

May 16, 2019



**Justice
Center**

Improving Cultural Competency: Working with People in the Criminal Justice System Who Have Mental Illnesses



Judges and Psychiatrists Leadership Initiative (JPLI)

Mission of the JPLI

The Judges' and Psychiatrists' Leadership Initiative (JPLI) aims to stimulate, support, and enhance efforts by judges and psychiatrists to improve judicial, community, and systemic responses to people who have behavioral health needs who are involved in the justice system

- ◆ Creating a community of judges and psychiatrists
- ◆ Increasing the reach of trainings
- ◆ Developing educational resources
- ◆ Three *Judges' Guides*



Subscribe to the JPLI Newsletter:

<https://csgjusticecenter.org/courts/judges-leadership-initiative>

Speakers

Judge Steve Leifman

Associate Administrative Judge, Miami-Dade County Court

Dr. Sarah Vinson

Child and Adolescent, Adult and Forensic Psychiatrist, Lorio Psych Group

Webinar Overview

1

Overview of
Mental Illness in
the Criminal
Justice System

2

Cultural and
Structural
Considerations

3

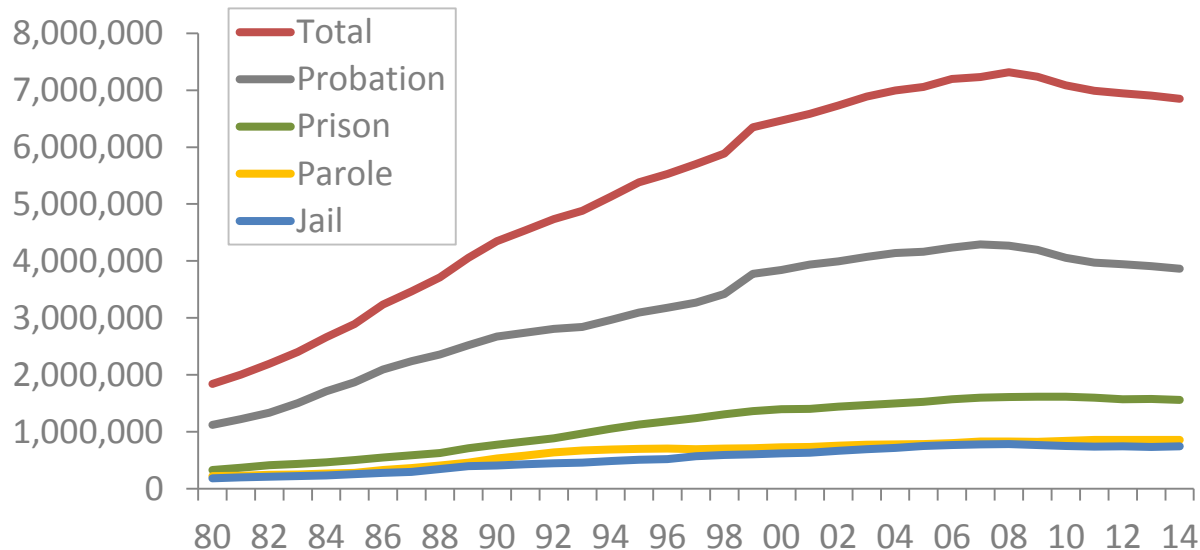
The Role of Judges,
Prosecutors and
Defense Attorneys
In Effective
Responses

Judge's Story: Hon. Steve Leifman - Miami-Dade, FL

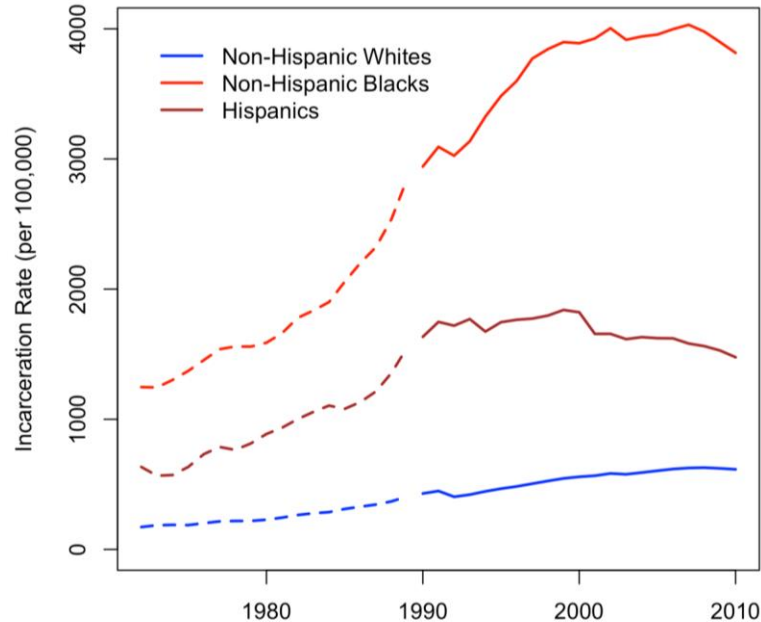
- ◆ The problem observed
- ◆ The learning process:
 - ▶ History
 - ▶ Law
 - ▶ Situation in the community
- ◆ The actions taken in Miami and in Florida



