defendants early since they had remained consistently compliant for several months.

Extended judicial supervision is a unique feature of problem-solving courts. Our observations revealed time played a role in the amount of leniency the team allowed towards noncompliance, especially in decisions to terminate the defendant from the MHC process. To explore this finding further we turned to quantitative methodologies to incorporate measures of focal concerns *and* time when predicting MHC completion.

## MENTAL HEALTH COURT COMPLETION

### ANALYTIC METHOD

We conducted competing-risk survival analysis of defendants who were enrolled in MHC from 2008 through 2010. Our sample originally included 141 defendants, but six individuals opted-out of the MHC during this time period and are not included in our analysis; therefore, our analytical sample includes 135 MHC defendants. Data obtained from court dockets and official arrest records include information on defendant demographic characteristics (age, race and gender), key offense characteristics (felony or misdemeanor and type of crime), number of prior arrests, and MHC outcome (completed or terminated).

Previous studies examining problem-solving court termination use logistic regression, which does not appropriately model the time to court outcome (e.g. Bowser, Lewis, and Dogan 2011; Butzin, Saum, and Scarpitti 2002; Cosden et al. 2010; Dirks-Linhorst et al. 2011; Hepburn and Harvey 2007; Hickert, Boyle, and Tollefson 2009; Jones and Kemp 2011; Redlich et al. 2010; Roll et al. 2005; Rysavy, Cunningham, and O'Reilly-Martinez 2011). One exception is Brown, Allison and Nieto (2011) who use Cox proportional hazard models to predict termination from drug court. In this study defendants successfully completing the court were treated as “censored” because the researchers did not have data on the time it took for defendants to complete the program. As such, Brown et al. (2001) were unable to predict time to termination *and* completion.

Competing risks arise in studies where subjects can experience more than one cause of failure (i.e., outcome event), and failure in one of the causes excludes failure to other causes (Fine and Gray 1999). This is the situation in problem-solving courts as defendants can experience one of two competing outcomes: successfully completing the court or being terminated from the court. Furthermore, each outcome can occur at various times during a

## MENTAL HEALTH COURT COMPLETION

defendant's tenure in the court, and the occurrence of one outcome (completion or termination) prevents the other from occurring. Cox regression would be an adequate procedure if all of the defendants in a given sample were terminated prior to those who completed (or vice versa); however this is not the case. Therefore, when data are available on both the time to termination and completion a more accurate method of modeling time is competing-risk survival analysis (Fine and Gray 1999).

Competing-risk analysis can be done using a minimum of two potential failure events. In this analysis we use the time to termination as the event of interest and the time to completion as the competing event. For each event there is a failure function, which is the cumulative proportion of the group that has experienced the event at each point in time; also known as the cumulative incidence function (CIF). Rather than reporting the log odds (logistic regression) or hazard ratio (Cox regression), competing-risk analysis uses the CIF to estimate the subhazard distribution, which models the hazard of the failure event (i.e., termination) while considering the completion time for those who eventually complete.

## RESULTS

Research using the focal concerns perspective finds that race and gender interact in complex ways in predicting punitive outcomes (Steffensmeier et al. 1998). As such, rather than focusing on the direct effect of race and gender separately—as all prior research on problem-solving court outcomes has done—we present the interaction categories of these terms. Given the limited variation in ethnicity in our data (only five defendants were Hispanic), we created white, non-white categorizations by gender. Table 1 shows that the majority of our sample are males

## MENTAL HEALTH COURT COMPLETION

(75 percent), with the largest group being white males (41 percent). On average the participants had approximately three arrests prior to MHC entry.

