

Report

Queens 730 Process Evaluation

A decorative graphic consisting of a dotted line that starts at the bottom left, moves up and right to a person icon, then down and right to another person icon, then up and right to a third person icon, and finally up and right to a fourth person icon at the top right. The person icons are light blue circles with a white silhouette of a person.

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Acknowledgements

Queens 730 Process Evaluation: An analysis of an expedited examination pilot process for court-ordered forensic psychiatric evaluations related to competency to stand trial.

This report outlines the results and analysis of the 730 pilot process at the Queens Forensic Psychiatric Evaluation Court Clinic in New York City. Navena Chaitoo, MS, Olivia Pinney, BA, Josephine Wonsun Hahn, MPH, ScD, and Tasha Lloyd, Esq from the NYC Mayor’s Office of Criminal Justice led the report writing, and Andrew Biundo, MPH, and Monica Katyal, JD, MPH from NYC Health + Hospitals Correctional Health Services were instrumental in writing and editing the report.

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Executive Summary

Executive Summary

In New York City (NYC), psychiatric evaluation court clinics conduct court-ordered psychiatric examinations of criminally charged individuals to measure their mental fitness to proceed in trials, or what will be referred to in this report as “competency to stand trial.” A 2016 analysis of incarceration length of stay found that individuals ordered to undergo court-ordered psychiatric evaluations in accordance with New York State Criminal Procedure Law Article 730 spent almost three times as long in jail compared with other individuals facing similar charges. In 2018, NYC Health + Hospital Correctional Health Services (CHS) assumed oversight and management of the four NYC court clinics in an effort to improve the efficacy of the psychiatric evaluation system.

This report by the NYC Mayor’s Office of Criminal Justice provides an analysis of an expedited examination pilot process for court-ordered evaluations related to competency to stand trial at the Queens Forensic Psychiatric Evaluation Court Clinic (FPECC). In late 2017, an independent analysis provided by the Center for Court Innovation found the average time for completion of 730 examinations and delivery of examination reports to court from date of court order was 43 days for cases in Brooklyn Supreme Court. The primary goal of the Queens pilot was to complete court-ordered evaluations within 7 business days for misdemeanor cases and 14 business days for felony cases from date of judicial order. The pilot benefited from additional coordination by key NYC stakeholders and staffing, including defense attorneys and other personnel from the Legal Aid Society to support individual clients in their cases. The analysis included individuals who received judicial orders for a 730 examination between July 1, 2018 and April 30, 2019.

Analysis of CHS, incarceration, and NYC court data showed that 82.5% of all examinations conducted during the pilot period—85.6% of those associated with felony cases and 77.1% of those associated with misdemeanors—were successfully completed within their respective target timeframes. Bivariate analysis of auxiliary process components showed that the following factors were significantly associated with non-timely completion of examinations:

1. Needing medical records and/or additional testing to aid in the assessment (7.4% of on-time examinations vs. 30.4% of delayed examinations);
2. Having an out-of-custody examination (1.8% of on-time examinations vs. 34.8% of delayed examinations); and
3. Needing to reschedule the examination (12.4% of on-time examinations vs. 43.5% of delayed examinations), including for reasons of initial refusal by defendant.

Timely completion of 730 forensic psychiatric examinations of individuals to determine competency to stand trial in an expedited manner remains an important priority for continuous quality improvement at the Queens FPECC and other evaluation clinics. The pilot demonstrated that reducing case processing times and incarceration exposure for individuals with mental health needs requires focus on courts in identifying the need for such evaluations and defense bars in advocating for their clients. Additionally, coordination by defense attorneys with community-based support services may encourage improved client compliance with undergoing examinations; this joint coordination will allow the examinations to be completed whether the client is held in custody or situated in their community.

Introduction

Introduction

In March 2017, Mayor Bill de Blasio announced New York City’s (NYC) plan to close Rikers Island and replace it with a smaller network of modern jails that are more safe and humane. Key to this plan for the NYC jail system is the reduction of pretrial detention times, which are associated with case processing delays and constitute the single largest driver of the size of the jail population.¹ Case processing delays may be particularly pronounced for some individuals in pretrial detention who may lack the mental capacity to stand trial. An unpublished analysis by the Mayor’s Office of Criminal Justice in 2016 revealed that people spent almost three times as much time in jail when courts ordered psychiatric examinations in connection with their cases compared with other incarcerated individuals facing similar charges. In the jails, individuals with mental health needs generally have longer average lengths of stay than those who do not.² These observations coupled with the known negative health and social harms of incarceration on individuals with mental illness underscore why reducing case processing times and incarceration exposure for this population continues to be a NYC priority. The Mayor’s “Smaller, Safer, Fairer” plan affirms NYC’s commitment to reducing the number of individuals with mental illness in jails through continued implementation of the Mayor’s Action Plan on Behavioral Health and the Criminal Justice System.³

Prior to February 2018, NYC Health + Hospitals, the municipal public health care system, operated four court clinics in a decentralized model: the Bronx and Manhattan clinics were operated by Bellevue Hospital Center; the Brooklyn and Queens clinics were operated by Kings County Hospital Center. In February 2018, Correctional Health Services (CHS), a relatively new division of NYC Health + Hospitals, announced its intention to reorganize the four clinics into a unified network of Forensic Psychiatric Evaluation Court Clinics (FPECCs). The restructuring capitalized on CHS’ mission and expertise in working to reduce the health impacts of incarceration. Under CHS’ leadership, the reorganization provided unified clinical support and supervision and centralized administrative support and direction; reduced barriers to the sharing of clinical information and standardization of policies among the clinics; created electronic reporting and data capture systems; more closely aligned FPECC workflows to those of the correctional system; facilitated the backfilling of critical staff vacancies; and upgraded physical space and technologies. The Kings County clinics were transitioned to CHS on April 1, 2018, followed by the Bellevue clinics on July 1, 2018.

FPECC conducts court-ordered psychiatric examinations of criminally charged individuals related to competency to stand trial (New York State [NYS] Criminal Procedure Law [CPL] Article 730). FPECC also conducts court-ordered pre-sentencing psychiatric evaluations, though at a far lesser volume, to provide courts with guidance that may be relevant for sentencing decisions [CPL Article 390]. The majority of individuals undergoing evaluation by FPECCs are persons held in detention in NYC jails, and a small number are individuals in the community awaiting trial.

1 Mayor’s Office of Criminal Justice, *Smaller, Safer, Fairer: A roadmap to closing Rikers Island*, New York City, New York, 2018, <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/04/Smaller-Safer-Fairer.pdf> (accessed October 1, 2020).