Expanding Population under Correctional Supervision

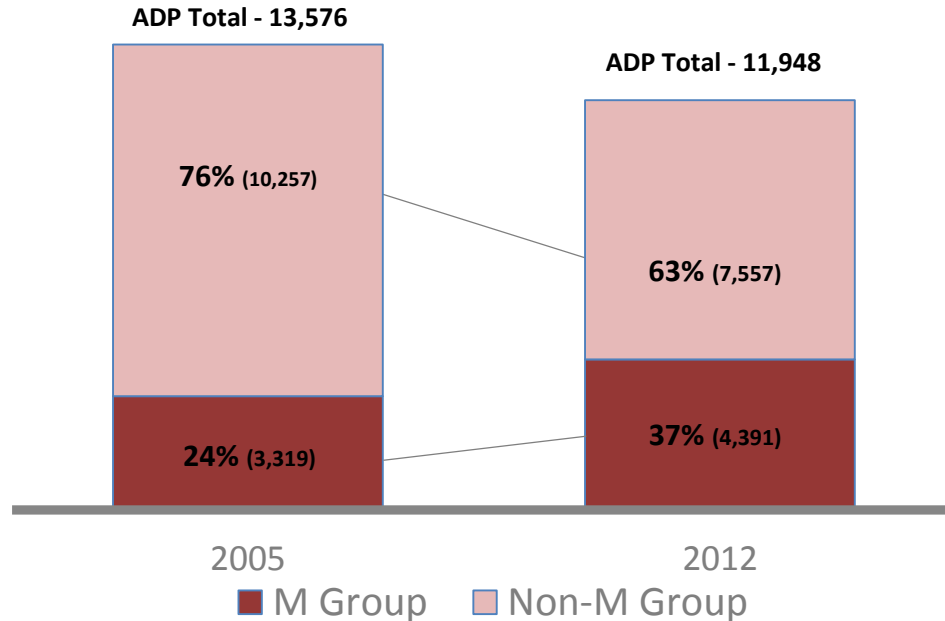


Substantially Higher Rates across Demographic Lines



Jails Report Increases in the Numbers of People Who Have Mental Illnesses

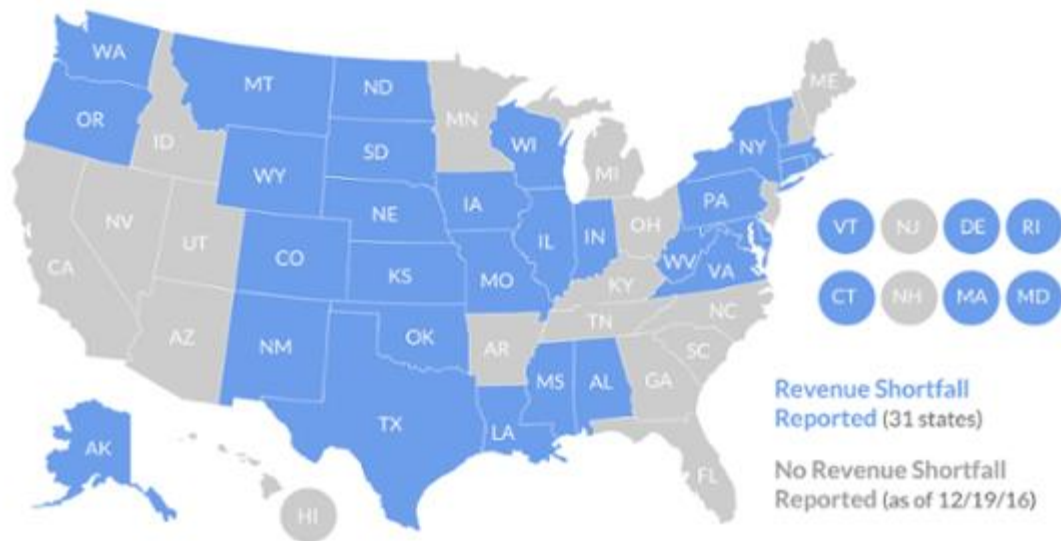
NYC Jail Population (2005-2012)