Key arrest is measured in two ways. First, as a dummy variable that represents whether the offense was a felony, and second, as a categorical variable indicating the type of charge. The majority of arrests were crimes against a person (47 percent), including simple assault, assault against a government official, and communicating threats. The average time in the MHC was slightly less than 10 months ( $SD = 6.53$ ) and ranged from 1 to 33 months; however, this varied significantly by outcome. Those who were terminated from the MHC spent an average of 6.5 months ( $SD = 6.48$ ) in the court, while those who completed the court had an average enrollment time of 12.4 months ( $SD = 5.36$ ). More than half of the participants graduated and successfully completed the MHC process (58 percent).

[Table 1 about here]

As mentioned previously, the majority of prior research looking at problem-solving court outcomes has used logistic regression, but we argue that using competing-risk analysis is better suited for termination-completion analysis. To illustrate that these two analytical techniques can produce substantively different results, we present the logistic regression models before turning to our competing risk models. Model 1 in Table 2 shows the results of a logistic regression model predicting termination from MHC. Consistent with the predictions of focal concerns, the data reveal significant differences by race and gender in predicting termination net of legal factors. Specifically, non-white males, non-white females and white males are all more likely to be terminated from the MHC than white females. Only 14 percent of the white females who

## MENTAL HEALTH COURT COMPLETION

started the MHC process were terminated, compared to 49 percent of non-white males, 55 percent of non-white females, and 45 percent of white males. These findings are consistent with our observations regarding gender and noncompliance; however, the role of race on termination was not evident during our observations as race was never discussed in compliance audits. We revisit this lack of dialogue in our discussion.

Model 2 in Table 2 includes months in MHC and shows that the odds of termination decrease by 82 percent for each additional month in the court—which is consistent with the relationship between court appearances and termination in the Dirks-Linhorst et al. (2011) study. By comparing the -2 Log Likelihood values across Models 1 and 2, we demonstrate that Model 2, which adds time to the model, is a better fit to the data (163.84 and 134.53, respectively) but mediates the effect of the race-gender interaction on termination.

Our observational findings led us to question the effect of time and reconsider how earlier studies have modeled the relationship between time and MHC outcomes. That is, MHC team members have an ideal time that they expect defendants to complete the court, and extending beyond this time will result in a determination of noncompliance that is contextualized based on the practical implications and organizational costs to the court. To examine this we included a squared term of months in a logistic regression model and found that that this function of time fit the data better. This model indicated that the relationship between time and termination followed a U-shaped curve (results not shown here). This finding was consistent with our observations; however, similar to Model 2, whenever we included time as independent variable, the race-gender effect diminished. Therefore, in considering our observational findings, the nature of problem-solving court outcomes, and the fact that we had time to both termination and completion, we concluded that competing-risk is the most appropriate modeling technique.

## MENTAL HEALTH COURT COMPLETION

[Table 2 about here]

To model competing risks we used the STREG command in Stata 11. Model 3 in Table 2 presents the subhazard ratios (SHR) for covariates predicting the event of termination relative to the event of completion. Contrary to the findings revealed in our logistic regression of Model 2, we find that the race-gender interaction becomes a statistically significant predictor of termination relative to completion when modeling time *to* termination. The model shows that non-white males are 5.25 times more likely to experience termination rather than completion than white females. We should note that the direct effect of race and gender is not significant in any of the models we ran; only the interaction effect. Prior arrests are also a statistically significant predictor, showing that for each additional prior arrest, the hazard of termination, relative to completion, increases by 8 percent.

Like other survival analysis methods, when predicting the outcome of interest, coefficients predict whether the event is likely to occur but also if it is likely to occur sooner. The results of Model 3 suggest that nonwhite males and females, white males, as well as those with more prior arrests, are more likely to be terminated early in the MHC process as compared to white females. Life tables displaying the distribution of time to each event reveal that by the end of month three, 32 percent of the nonwhite males and 45 percent of the nonwhite females in the court had been terminated as compared to only 18 percent of the white males and 5 percent of the white females. Subsequent analysis using other reference groups consistently revealed that white women were significantly less likely to be terminated. Thus, consistent with our observations

## MENTAL HEALTH COURT COMPLETION

and the focal concerns perspective, both the race-gender interaction and time are associated with termination from the MHC process.