2 Independent Budget Office, *Looking Back at the Brad H. Settlement: Has the City met its obligations to provide mental health and discharge services in the jails?*, New York City, New York, 2015, <https://ibo.nyc.ny.us/iboreports/looking-back-at-bradh-settlement-has-city-met-obligations-provide-mental-health-discharge-services-in-jails-51115.pdf> (accessed October 1, 2020).

3 The Mayor’s Office of Criminal Justice, *Mayor’s Task Force on Behavioral Health and Criminal Justice*, New York City, New York, 2014, <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/04/annual-report-complete.pdf> (Accessed October 1, 2020).

The improvements made under CHS' oversight resulted in a higher quality of examinations and findings, as well as shortened examination processing times in all four sites, especially for persons charged with misdemeanors. A pilot was developed by MOCJ in partnership with the Queens District Attorney's Office, the Legal Aid Society, Queens Defenders (also known as Queens Legal Associates), the Assigned Counsel Plan (18-B Panel), the New York State Office of Court Administration (OCA), the NYC Department of Correction (DOC), the Queens court clinic, and CHS specifically to expedite the examination process for court-ordered evaluations related to competency. In late 2017, an independent analysis provided by the Center for Court Innovation found the average time for completion of 730 examinations and delivery of examination reports to court from date of court order was 43 days for cases in Brooklyn Supreme Court. The primary goal of the Queens pilot was for completion of 730 examinations to be accomplished within 7 business days for misdemeanor cases and 14 business days for felony cases from date of judicial order for individuals in correctional custody. The pilot, implemented in June of 2018, entailed the addition of one full-time and one part-time staff to conduct psychiatric examinations at the Queens clinic and one administrative support staff, one social worker, and one attorney at Legal Aid. The additional personnel, including the increased number of available examiners to conduct the evaluations, defense attorneys present for each examination, and social workers to coordinate cases, contributed to the shortened time spent between a court-ordered examination and the provision to the court of a report.

This retrospective analysis was undertaken to describe outcomes of the expedited examination pilot at Queens FPECC over a 10-month period, June 2018 to April 2019. The specific objectives were to:

Primary

- Assess timeliness between examination order and completion of report for misdemeanor and felony cases within the thresholds of 7 and 14 business days, respectively, for individuals in correctional custody

Secondary

- Describe defendant profiles (e.g., demographics)
- Describe case and examination characteristics and outcomes
- Identify factors associated with timely examination completion, such as additional appointment requirements, examination scheduling, and examination refusal
- Analyze the time between key events in the criminal justice process, starting from arraignment and ending with court disposition and jail discharge (if applicable)
- Review examination findings, examination timeliness, and court outcomes for racial and ethnic disparities

Background

Background

Standards for Competency to Stand Trial

The United States Supreme Court has promulgated national standards for determining a defendant's mental competency to stand trial. The decisions in *Dusky v. United States* (1960), *Pate v. Robinson* (1966), and *Drope v. Missouri* (1975) produced criteria both for defining defendant competency and for judges to inquire about a defendant's mental state and fitness to proceed to trial. These standards strive to maintain the fairness and accuracy of court proceedings by ensuring that defendants are capable of exercising their right to due process and participating in their own defense.

New York State Criminal Procedure Law Article 730

In NYS, judges are obligated under CPL Article 730 to order mental health evaluations ("730 order") at any time if the court is of the opinion that the defendant may be mentally incapacitated. These evaluations assist the courts in determining if a defendant charged with a criminal offense is mentally fit to proceed with the case. In general, the examination requires two examiners who are NYS board-certified or board-eligible psychiatrists or NYS-certified psychologists to complete the evaluations. In the event that these two examiners disagree on the fitness of the defendant, a third examiner is assigned to the case and the judge is obligated to hear testimony from all three examiners.⁴ Under CPL Article 730, NYS distinguishes between charge classifications (i.e., misdemeanor versus felony) and court levels (i.e., Criminal vs. Supreme).

Misdemeanor

Defendants who are found unfit to proceed on a misdemeanor case in a Criminal Court will have their charges dismissed and will be moved to a state civil psychiatric facility managed by the NYS Office of Mental Health (OMH) for admission and further evaluation. When developmental disabilities are the basis for the unfitness finding, individuals may be sent to a facility managed by the NYS Office for People with Developmental Disabilities. Within 72 hours of admission, these defendants must be civilly committed, converted to voluntary status,⁵ or released.⁶

4 NYS CPL 730.20

5 When a medical certification is required to determine whether an individual must be involuntarily admitted to a psychiatric facility for treatment, as in a 730 order, the individual may be held at the facility for up to 60 days after the examination. However, after the examination, cases associated with misdemeanor charges may be converted from involuntary status to voluntary status. This permits the individual to request discharge at any time. The individual must then be released unless the individual meets the criteria for an involuntary admission appropriate for individuals with mental illness in accordance with NYS civil commitment statutes.

6 NYS CPL 730.40

Felony

Defendants who are found unfit to proceed on a felony case due to mental illness or incapacitation will be committed to an OMH forensic psychiatric facility (e.g., Mid-Hudson Forensic Psychiatric Center or Kirby Forensic Psychiatric Center) until their fitness is restored. Such defendants do not have their charges automatically dismissed. In cases where the defendant is indicted, a Supreme Court judge may order the defendant to be committed to OMH for a period of up to one year. After this period expires, the court can issue consecutive orders of retention, but the defendant may not be retained for longer than two-thirds of the maximum sentence on the top indicted charge. In cases where the defendant is charged with a felony but not yet indicted, a local criminal court judge may order the defendant to be temporarily committed to OMH for an observation period of up to 90 days. The defendant may be indicted at any time during or after this 90-day period. If the defendant remains unfit to proceed and unindicted at 90 days, the case is dismissed. The District Attorney then has a 6-month window in which to indict the client after dismissal of the charges; however, the client is no longer subject to a criminal hold and is eligible for either release or civil commitment under Mental Hygiene Law.⁷

Notice of Order and Assignment of Examination

Prior to July 1, 2018, NYC Health + Hospitals/Bellevue received orders and oversaw the examination of defendants before Criminal and Supreme Court judges in Manhattan and the Bronx, and prior to April 1, 2018, NYC Health + Hospitals/Kings County was responsible for defendants with equivalent orders before Brooklyn, Queens, and Staten Island judges. These responsibilities were delegated to the Director of Forensic Psychiatry at each hospital and then on to psychiatric examiners at four forensic psychiatric court clinics for Manhattan, the Bronx, Brooklyn and Staten Island, and Queens.