Pressure on State Budgets

States with Revenue Shortfalls

MULTISTATE



A Crisis That's Hard to Miss



Mentally ill inmates at Franklin County Jail stay longer



Johnson County Sheriff: Mental health is number one problem



Inmates with mental health issues inundate Pima County Jail



Mental health crisis at Travis County jails



Nearly a third of county inmates require drugs for mental illness

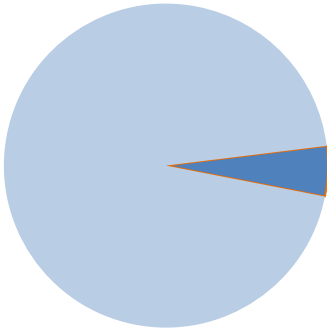


Jail violence increasing due to mental illnesses

Serious Mental Illnesses: Overrepresented in Our Jails

General Population

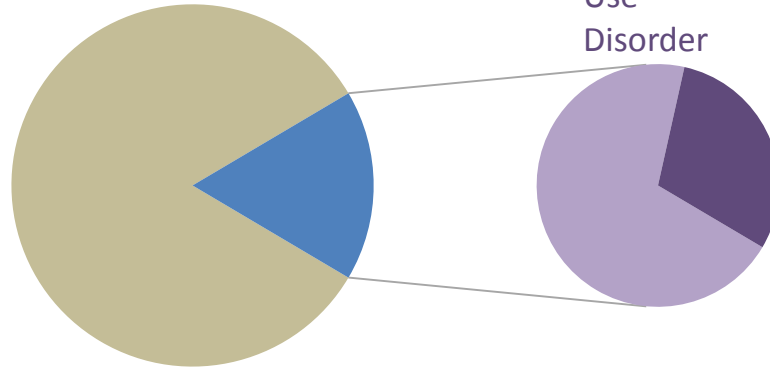
5% Serious
Mental Illness



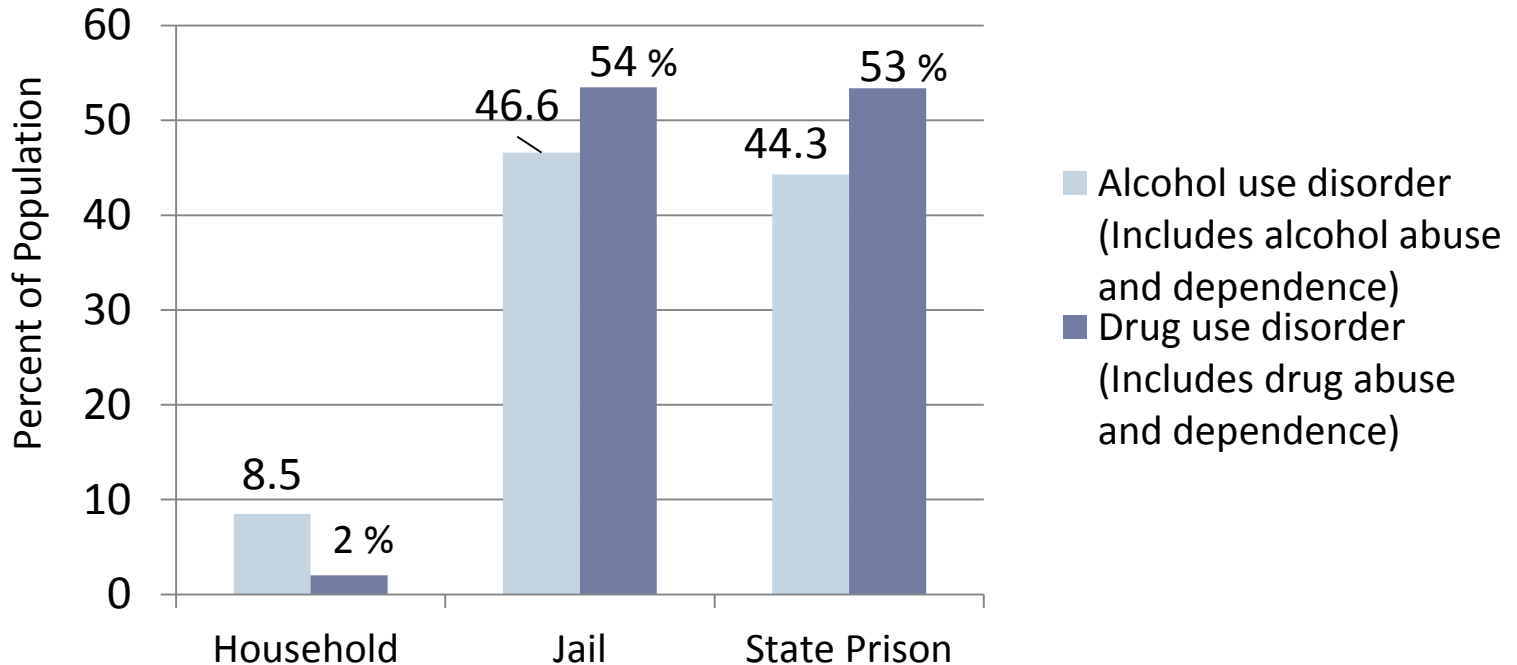
Jail Population

17% Serious
Mental Illness

72% Co-Occurring
Substance
Use
Disorder



Alcohol and Drug Use Disorders: Household vs. Jail vs. State Prison



This Issue is in the Courtrooms . . .