We used the STCURVE command in Stata 11 to graphically demonstrate the differences between these race-gender groupings. Figure 1 compares the CIF curves for each of the race and gender categories net of the other covariates in the model. These lines are plotting the cumulative proportion of defendants being terminated relative to those that complete. Thus, the probabilities take into consideration the possibility that some defendants may have already successfully completed the court process. The figure shows that the probability of termination at 6 months is approximately 0.30 for nonwhite males and nonwhite females and approximately 0.05 for white females.

[Figure 1 about here]

## DISCUSSION

The present study relies on the focal concerns perspective to interpret findings from a mixed-methods investigation of the decision-making process in a problem-solving MHC. Our findings suggest that within the MHC context, focal concerns are contextualized by the defendant's gender and race as these characteristics play a significant role in identifying patterns of MHC compliance and completion. Consistent with prior focal concerns research, our findings suggest that MHC team members rely on a "perceptual shorthand" that is tied to larger cultural ideas about race and gender and the perceived culpability and dangerousness of offenders (Albonetti 1991; Auerhahn 2007; Bridges and Steen 1998; Daly 1987, 1994; Spohn, Beichner, and Davis-Frenzel 2001; Steffensmeier 1980; Steffensmeier et al. 1993; Steffensmeier et al.



## MENTAL HEALTH COURT COMPLETION

1998; Ulmer and Johnson 2004). Our observation findings highlight how this occurs in a MHC setting as males were more likely than females to be perceived as culpable for their noncompliant behaviors and that the team spends more time contextualizing female defendants' noncompliance in ways that minimized their culpability.

We also found that time in the MHC played a role in how team members perceived defendant's culpability and dangerousness. As team members get to know the defendants they accumulate personal information about them, which functioned to both reduce the need for "perceptual shorthand" and heighten the team's expectations of the defendant's compliant behavior. The defendants who were noncompliant and in the court for over a year would often be more severely sanctioned than those who were noncompliant but newer to the MHC process. These findings complement those of Farrell and Holmes (1991) who argued that routine cases may rely more heavily on stereotypical attributions of the defendant, but cases that use more court resources results in harsher treatment of the defendant.

Discussions about the defendant's race were absent in our observations of MHC compliance meetings as none of the court team members mentioned the defendant's race or ethnicity. This is not surprising since expressions of race-based differences are understood as socially inappropriate and, in fact, can be the subject of legal sanctions (Bonilla-Silva 2010; Wellman 1993). However, the significance of race in the MHC decision-making process was revealed through our quantitative analysis of administrative data. Unlike early studies examining MHC completion (Dirks-Linhorst et al. 2011; Redlich et al. 2010), our use of the focal concerns perspective led us to explore the effect of interaction of race and gender on court outcomes. Based on the observed importance of time and the fact that MHC completion and termination are not consistently ordered, we used competing-risk analysis to model the hazard of termination

## MENTAL HEALTH COURT COMPLETION

relative to completion. We found significant differences by race and gender in predicting termination from the MHC. Specifically, white female defendants are significantly less likely to be terminated from the MHC process than other defendants. These findings indicate the continued significance of race and race-gender interactions in court processing decisions. Further, these findings suggest that the absence of racial discourse does not necessarily signify an absence of racializing effects (Bobo, Kluegel, and Smith 1997; Bonilla-Silva 2001).

The findings of this research contribute to the focal concerns literature by showing that these concerns play a role in legal decisions in a problem-solving MHC context. Moreover, we show that focal concerns can be examined in this setting through direct observation as well as quantitative analysis of administrative data. Observationally, we show MHC team members verbally state decisions regarding compliance and that such decisions are often grounded in focal concerns contextualized by gender. We also find that time plays an important role in how focal concerns are perceived. Specifically, time spent with a defendant might reduce the need for “perceptual shorthand,” but at a certain point time starts to cause concerns regarding the practical constraints faced by the court’s docket.

