

Judges' Guide to Mental Illnesses in the Courtroom

OBSERVATIONS THAT INDICATE A DEFENDANT MAY HAVE A MENTAL ILLNESS

When Mental Illness Seems to be a Factor, Consider:

Prevalence:

- **Serious Mental Illness:** 17% of adults booked into jails (31% of women; 15% of men)
- **Substance Use Disorder:** 65% of adults in U.S. corrections systems
- **Co-Occurring Mental Illness/Substance Use Disorder:** 72% of adults with serious mental illnesses in jail also had co-occurring substance use disorders

Contextualizing Observations: *While these categories of observation are provided to alert judges that an individual may have a mental illness that requires different judicial action and/or attention by a mental health professional, they are not definitive signs of mental illness. Certain contextual elements are important to remember:*

- Appearing in court is an anxiety-provoking experience for most people.
- Individuals may not be prepared to navigate a system as complex and demanding as the criminal justice system.
- Individuals may bring to court skills that have allowed them to survive in their communities but are poor fits for interacting with the court (e.g., toughness, argumentativeness, silence).

Categories of Observation: <i>Do you see something in one of the following areas <u>that does not make sense</u> in the court context?</i>	Courtroom Observations: <i>Examples of how behaviors in the observational areas can indicate that the individual may have a mental illness:</i>
Appearance: Age, hygiene, attire, ticks/twitches	<ul style="list-style-type: none"> • Looks older/younger than the listed date of birth • Wears inappropriate attire (e.g., multiple layers of clothing in the summertime) • Trembles or shakes, is unable to sit or stand still
Cognition: Understanding/appreciation of situation, memory, concentration	<ul style="list-style-type: none"> • Does not understand where s/he is • Seems confused or disoriented • Has gaps in memory of events • Answers questions inappropriately
Attitude: Cooperativeness, appropriate participation in court hearing	<ul style="list-style-type: none"> • Stays distant from attorney or bench • Acts belligerent or disrespectful • Is not attentive to court proceedings
Affect/Mood: Eye contact, outbursts of emotion/indifference	<ul style="list-style-type: none"> • Does not make eye contact with judge or court staff • Appears sad/depressed, or too high-spirited • Switches emotions abruptly • Seems indifferent to severity of proceedings
Speech: Pace, continuity, vocabulary <i>(Note: Can this be explained by discomfort with English language?)</i>	<ul style="list-style-type: none"> • Speaks too quickly or too slowly • Misses words • Uses vocabulary inconsistent with level of education • Stutters or has long pauses in speech
Thought Patterns and Logic: Rationality, tempo, grasp of reality	<ul style="list-style-type: none"> • Seems to respond to voices/visions • Expresses racing thoughts that may not be connected to each other • Expresses bizarre or unusual ideas

JUDICIAL INTERACTIONS

Before Interacting with a Defendant, Consider:

- **How the courtroom environment is affecting the defendant:**
 - Are there noises or distractions in the courtroom that are negatively affecting the defendant?
 - Is there a family member or defense attorney who can help calm the person?
- **Safety** for yourself, the court staff, and the individual.
- **What is being asked and said in open court** and how this may affect future proceedings.

While Interacting with a Defendant, Consider:

Courtroom Situations: <i>Examples of commonly-observed scenarios</i>	Immediate Responses: <i>Recommendations for immediate situation management</i>
When a mental illness is affecting a defendant's courtroom participation	<ul style="list-style-type: none"> • Speak slowly and clearly • Avoid jargon • Explain what's happening • Write instructions down if dates/address are involved • Treat individual with the respect you would give other adults • If appropriate, use principles of Motivational Interviewing:[*] <ul style="list-style-type: none"> • Express empathy • Point out discrepancies between goals and current behavior • Roll with resistance • Support self-efficacy
Loss of Reality:^{**} <i>When the defendant appears confused or disoriented</i>	<ul style="list-style-type: none"> • Ground defendant in the here and now^{**}
Loss of Hope: <i>When the defendant appears sad, desperate</i>	<ul style="list-style-type: none"> • As appropriate, instill hope in positive end result • To extent possible, establish a personal connection
Loss of Control: <i>When the defendant appears angry, irritable</i>	<ul style="list-style-type: none"> • Listen, defuse, deflect • Ask defendant about why s/he is upset • Avoid threats and confrontation
Loss of Perspective: <i>When defendant appears anxious, panicky</i>	<ul style="list-style-type: none"> • Seek to understand • Reassure and calm defendant • Deflect concerns

When Taking Action, Consider:

- **Having defendant approach the bench:** Would this de-escalate the situation or create a safety risk?
- **Re-calling the case later in the session/calendar:** Could this help the defendant calm down?
- **Determining whether to proceed:** Is a fitness or competency evaluation appropriate?
- **Setting conditions of release:**
 - Does defendant have capacity to understand conditions?
 - Does defendant have ability to adhere to conditions?
 - What effect will these conditions have on regularity of treatment?
 - What effect will time in jail have on mental health, access to medication, benefits maintenance, etc.?
 - How will conditions/time in jail affect the defendant's access to a primary caregiver?
- **Requesting mental health information:** What exactly do you need to make the decision facing you?
- **Making a referral (to mental health services provider or other services):**
 - What are the goals of the referral?
 - How might the defendant's cultural background and linguistic needs impact access to services?
 - What are the expectations for reporting back to the court?

* Motivational Interviewing is a counseling approach initially developed by William R. Miller and Stephen Rollnick.

**The Loss of Reality, Hope, Control, and Perspective and the immediate responses are based on the LOSS Model developed by Paul Lilley.