- ◆ Defendant who remains silent in response to the judge's questions due to paranoia
- ◆ Defendant who provides incoherent/nonsensical responses to the judge's questions
- ◆ Defendant who is unable to follow the judges instructions
- ◆ Individual on community supervision who has difficulty following the conditions of probation



Photo source:

http://www.countyofdane.com/court/court/photos.aspx?photo_id=18

. . . And Causes Challenges for Judges and Attorneys

In the courts, individuals who have serious mental illnesses:

- ◆ Present time management issues for managing a docket
- ◆ Try judicial patience with behaviors
- ◆ Come back in again and again
- ◆ Can be disruptive

Challenges for attorneys:

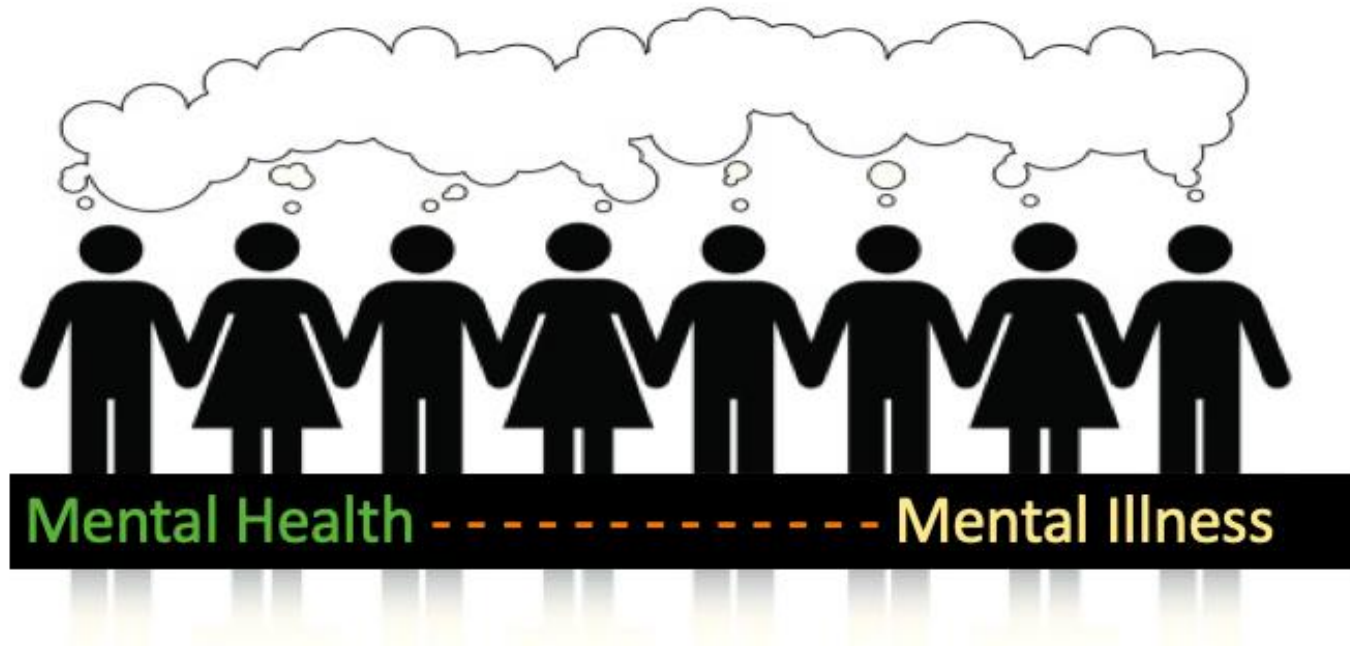
- ◆ Difficult for defense attorneys to communicate with their clients
- ◆ Clients do not accept defense attorneys' advice and acts against their best interest
- ◆ Prosecutors may lack viable options

And Challenges for the Individual in the Courtroom

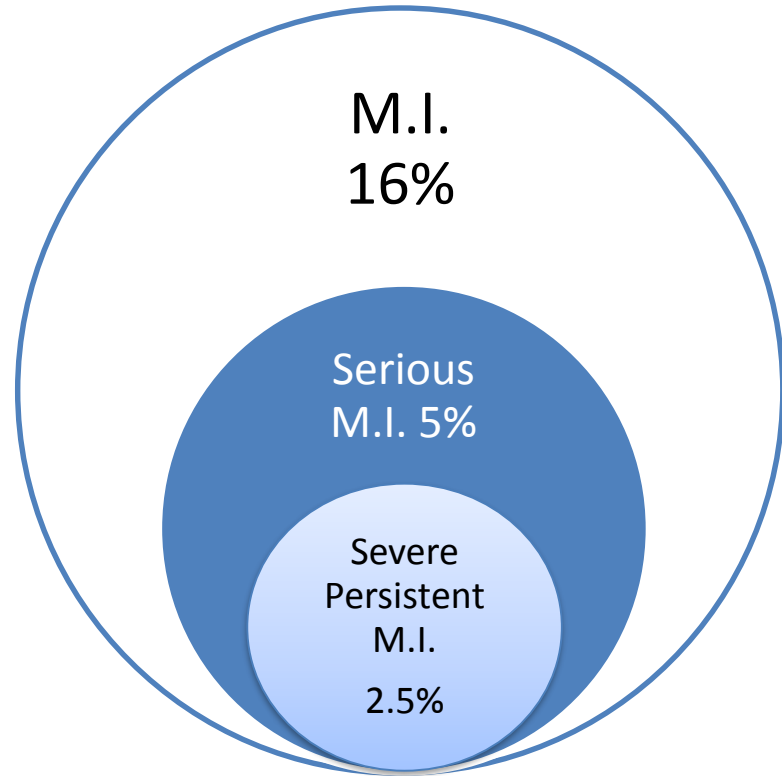
- ◆ Embarrassment
- ◆ Fear
- ◆ Anxiety
- ◆ Stress
- ◆ Trauma (Re-traumatization for many)