Our findings are important to the MHC and problem-solving court literature. Few studies have observed judicial decision-making in these court contexts (Castellano 2011b; Nolan 2001). We found that decisions regarding noncompliance, and ultimately termination, are largely based on the subjective appraisals of those individuals who make up the problem-solving court team. Specifically, similar behaviors might be overlooked or excused in some instances and deemed as noncompliant and in need of sanctioning in others. This finding problematizes measures of compliance that rely exclusively on MHC team members (Redlich et al. 2010) and suggests that

## MENTAL HEALTH COURT COMPLETION

MHC decision-making process may have similar problems of differential treatment that have been revealed in traditional court outcomes.

More generally our study points to the importance in using a mixed-methods approach. As mentioned above, we would have missed important elements predicting termination had we not observed the MHC process prior to analyzing administrative data. For example, observations indicated that gender was an important component in decisions about compliance, but our quantitative analysis further revealed that it was a race-gender interaction that predicted termination from the court. Similarly, our observations led us to question the linear relationship between time and termination and to use competing-risks to model outcomes in a way that reflects the reality of court organization and operation. Moreover, in using focal concerns as a theoretical framework we examined the intersection of race and gender. Had we not done so the relationship between these demographic characteristics and MHC would not have been apparent (see Berg 2010 for similar intersectional results). Future research examining the influence of time on court outcomes should consider adopting a similar modeling approach and examine the intersection of race and gender.

Unfortunately, we are unable to gather information about the means by which defendants are referred to the MHC or information on those defendants who choose not to participate in the court. To date only Dirks-Linhorst and colleagues (2011) have examined factors associated with nonparticipation in MHC and found that while racial minorities were less likely to participate the association was not significant when controlling for key arrest characteristics. Future research examining these processes are needed to provide insight about what factors are important in decisions to select and refer defendants into the MHC process as well as what factors are relevant in choosing to opt out of the process.

## MENTAL HEALTH COURT COMPLETION

Despite the contributions of this study, we note some limitations. First, we were unable to examine the potential effect of defendant self-disclosure to MHC team members. As noted in our observations, team members often accumulate personal information about the defendants, which may help them to contextualize noncompliance. Defendants who are more willing to disclose information about themselves might better maneuver through the problem-solving court process. Research suggests self-disclosure is often related to help-seeking behaviors (Addis and Mahalik 2003; Cepeda-Benito and Short 1998; Kelly and Achter 1995), and that women are more likely to self-disclose than men (Dindia and Allen 1992; Shaffer, Pegalis, and Cornell 1992). Therefore, the gendered pattern of contextualization that we observed in the compliance meetings may be because the female defendants were more willing to disclose personal information that is then used by the MHC team members to explain their noncompliant behaviors. While this is not something we were able to explore, in regards to our findings it certainly remains a possibility that should be noted and considered in future research.

Second, we were only able to examine decision-making at one MHC setting with a limited number of defendants. Focal concerns are likely embedded in the organization, politics and structure of the surrounding community (Farrell and Holmes 1991; Ulmer, Bader, and Gault 2008; Ulmer and Kramer 1998; Ulmer and Johnson 2004). As such, future research examining MHC decision-making processes might consider community-level variables—such as the demographic composition of the local population, neighborhood crime, political affiliations, and funding—in modeling completion rates across courts.