Under the CHS structure, court clerks electronically or via paper transmit a signed order to the FPECC where coordinating managers immediately open a case in the FPECC electronic reporting system and contact the defendant's attorney to schedule an evaluation. The director of the FPECC assigns qualified psychiatrists or psychologists to the case for the evaluation, and these assigned evaluators see the defendant. The FPECC can seek the medical records of the defendant from any health care site, CHS or non-CHS, where the defendant was treated and/or, on rare occasions, request the defendant to undergo additional psychological testing by an FPECC psychologist, should the assigned examiners need this information to aid their competency evaluation. Both the release of medical records and/or additional testing can be accomplished by court order. Formal consent by the defendant is not required for testing, though the defendant must be willing to cooperate.

⁷ NYS CPL 730.40

New York City Jails

The NYC jail system is one of the nation's largest. The jails, which comprise multiple facilities on Rikers Island and in the NYC boroughs during the pilot period, receive individuals age 18 and older. Many of the individuals are pre-trial detainees, while a smaller proportion of individuals are held on parole violations, sentenced to serve one year or less on a misdemeanor conviction, awaiting transfer to custody in another jurisdiction, or transferred from other jurisdictions for trial proceedings in NYC. Until October 2018, the jails held adolescents 16 and 17 years of age. During the pilot period, July 2018 and April 2019, nearly 41,000 individuals were admitted to jail, including over 13,000 who received mental health services. The overall average daily population during this period was approximately 8,000.

During the pilot period, the vast majority of individuals who were required to undergo CPL 730 examinations were incarcerated in the jails. A small proportion were on bail or had been released on their own recognizance. Prior to the pilot, defense counsel usually attended 730 examinations. The pilot funded the hiring of an additional Legal Aid Society attorney, social worker, and administrative assistant.

Methods

Methods

Population

Individuals who received judicial orders for a 730 examination on or between July 1, 2018 and April 30, 2019 made up the population for this analysis. These individuals were at least 16 years old when the judge signed their order and were either in DOC custody at the time of order (i.e., in jail) or not in custody. Individuals could be represented multiple times if they received more than one judicial order for a 730 examination during the timeframe.⁸ Though the 7- and 14-day goals for completion of evaluations on misdemeanor and felony cases, respectively, were intended for those individuals in correctional custody, all individuals, regardless of whether they were in or out-of-custody, were included in the evaluation population.

Data Sources and Matching

This analysis required data from three sources: (1) the Correctional Health Information Reporting Program (CHIRP), the electronic reporting database that CHS utilizes for FPECC-based operations; (2) DOC incarceration-level information available through CHS' electronic medical record; and (3) the Office of Court Administration's (OCA) data for Supreme and Criminal Court actions, which detail key events during a case (i.e., arraignment, judicial orders for a forensic psychiatric examination, and dispositions), made available to MOCJ for the purposes of this analysis.

Staff at the Queens FPECC enter data detailing the examination process into CHIRP. For this analysis, relevant examination and jail process information were extracted from CHIRP for individuals meeting the analysis criteria. This included examination case numbers⁹, charge severity associated with the examination (i.e., felony, misdemeanor), special appointment requirements, examination court order dates, examiner findings, dates of examination, and other workflow markers as well as docket (i.e., case) and indictment numbers. Incarceration data from CHS electronic medical records included admission and discharge dates, and NYSID and book and case numbers (unique New York State person-level and NYC incarceration-level identifiers, respectively).

Using individual- and case-level identifiers, MOCJ then matched these data to OCA court-level data, included information on arraignment, date¹⁰, top charge¹¹, release status, and outcome at arraignment; first and last sentence date¹², top charge, and sentence information where applicable at disposition; and first and last date¹³ that a forensic psychiatric examination was ordered on the docket, court part associated with the first and last order, and next court date after the first and last order.

8 Individuals can have multiple orders if they decompensated following an initial (or subsequent) order and restoration. Individuals could also have multiple open court cases associated with active judicial orders for 730 examinations in Queens. Thus, there were three units of analysis available: (1) individual; (2) 730 examination; and (3) case.

9 Unique case numbers are assigned for each order signed by a judge; however, in some cases multiple case numbers can be linked and evaluated simultaneously. This generally happens when charges occur in multiple, separate court parts.

10 No appearance was explicitly identified as an arraignment in OCA data in 330 (99%) dockets. For these dockets, MOCJ provided the first appearance date associated with the docket, the first appearance release status, and first appearance outcome.

11 The top charge is the most severe charge associated with the docket. The top charge at arraignment was missing for 4 (1%) dockets.

12 There were multiple sentence dates associated with 14 (4%) dockets. For these dockets, MOCJ reported the first and last sentence date.

13 Multiple orders for a forensic psychiatric examination associated with 280 (84%) dockets. For these dockets, MOCJ reported the first and last order date, court parts, and next court dates.

Data Analysis

Descriptive and summary statistics (e.g., frequencies, percentages, means, and medians) were generated for demographics, court-related information, and examination completion time and determination. Bivariate analyses were conducted using chi-square and Fisher's exact tests ($\alpha=0.05$) to assess for associations between various categorical process factors and timely examination completion status (yes vs. no). No multivariable analyses were conducted.

Institutional Review Board Determination

BRANY institutional review board (IRB; Lake Success, NY) reviewed and determined that the analysis protocol was a program evaluation for process improvement, and that it did not constitute research involving human subjects.

Data Use Agreements

A data confidentiality and non-disclosure agreement was executed between CHS and MOCJ for the sharing and use of identified data. Data use agreements were executed between OCA and each of MOCJ and CHS for use of OCA data.

Results

Results

The study population included 229 individuals who received judicial orders for a 730 examination. Of these 229, 31 (13.5%) received multiple judicial orders (Table 1). More frequently, individuals had multiple open court cases with active judicial orders for a 730 examination in Queens. Of 263 examinations conducted by the Queens FPECC during the study timeframe, 42 (16.0%) were associated with multiple court cases in Queens (Table 2). Thus, the final units of analysis were (1) individuals (n=229); (2) 730 examinations (n=263); and (3) cases (n=321). For descriptive analyses, with the exception of demographics, which were analyzed at the individual level, and charges, which are presented at the case level, all other results are presented at the examination level. Of 263 examinations conducted by the Queens FPECC during the study timeframe, 20 (7.6%) were completed out-of-custody. Where applicable, results are also presented within the text for out-of-custody examinations, with complete results in Appendix 1.