The Continuum



Continuum in the General Population



Principles of Care

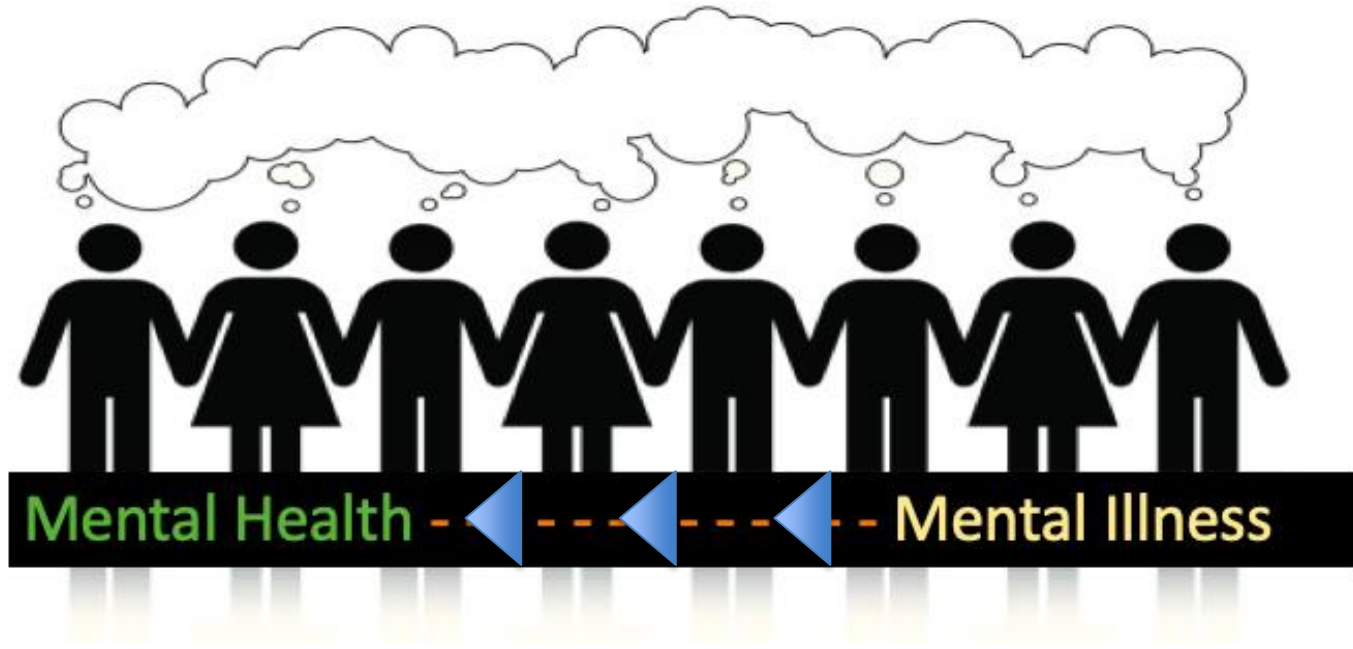
- ✓ Integrating substance and M.I. treatment
- ✓ Individualized treatment planning
- ✓ Assertiveness
- ✓ Close monitoring
- ✓ Longitudinal perspective
- ✓ Harm reduction
- ✓ Matching stage of change
- ✓ Stable housing
- ✓ Cultural competency and consumer-centeredness
- ✓ Optimism



Medication

- A tool, but rarely curative
- Not always easy to “Just take”
 - Different classes with different effects and side effects
 - Access to prescribers
 - Cost
 - Organization
- In cases of SPMI needed consistently and long-term for most

Recovery



Recovery: Common Misconceptions

It means cure.

It is rare.

It is more costly.

It's not the
court's issue.

It's uniform.

Recovery

It means
a better life.

It can and does
happen.

It has many
benefits.

It's multi-systemic
and multi-factorial.

It's different for
everyone.

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The Myth of
Cultural & Structural
Competence
and the Case for Humility

Objectives

- Introduce Basic Terminology
- Understand Need and Implications
- Foster Cultural and Structural Humility
- Identify Strategies
- *Not* to make you “Competent”