### CONCLUSION

Prior work in traditional court settings has noted significant race-gender effects on punitive outcomes; however, to our knowledge, the present analysis is the first investigations of such effects in the problem-solving court context. Thus, our research offers a new context in which to examine focal concerns, but we also acknowledge a need for further theorizing and empirical analysis in how focal concerns operate in non-traditional settings. Given the growth of problem-solving courts, it is important that we gather information about decision-making practices in these courts. While this study found differences in MHC outcomes by gender and the interaction of gender and race, we do not suggest that the problem-solving court model is particularly prone to discrimination. Rather, our findings raise concerns about the equitable operation of these programs. Since fair and just legal practices are fundamental requirements of a democratic social system, the critical assessment of these programs is crucial to studies of law and society and larger issues of inequality. When such disparate treatment is revealed, we are reminded of the risk for reinforcing biased treatment in the justice system. Our results reveal that decisions about noncompliance may be discretionary and do not objectively capture defendant behavior. This information should be carefully considered by key stakeholders in problem-solving courts as well as researchers interested in investigating the outcomes of problem-solving court decisions. Establishing restorative justice programs is important in repairing personal and community injuries; however, we must also be mindful to provide equal opportunity to all people so that everyone can equally benefit from these programs.

**APPENDIX**

<sup>1</sup> Following Hartley, Maddan, and Spohn (2007), we use the term “perspective” rather than “theory.” Focal concerns are useful in explaining court-decision making; however, it does not provide explicit propositions, hypotheses or clearly defined causal relations.

<sup>2</sup> We recognize that the MHC literature often refers to defendants as “participants” or “clients,” but, we use the term defendant as a way to underscore our research interest in examining how focal concerns are employed in non-traditional court settings, while also recognizing them as a part of a larger justice process.

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## MENTAL HEALTH COURT COMPLETION

Table 1: Descriptive Statistics

<i>Age</i>	N (mean)	
Less than 20	25	19%
20 - 29	43	32%
30-39	34	25%
40 -49	17	13%
50 and over	16	12%
<i>Race and Gender</i>		
Non-white Males	47	35%
Non-white Females	11	8%
White Males	55	41%
White Females	22	16%
Prior Arrests (mean)	2.9	
Prior MHC	23	17%
Key Arrest Felony	21	16%
<i>Key Arrest Type</i>		
Person	63	47%
Property	27	20%
Drug	15	11%
Traffic	8	6%
Other	22	16%
Months in MHC (mean)	9.6	
Terminated	57	42%
Completed	78	58%

MENTAL HEALTH COURT COMPLETION

Table 2: Models Predicting Mental Health Court Termination

	Model 1: Logistic Regression			Model 2: Logistic Regression			Model 3: Comp	
	B	S.E.	Exp(B)	B	S.E.	Exp(B)	B	S.E.
Age	-0.02	0.02	0.98	-0.02	0.02	0.98	-0.01	0.11
Race by Gender								
Non-white Males	1.93 **	0.73	6.92	1.32	0.79	3.74	1.66 **	3.25
Non-white Females	1.93 *	0.92	6.90	1.53	1.04	4.60	1.72 *	4.11
White Males	1.57 *	0.72	4.84	1.27	0.77	3.56	1.31 *	2.21
White Females	--	--	--				--	--
Prior Arrests	0.11	0.07	1.11	0.17 *	0.08	1.19	0.07 *	0.07
Key Arrest Felony	-0.64	0.60	0.53	-0.32	0.65	0.72	-0.55	0.28
Key Arrest Type								
Person	-0.02	0.51	0.98	0.41	0.60	1.51	-0.14	0.33
Property	-0.57	0.65	0.58	-0.12	0.72	0.89	-0.60	0.27
Drug	-0.72	0.70	0.49	-0.87	0.80	0.42	-0.52	0.31
Traffic	0.47	0.92	1.59	0.48	1.00	1.62	0.23	0.60
Other	--	--	--	--	--	--	--	--
Months in MHC	--	--	--	-0.21 ***	0.05	0.82	--	--
- 2 Log Likelihood		163.84			134.53			256.07

\* p < 0.05; \*\* p < 0.01; \*\*\* p < 0.001

# MENTAL HEALTH COURT COMPLETION

Figure 1: Cumulative Incidence of Termination and Completion by Race and Gender