Sixty-nine percent of individuals were Non-Hispanic Black or Hispanic, and 83.4% identified as male (Table 3). Age at first examination ranged from 17 to 90 years old with mean age being 35 years and median age being 33 years.

| Table 1: Number of 730 Orders Per Person | | Table 2: Examination Orders Associated with Multiple Legal Cases | |
|--|------------------------|--|------------------------------|
| Number of 730 Orders Per Person | Overall (n=229 people) | Multiple Legal Cases | Overall (n=263 examinations) |
| 1 | 198 (86.5%) | No | 221 (84.0%) |
| 2+ | 31 (13.5%) | Yes | 42 (16.0%) |

| Table 3: Demographics | | |
|--|------------------------------|------------------------------|
| | | Overall (n=229 examinations) |
| Race/Ethnicity | Hispanic | 52 (22.7%) |
| | NH Black or African American | 106 (46.3%) |
| | NH White | 30 (13.1%) |
| | NH Multiracial or Other | 26 (11.4%) |
| | NH Asian or Pacific Islander | 15 (6.6%) |
| Gender† | Male | 191 (83.4%) |
| | Female | 38 (16.6%) |
| Age (at first examination) | Mean (SD) | 35.3 (12.5) |
| | Median [Min, Max] | 33.0 [17.0, 90.0] |
| Age Category (at first examination) | 21 and under | 17 (7.4%) |
| | 22-25 | 38 (16.6%) |
| | 26-29 | 35 (25.3%) |
| | 30-39 | 73 (31.9%) |
| | 40-49 | 35 (15.3%) |
| | 50+ | 31 (13.5%) |

† In order to protect confidentiality of individuals in the sample, gender includes a small number of transgender people according to their preferred gender identity.

Summarizing the top-level charges on cases for which 730 examinations were ordered, 39.9% of cases were for felony assault, robbery, burglary, judicial offenses, murder, and theft; an additional 40.8% of the cases were for misdemeanor judicial offenses, assault, larceny, criminal mischief, burglary, theft, sex offenses, and obstruction (Table 4). The remaining 19.3% of cases were for charge categories containing five or fewer cases that were masked to preserve anonymity (16.8%) or missing charges/reported as being a violation (2.5%).

| Table 4: Charge Distribution | | |
|------------------------------|----------------------|---------------------------|
| Charge Type | Felony (n=159 cases) | Misdemeanor (n=154 cases) |
| Assault | 46 (28.9%) | 29 (18.8%) |
| Burglary | 23 (14.5%) | 10 (6.5%) |
| Criminal Mischief | † | 18 (11.7%) |
| Judicial Offense | 13 (8.2%) | 30 (19.5%) |
| Larceny | † | 24 (15.6%) |
| Murder | 12 (7.5%) | † |
| Robbery | 28 (17.6%) | † |
| Sex Offense | † | 6 (3.9) |
| Theft | 6 (3.8%) | 8 (5.2%) |
| Obstruction | † | 6 (3.9%) |

Note 1: Charges were missing or reported as a violation for 8 (2.5%) of the 321 cases in the sample.

Note 2: Charges that were not represented by more than five cases either were excluded or masked using † in the table above. This was noted for 54 (16.8%) of the 321 cases in the sample. Charges that were excluded from the table include agriculture and markets law-related charges, possession or sale of a controlled substance, corrections law, forgery, gun possession, kidnapping, public order offenses, terrorism, weapon possession, endangerment, fraud, marijuana, prostitution, and strangulation.

Of 263 total 730 examinations completed, 82.5% of examinations were completed within their respective target timeframes (Table 5). Of the 167 examinations associated with felony charges, 85.6% were completed within 14 days, while 77.1% of the 96 examinations associated with misdemeanor charges were completed within 7 days. Of 20 out-of-custody examinations, 20.0% were completed within their respective target timeframes. Of the 11 out-of-custody examinations associated with felony charges, 36.4% were completed within 14 business days, while none of the 9 out-of-custody examinations associated with misdemeanor charges were completed within 7 business days.

Table 5: Examinations Completed within Process Goals

| Examinations Completed within Process Goals | Felony (n=167 examinations) | Misdemeanor (n=96 examinations) | Overall (n=263 examinations) |
|---|-----------------------------|---------------------------------|------------------------------|
| Yes | 143 (85.6%) | 74 (77.1%) | 217 (82.5%) |
| No | 24 (14.4%) | 22 (22.9%) | 46 (17.5%) |

On average, it took 11.6 business days to complete examinations for felony cases and 7.2 business days to complete examinations for misdemeanor cases (median = 11.0 and 6.0 business days, respectively) (Table 6). For out-of-custody exams, it took, on average, 21.7 and 16.1 business days to complete examinations on felony and misdemeanor cases respectively (median = 19.0 and 17.0 business days, respectively).

Table 6: Examination Completion Time

| Report Completion Time | Felony (n=167 examinations) | Misdemeanor (n=96 examinations) | Overall (n=263 examinations) |
|------------------------|-----------------------------|---------------------------------|------------------------------|
| Mean (SD) | 11.6 (6.4) | 7.2 (5.1) | 10.0 (6.4) |
| Median [Min, Max] | 11.0 [2.0, 64.0] | 6.0 [2.0, 34.0] | 9.0 [2.0, 64.0] |

Bivariate analysis of various measurable auxiliary process components related to examinations showed that the following factors were significantly associated with not meeting process goals (completion of examinations after 7-/14-day goals): (1) needing medical records and/or additional testing to aid the assessment¹⁴ (7.4% of on-time examinations vs. 30.4% of delayed examinations [though more detailed information about these needs was unavailable for analysis]; p-value <0.001); (2) having an out-of-custody examination (1.8% of on-time examinations vs. 34.8% of delayed examinations; p-value<0.001); and (3) needing to reschedule the examination for any reason, including refusals (12.4% of on-time examinations vs. 43.5% of delayed examinations; p-value<0.001) (Table 7). Refusals alone were also associated with delayed examinations (7.8% of on-time examinations vs. 30.4% of delayed examinations; p-value<0.001). However, the absence of any requirement for the examination (e.g., interpreter services, need for medical records) and the requirement of the defense attorney's presence at the examination were associated or weakly associated with timely completion (87.6% of on-time examinations vs. 67.4% of delayed examinations, p <0.001; 46.1% of on-time examinations vs. 30.4% of on-time examinations, p=0.071, respectively).

No association with process goal outcomes (met/not met) was found by examinations being linked to one vs. multiple legal cases for a defendant or whether medical records requested to aid the assessment were requested of CHS vs. an external health care provider.

14 In CHS' CHIRP, the FPECC-based operational database, 'Medical Records and/or Testing' was a combined category of Appointment Requirements for administrative tracking purposes.