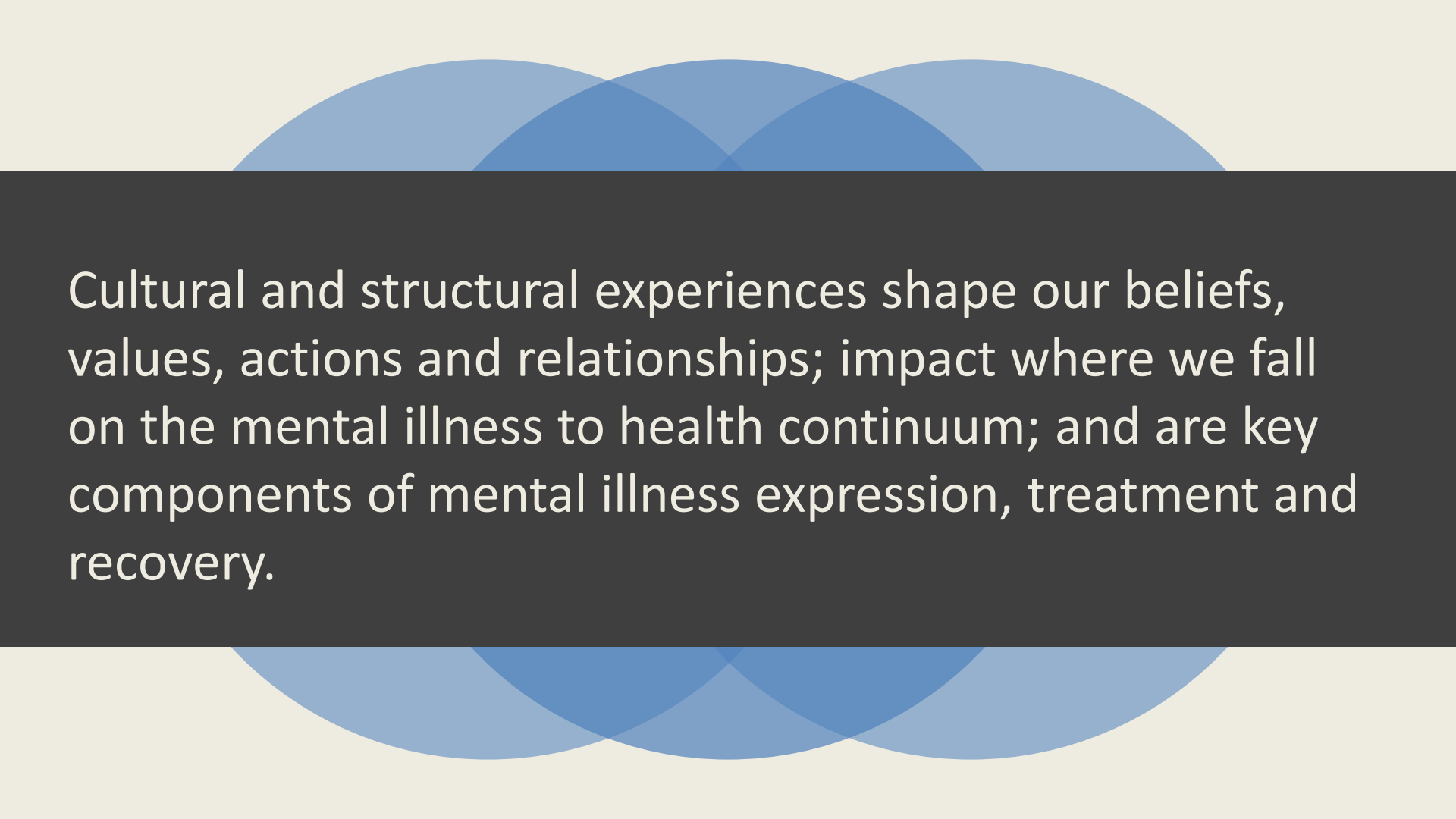
- Competence

- Build understanding
- Values knowledge and training
- Perceived as endpoint
- Over-reliance on knowledge and generalizations

- Humility

- Inspire personal reflection and growth in order to increase awareness
- Introspection and co-learning
- Open-ended





Cultural and structural experiences shape our beliefs, values, actions and relationships; impact where we fall on the mental illness to health continuum; and are key components of mental illness expression, treatment and recovery.



The experience-based perspectives of officers of the court are often quite disparate from the experience-based perspectives of those served by the court.

Bias

- Explicit
 - Attitude and stereotypes that are **consciously accessible** through introspection and endorsed as appropriate
 - People can choose to **freely express or conceal**
- Implicit
 - Attitudes and stereotypes that are **not consciously accessible** through introspection
 - **Impact behavior**
 - May reject them as inappropriate **with insight**.

Bias

- Structural bias
 - AKA institutional or societal – school, housing, wealth, healthcare, employment
 - Can lock in past inequalities, reproduce them and exacerbate them **even without formally treating persons worse** simply because of attitudes and stereotypes about the groups to which they belong
 - Can produce unfairness **even though no single individual is being treated worse right now** because of his or her membership in particular social category

THE RACIAL AND GENDER BREAKDOWN OF *STATE COURT JUDGES*

THE
AMERICAN
PEOPLE ARE
51%
WOMEN

70%
MEN

80%
WHITE

AND
38%
PEOPLE
OF COLOR

30%
WOMEN

20%
PEOPLE
OF COLOR

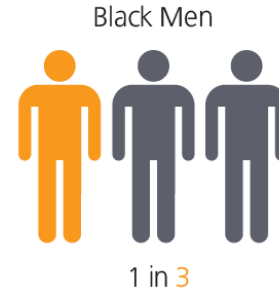
THE
GAVEL  GAP

TO LEARN MORE, GO TO [GAVELGAP.ORG](https://gavelgap.org)

 **ACS** AMERICAN
CONSTITUTION
SOCIETY FOR
LAW AND POLICY

Judges & 
Psychiatrists
Leadership Initiative

Lifetime Likelihood of Imprisonment of U.S. Residents Born in 2001



Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, DC: Bureau of Justice Statistics.