Table 7: Associations of Examination-Related Factors With Process Goal Outcomes

| Appointment Requirements *** | Completed within Process Goals (n=217 examinations) | Not Completed within Process Goals (n=46 examinations) | P-value |
|--|--|---|----------------|
| Interpreter | 9 (4.1%) | 1 (2.2%) | <0.001 |
| Medical Records and/or Testing | 16 (7.4%) | 14 (30.4%) | |
| No Requirements | 190 (87.6%) | 31 (67.4%) | |
| Other | 2 (0.9%) | 0 (0%) | |
| Attorney Presence Required at Examination * | | | |
| No | 117 (53.9%) | 32 (69.6%) | 0.071 |
| Yes | 100 (46.1%) | 14 (30.4%) | |
| Non-CHS Medical Records Requested | | | |
| No | 216 (99.5%) | 46 (100%) | 1.000 |
| Yes | 1 (0.5%) | 0 (0%) | |
| Multiple Legal Cases | | | |
| No | 182 (83.9%) | 39 (84.8%) | 1.000 |
| Yes | 35 (16.1%) | 7 (15.2%) | |
| Type of Examination*** | | | |
| In Custody | 213 (98.2%) | 30 (65.2%) | <0.001 |
| Out-of-Custody | 4 (1.8%) | 16 (34.8%) | |
| Examination Rescheduled | | | |
| No | 190 (87.6%) | 26 (56.5%) | <0.001 |
| Yes | 27 (12.4%) | 20 (43.5%) | |
| Refused Examination*** | | | |
| No | 200 (92.2%) | 32 (69.6%) | <0.001 |
| Yes | 17 (7.8%) | 14 (30.4%) | |

Note: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$

Process maps for both felony and misdemeanor cases were created describing key process components and reporting median number of days between key process components starting with arraignment and ending with disposition and, if applicable, discharge from jail (Figures 1 and 2). Several differences were observed for felony vs. misdemeanor cases.¹⁵ Examinations on felony cases took three days longer to be scheduled and their reports took three days longer to be sent to the court than those for misdemeanor cases.

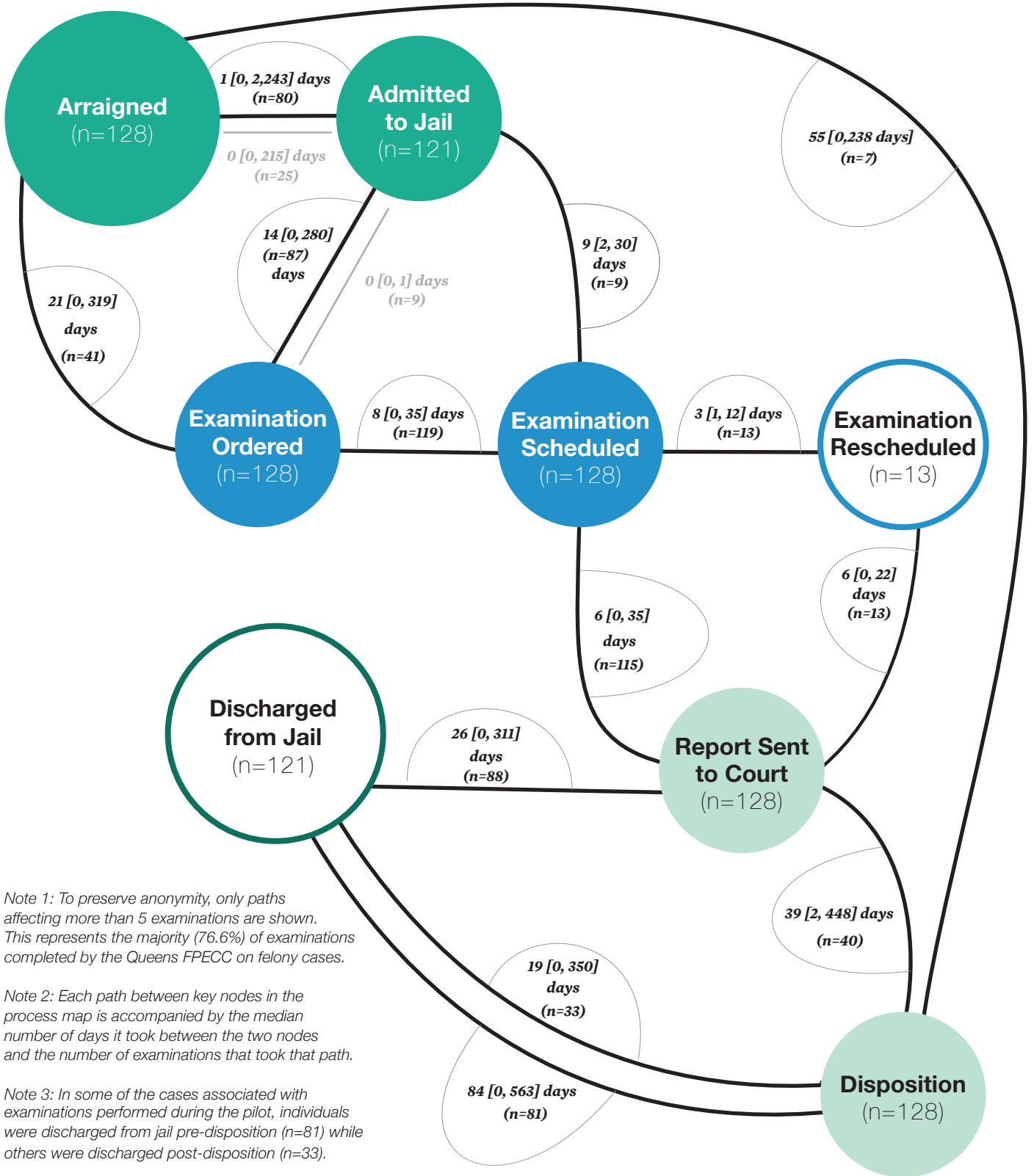
The findings of slightly greater scheduling and report completion times for felony cases compared with misdemeanor cases likely occurred for the following reasons. First, the length of time between judicial order for an examination and court return date is usually shorter for misdemeanor cases, necessitating a shorter turnaround time for scheduling and examinations. Secondly, in consideration of the broader goal of reducing the population of in-jail detainees, scheduling and completion of examinations for misdemeanor cases were more likely to be resolved before felony cases.

Similar differences were observed by case type after the report was sent to the court and the examination process was completed. For example, felony cases took nearly eight times longer to be disposed and individuals spent four times as many days in jail before being discharged. Additionally, while all individuals with a misdemeanor case were discharged from jail post-disposition, some individuals with felony cases were released pre-disposition while others were released post-disposition.

¹⁵ The estimated time from order to completion of examinations associated with felony cases is expected to be longer than the respective time for orders associated with misdemeanor cases. Thus, process completion targets for felony cases are twice as long as misdemeanor cases (14 days vs. 7 days).

Figure 1: Felony Process Map

Median [minimum, maximum] calendar days
(n = # examinations taking that path)



Note 1: To preserve anonymity, only paths affecting more than 5 examinations are shown. This represents the majority (76.6%) of examinations completed by the Queens FPECC on felony cases.

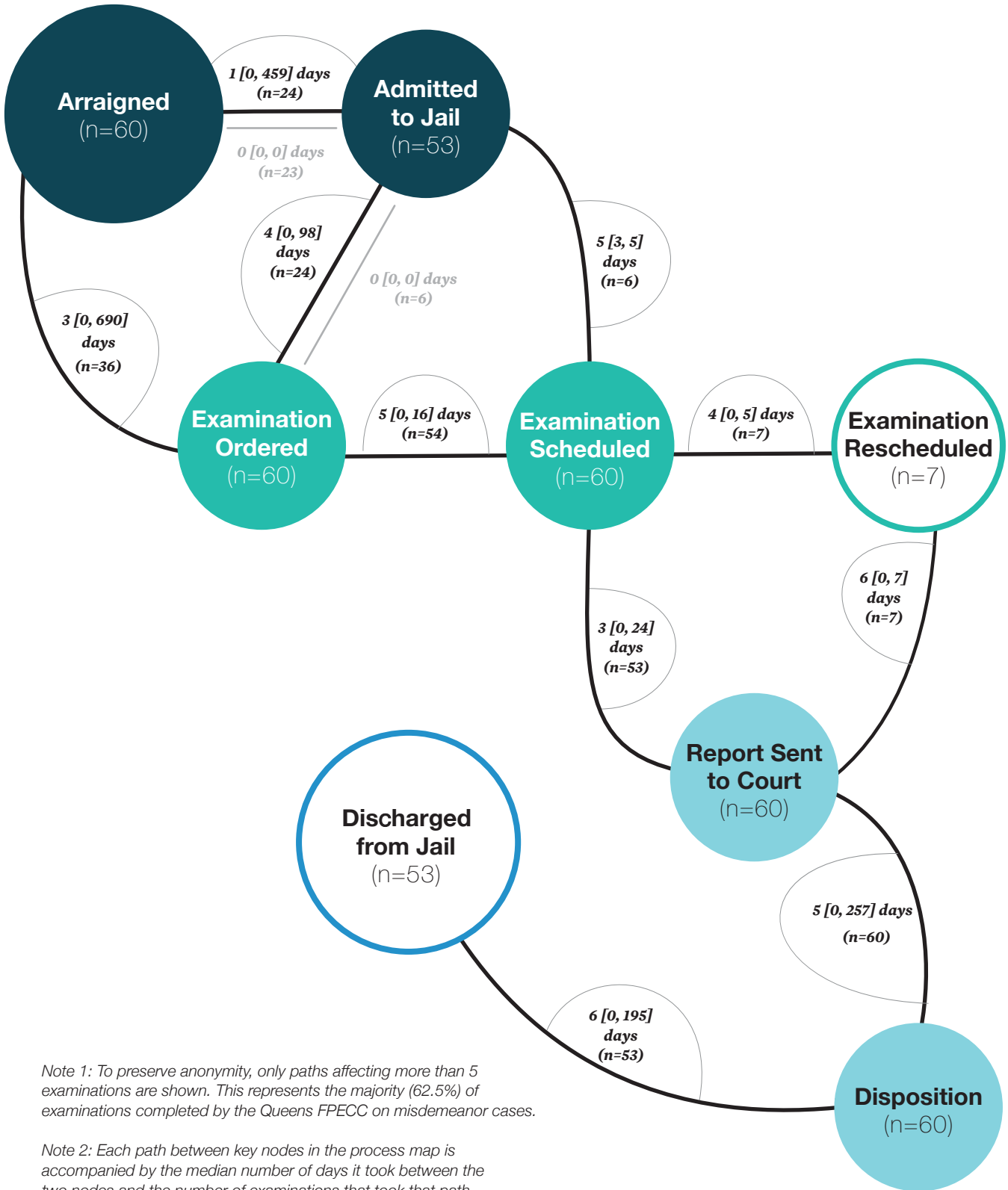
Note 2: Each path between key nodes in the process map is accompanied by the median number of days it took between the two nodes and the number of examinations that took that path.

Note 3: In some of the cases associated with examinations performed during the pilot, individuals were discharged from jail pre-disposition (n=81) while others were discharged post-disposition (n=33).

Note 4: Paths in gray reflect events most frequently occurring on the same day and are included to provide a holistic overview of the process.

Figure 2: Misdemeanor Process Map

*Median [minimum, maximum] calendar days
(n = # examinations taking that path)*



Note 1: To preserve anonymity, only paths affecting more than 5 examinations are shown. This represents the majority (62.5%) of examinations completed by the Queens FPECC on misdemeanor cases.

Note 2: Each path between key nodes in the process map is accompanied by the median number of days it took between the two nodes and the number of examinations that took that path.

Note 3: Paths in gray reflect events occurring on the same day and are included to provide a holistic overview of the process.

Ultimately, for 174 of 263 (66.2%) examinations, the individual was deemed not fit to proceed (Table 8). This finding held for 98 of 167 (58.7%) examinations ordered on a felony case and 76 of 96 (79.2%) examinations ordered on a misdemeanor case. Individuals were found not fit to proceed in 13 of 20 (65.0%) out-of-custody examinations. Specifically, this was the case for 7 of 11 (63.6%) out-of-custody examinations ordered on felony cases and 6 of 9 (66.7%) out-of-custody examinations ordered on misdemeanor cases.

Table 8: Examination Findings

| Examination Findings | Felony (n=167 examinations) | Misdemeanor (n=263 examinations) | Overall (n=263 examinations) |
|------------------------|-----------------------------|----------------------------------|------------------------------|
| Fit to stand trial | 69 (41.3%) | 20 (20.8%) | 89 (33.8%) |
| Not fit to stand trial | 98 (58.7%) | 76 (79.2%) | 174 (66.2%) |

As of May 8, 2020, 97.4% of misdemeanor cases for examinations in which the individual was found unfit to stand trial were dismissed (Table 9).¹⁶ While 25.5% of the felony cases in which the individual was found unfit were dismissed, 58.2% (n=57) are continuing.¹⁷ See Appendix 2 for a table describing how court dispositions were categorized.