Surgeon General's Report on M.I.

- Racial and ethnic minorities bear a greater burden from unmet mental health needs and thus suffer a greater loss to their overall health and productivity
- Less access to care, less likely to receive it, and less likely to receive quality care when they do
- Foremost barriers: cost of care, societal stigma and fragmented m.h. systems
- Secondary barriers: bias, language, client fear and mistrust of treatment, racism and discrimination

Potential Implications

- Racial and ethnic minorities bear a greater burden from unmet mental health needs and thus suffer a greater loss to their overall health and productivity
 - Impediment to academic progression
 - Diminished employment opportunities
 - Risk for homelessness
 - Frayed relationships
 - No resources for defense

Potential Implications

- Less access to care, less likely to receive it, and less likely to receive quality care when they do
 - Severe symptoms
 - Chronic symptoms
 - Ripple effects of symptoms
 - Maladaptive coping
 - Self-Medication
 - Aversive experiences w/n m.h. care
 - Challenges in presenting care plans
 - Untreated, undiagnosed illness upon entering the judicial system

Potential Implications

- Foremost barriers: cost of care, societal stigma and fragmented m.h. systems
 - “Non-adherence”
 - Insured without access
 - Co-pays, transportation, provider availability, services covered or not
 - Double stigma - Racism + Stigma

Potential Implications

- Secondary barriers: Lack of awareness of cultural issues, bias, language, client fear and mistrust of treatment, racism and discrimination
 - Symptoms missed or misinterpreted
 - Criminal rather than ill
 - Undermined working relationships
 - Little faith that treatment will work or that providers will help
 - Fact-based “paranoia”
 - Lack of engagement due to fear of involvement of other systems
 - ICE, DFCS, Housing, Legal



Police Encounter

Charge and Plea Bargain

Trial

Sentencing

*How might these factors
impact a **defendant's**
perception of or behavior
during the various phases of
legal system involvement?*



Police Encounter

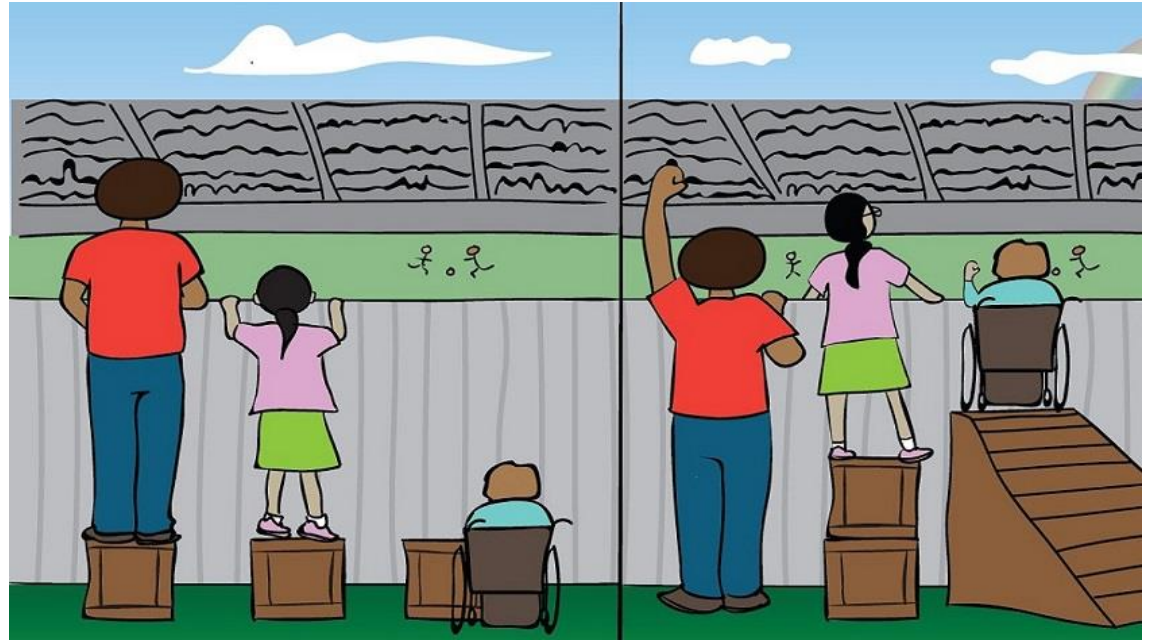
Charge and Plea Bargain

Trial

Sentencing

*How might these factors
impact an **officer of the
court's** perception of or
behavior during the various
phases of legal system
involvement?*

Treating
everyone the
same isn't
fair... and in
reality rarely
happens



CJS & Mental Health

- Criminal justice system involved blacks are 44% less likely to be referred for a mental health evaluation
- People of color are more likely to receive misdiagnoses, not be diagnosed, or not referred for a mental health evaluation despite exhibiting behavior indicative a mental illness.
 - Bias within personnel of justice and mental health system responsible for referrals and assessments.