Table 9: Court Dispositions for Examinations Completed on Felony vs. Misdemeanor Cases for Individuals Found Unfit to Stand Trial

| Court Dispositions | Felony (n=98 examinations) | Misdemeanor (n=76 examinations) |
|---------------------|----------------------------|---------------------------------|
| Dismissed | 25 (25.5%) | 74 (97.4%) |
| Continued | 57 (58.2%) | 0 (0%) |
| Pled Guilty | 7 (7.1%) | 1 (1.3%) |
| Sentenced/Convicted | 5 (5.1%) | 0 (0%) |
| Other | 4 (4.1%) | 1 (1.3%) |

For the individuals with 57 continuing felony cases, 63.2% were indicted; 22.8% remain committed to OMH; 8.8% were declared fit to proceed to trial; 3.5% had completed the discovery process and the District Attorney's Office had indicated their readiness for trial; and 1.8% had a new psychiatric examination ordered (Table 10).¹⁸

¹⁶ When an individual is found unfit to proceed on a misdemeanor case, the charges are dismissed, the case is sealed, and they are moved to a state civil psychiatric facility run by OMH. Individuals found unfit on felony cases will be committed to an OMH forensic psychiatric facility until their fitness can be restored and they can proceed with the case.

¹⁷ As all continuing cases are felony cases, these individuals are committed to OMH until their fitness can be restored and they can proceed with their cases. In practice, few of these cases result in a jury trial and many are adjudicated through the plea-bargaining process whereby the individual may be offered an alternative to incarceration that may better suit their mental health needs.

¹⁸ Though not frequently observed in the data, it is expected that some individuals will decompensate or experience a new mental health crisis that will require an additional psychiatric examination after their fitness to stand trial has been restored.

Table 10: Status of Continuing Felony Cases as of May 8, 2020

| Court Dispositions | Found Unfit on a Felony Case During Analysis Period (n=57 examinations) |
|---|--|
| Indicted/indictment waived | 36 (63.2%) |
| Committed to OMH | 13 (22.8%) |
| Declared fit to stand trial | 5 (8.8%) |
| Discovery completed/District Attorney ready for trial | 2 (3.5%) |
| Psychiatric examination ordered | 1 (1.8%) |

Black or African American individuals, comprising 24.3% of the NYC population¹⁹, disproportionately face arrest on criminal charges and incarceration in NYC jails and NYS prisons. Additional analyses were conducted to determine if racial disparities persisted in the receipt of judicial orders for 730 examinations, examination timeliness, examination findings, and court outcomes. People who are Black or African American, regardless of Hispanic ethnicity, represented 46.8% of the examinations in the sample (46.9% of in-jail examinations) but comprised 54.8% of the NYC jail population at this time and thus were less likely to have received a judicial order for a competency examination than individuals of other races. This finding is based on the limited data available here and requires broader additional inquiry (such as understanding individual needs and community conditions) to conclude whether systemic bias exists, as well as effective solutions to address bias. However, the timely completion of forensic psychiatric examinations, findings of a person's fitness to stand trial, and the likelihood of dismissal versus another disposition were found to not differ significantly by race or ethnicity (Appendix 3).

¹⁹ US Census Bureau, 2019, QuickFacts: New York City, New York, <https://www.census.gov/quickfacts/newyorkcitynewyork> (Accessed October 1, 2020).

Conclusion

Conclusion

In NYC, the consolidation of four FPECC court clinics under CHS management was in part a streamlining effort to improve the timeliness of court-ordered 730 forensic psychiatric examinations of individuals to determine competency to stand trial and, in turn, reduce the length of time these individuals spend in jail custody while awaiting resolution of their cases. The systemic baseline improvements of the FPECCs by CHS have succeeded in effectuating overall reductions of average case processing times. Although the analysis of the pilot at the Queens FPECC between June 2018 and April 2019 did not study the impact of additional staffing on timeliness of examination processes, it cannot be discounted that the further addition of staffing resources at this site may have contributed to expedited examination processes within target completion times. Overall, the Queens FPECC met its process goals 82.5% of the time, with examinations for felony cases completed within 14 business days 85.6% of the time and those associated with misdemeanor cases completed within 7 business days 77.1% of the time.

Process completion delays were found to be associated with appointment requirements to aid examinations, type of examination ('in' vs. 'out-of-custody'), and examination rescheduling, including those following refusals of examination. These findings were reasonably expected, and it was reassuring that the overall impact was of a small magnitude. While the need for medical records and/or testing was cited as a potential driver of delays in examination process timeliness, it was already noted that the medical record request process had been updated by CHS for all FPECCs to expedite provision of CHS medical records upon receipt of a request. Thus, unmeasured factors associated with medical records and/or its conflation with the need for additional testing other than the administrative request for records may explain these findings. Today, case processing times continue to be examined as part of routine quality review at Queens FPECC and other FPECCs.

Addressing the noted process delays, which may result from defendant refusals to undergo examinations and subsequent need to reschedule them, may benefit by more targeted focus on the part of defense attorneys and community-based supports. In addition to expecting defense attorneys to continue to adhere to best practice standards of legal representation set forth by the American Bar Association, participation in continuing legal education trainings on 730 examination process is encouraged. These trainings are available to the entire NYC defense bar through a partnership of CHS, Legal Aid Society, and the Assigned Counsel Plan (18-B Panel) and are hosted by the OCA. In this pilot, the Legal Aid Society staff were required to make every effort to attend their client's 730 examinations and other attorneys were expected and encouraged to attend. It is therefore recommended that all defense attorneys do the same, by (a) being flexible to accommodate clinic scheduling, (b) making every effort to meet with their clients post-arraignment and prior to the examination, (c) encouraging their clients to attend the examinations to maximize attendance and minimize delays caused by non-appearance.

Since the undertaking of this analysis, broader policy and programmatic changes affecting individuals required to undergo 730 examinations have come into focus. On January 1, 2020, NYS bail reform legislation went into effect.²⁰ The revisions in CPL 510.30 and 510.20 provide that monetary bail or remand may only be imposed in cases where an individual is charged with certain qualifying offenses, namely violent felonies. Given this legislation, NYC sought to bolster its active decarceration efforts by expanding its Supervised Release program – an alternative to bail – to serve any individual, regardless of charge. NYC also significantly increased its investment in alternative to incarceration programs, including many that serve individuals with behavioral health needs. However, a NYS court has since held in *People vs. Suero* that bail reform provisions do not apply in the context of an individual who may be an incapacitated person and thus may need to be remanded for the purpose of receiving a psychiatric examination pursuant to CPL 730. Based on this ruling, two similarly situated individuals charged with non-qualifying offenses could have differing arraignment outcomes based on whether a 730 examination was ordered. The individual with a 730 examination ordered may be taken into custody and held in jail while the individual who does not have a 730 examination ordered would remain at liberty in the community. The impact of these changes on 730 examinations in terms of the frequency of examinations ordered, incarceration, lengths of stay, and 730 examination completion times remains largely unknown and will need to be examined in the near future. As NYC continues to advocate for decarceration of its jails, community-based supports such as intensive mobile treatment (IMT) and assertive community treatment (ACT) may provide needed treatment and stability to defendants who are not in correctional custody throughout their legal case and recovery. Further, the ongoing COVID-19 pandemic and recovery efforts in NYC underscore the critical need for NYC to expand interventions like additional staffing for the expedited forensic examination process at the Queens FPECC to meet the needs of justice-involved people, especially those struggling with mental health and complex needs who are disproportionately impacted by the pandemic.

In summary, in light of NYC's commitment to reduce the number of individuals with mental illness in jail and minimize lengths of pretrial detention, completion of 730 forensic psychiatric examinations of individuals to determine competency to stand trial in an expedited manner is an important part of jail reform. The system improvements made by CHS across all FPECC sites regardless of the Queens pilot have resulted in notable improvements in the quality and timeliness of court-ordered psychiatric examinations. The pilot demonstrates that the focus must be on courts in identifying the need for such evaluations; and defense bars in advocating for their clients. Coordination by defense attorneys with community-based supports such as IMT and ACT services may encourage improved client compliance with judicial orders for psychiatric examinations and allow them to be completed whether the client is detained in jail or is at liberty in the community.

MOCJ will convene a group of key stakeholders involved in the design and initiation of the Queens pilot, including the Queens District Attorney's Office, the Legal Aid Society, Queens Legal Associates, Queens Defenders, the Assigned Counsel Plan (18-B Panel), and OCA, as well as DOC and CHS, to review its successes and lessons learned, and to develop recommendations for improving court-related and/or defense-related processes that may enhance timeliness of case processing and reduce length of stay for individuals with mental health needs.

20 NYS CPL 510

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Appendices

Appendix 1

Table 11: Examination by Custody Status

| Type of Examination | Overall (n=263) |
|---------------------|-----------------|
| In custody | 243 (92.4%) |
| Out-of-custody | 20 (7.6%) |

Table 12: Out-of-Custody Examinations Completed within Process Goals

| Examinations Completed within Process Goals | Felony (n=11) | Misdemeanor (n=9) | Overall (n=20) |
|---|---------------|-------------------|----------------|
| Yes | 4 (36.4%) | 0 (0%) | 4 (20.0%) |
| No | 7 (63.6%) | 9 (100%) | 16 (80.0%) |

Table 13: Findings for Examinations Conducted Out-of-Custody

| Examinations Findings | Felony (n=11) | Misdemeanor (n=9) | Overall (n=20) |
|------------------------|---------------|-------------------|----------------|
| Fit to stand trial | 4 (36.4%) | 3 (33.3%) | 7 (35.0%) |
| Not fit to stand trial | 7 (63.6%) | 6 (66.7%) | 13 (65.0%) |

Table 14: Report Completion Time (in business days) for Out-of-Custody Examinations

| Examinations Findings | Felony (n=11) | Misdemeanor (n=9) | Overall (n=20) |
|-----------------------|------------------|-------------------|------------------|
| Mean (SD) | 21.7 (15.8) | 16.1 (4.6) | 19.2 (12.2) |
| Median [Min, Max] | 19.0 [7.0, 64.0] | 17.0 [8.0, 23.0] | 17.5 [7.0, 64.0] |

Appendix 2

| Table 15: Categorization of Court Dispositions | |
|---|-----------------------|
| Court Dispositions | Categorization |
| Certificate of Compliance Filed (People) | Continued |
| Bail Forfeited | Continued |
| Committed to Mental Hygiene | Continued |
| Community Service Completed | Other |
| Continued for Payment of Fine and/or Surcharge Before or After A Judgment | Continued |
| Convicted After Jury Trial | Sentenced/Convicted |
| Declared Fit to Proceed | Continued |
| Detention at Home | Other |
| Dismissed - Interest of Justice | Dismissed |
| Dismissed After ACD 170.55 | Dismissed |
| Dismissed CPL730 | Dismissed |
| Execution of Sentence | Sentenced/Convicted |
| Hearing Continued | Continued |
| Indicted | Continued |
| Indictment Waived | Continued |
| Plea of Not Guilty | Continued |
| Pled Guilty - PGIA | Pled Guilty |
| Pled Guilty, Sentence Imposed | Pled Guilty |
| Psychiatric Examination Ordered | Continued |
| Resentenced | Sentenced/Convicted |
| Returned on Warrant | Continued |
| Sentence Imposed | Sentenced/Convicted |
| Warrant Ordered | Continued |
| Cert Comp Filed/ Ready (People) | Continued |
| Certificate of Supplemental Compliance Filed (PEO) | Continued |
| Covered by Another Case | Other |
| Dismissed | Dismissed |
| Dismissed, Superseded by Another Case | Dismissed |
| Probation Terminated Without Comment | Other |
| Retention Order Signed | Other |

Appendix 3

Table 16: Race/Ethnicity by Examination Timeliness

| | Completed within Process Goals (n=217 examinations) | Not Completed within Process Goals (n=46 examinations) | P-value |
|------------------------------|---|--|---------|
| Race/Ethnicity | | | 0.863 |
| Hispanic | 51 (23.5%) | 9 (19.6%) | |
| NH Black or African American | 94 (43.3%) | 22 (47.8%) | |
| NH White | 30 (13.8%) | 5 (10.9%) | |
| NH Multiracial or Other | 28 (12.9%) | 8 (17.4%) | |
| NH Asian or Pacific Islander | 14 (6.5%) | 2 (4.3%) | |

Table 17: Race/Ethnicity by Examination Findings

| | Not Fit to Stand Trial (n=174 examinations) | Fit to Stand Trial (n=89 examinations) | P-value |
|------------------------------|---|--|---------|
| Race/Ethnicity | | | 0.658 |
| Hispanic | 37 (21.3%) | 23 (25.8%) | |
| NH Black or African American | 82 (47.1%) | 34 (38.2%) | |
| NH White | 21 (12.1%) | 14 (15.7%) | |
| NH Multiracial or Other | 24 (13.8%) | 12 (13.5%) | |
| NH Asian or Pacific Islander | 10 (5.7%) | 6 (6.7%) | |

Table 18: Race/Ethnicity by Court Disposition

| | Dismissed (n=110 examinations) | Other Disposition (n=153 examinations) | P-value |
|------------------------------|--------------------------------|--|---------|
| Race/Ethnicity | | | 0.718 |
| Hispanic | 24 (21.8%) | 36 (23.5%) | |
| NH Black or African American | 50 (45.5%) | 66 (43.1%) | |
| NH White | 13 (11.8%) | 22 (14.4%) | |
| NH Multiracial or Other | 18 (16.4%) | 18 (11.8%) | |
| NH Asian or Pacific Islander | 5 (4.5%) | 11 (7.2%) | |

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