CJS & Mental Health

- Black people are significantly less likely to receive psychiatric medication and counseling while in prison than their non-black counterparts.
 - More likely to be involuntarily hospitalized
- Within correctional settings, without a prior history of mental health diagnosis, blacks are significantly less likely than non-black people to receive treatment.

¿Por qué Archie, el nuevo miembro de la familia real británica no tiene título?...



Leonard Bailey, surgeon who stoked moral dilemma with baboon-to-human hea...



Busy Philipps' #youknowme campaign prompts emotional abortion stories



Racist 'promposal' shows disconnect between affluent Palos Verdes, the rest of...



His wea baring Georget

MUST READS L.A. NOW LOCAL

L.A. County deputies stopped thousands of innocent Latinos on the 5 Freeway in hopes of their next drug bust

By JOEL RUBIN and BEN POSTON OCT 04, 2018 | 6:50 PM

The New York Times

Speaking Black Dialect in Courtrooms Can Have Striking Consequences



ABOUT | POLICY TOPICS | PODCASTS | SPRING EDITION | SUBMIT



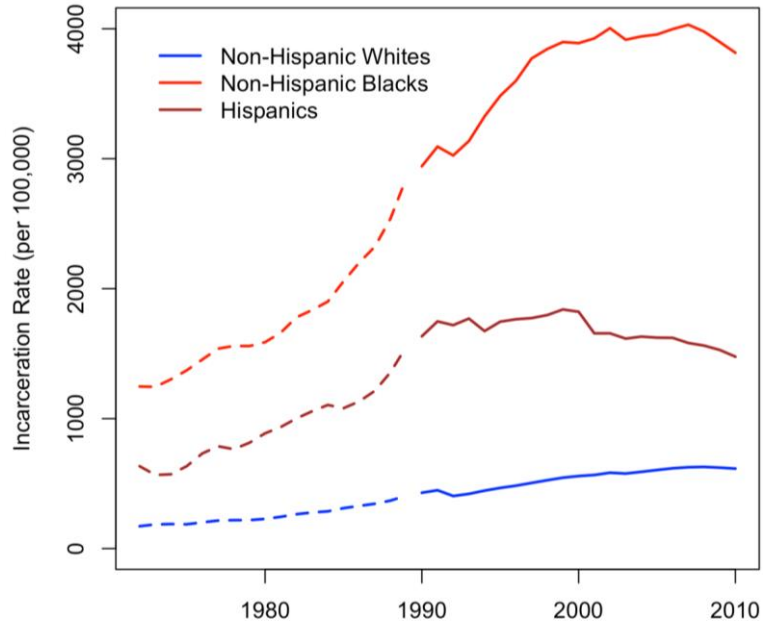
STILL SEPARATE, STILL UNEQUAL: HOW EXCLUSIONARY ZONING SUSTAINS INEQUITY IN EDUCATION

DEVON EDWARDS / DOMESTIC POLICY, EDUCATION, EXCLUSIONARY ZONING, HOUSING / MAY 15, 2019



A person walks past the federal courthouse in Philadelphia. A study found court reporters in the city regularly made errors in transcribing sentences that were spoken in black dialect. Matt Rourke/Associated Press

Bad Apples or Bad Soil?





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Judicial Role(s)

◆ In the courtroom

- ▶ Identifying mental illness and other factors that may affect an individual's behavior
- ▶ Getting the right information
- ▶ Interacting to encourage compliance
- ▶ Making appropriate referrals to treatment
- ▶ Considering effects of sentencing

◆ In the community

- ▶ As conveners
- ▶ As agents of change



In the Courtroom: Changing Individual Behavior



1. Understand the problem(s)
2. Identify an appropriate approach
3. Communicate the approach to maximize likelihood of compliance
4. Monitor compliance and adjust as needed

Identifying that Mental Illness May Be a Factor

Modified Mental Health Status Exam:

Observations from the bench

- ◆ Appearance
- ◆ Cognition
- ◆ Attitude
- ◆ Affect
- ◆ Speech
- ◆ Thoughts

Other Issues to Consider:

- ◆ How is behavior shaped by:
 - ▶ History of trauma?
 - ▶ Substance use/abuse?
- ◆ How do life circumstances affect behavior/ability to comply with orders?
 - ▶ Homelessness
 - ▶ Unemployment
 - ▶ Lack of transportation

Getting the Right Information

Behavioral Health Information

- ◆ Specific Diagnoses
- ◆ Specific Responsivity Factors
 - ▶ Trauma
 - ▶ Homelessness
 - ▶ Poverty

Criminogenic Risk/Needs

- ◆ Level of risk to inform release decisions
- ◆ Specific dynamic risk factors

Getting the Right Information

What you can do as a judge or lawyer?

- ◆ **Be clear** with your behavioral health colleagues about what sort of information you need
- ◆ **Engage** in dialogue with the assessor about what will be most helpful for you to inform your decisions
- ◆ **Be aware** that different types of “assessment” require different amounts of time, have different costs, and may trigger other legal consequences

In the Courtroom: Changing Individual Behavior

1. Understand the problem(s)
- ➡ 2. Identify an appropriate approach
3. Communicate the approach to maximize likelihood of compliance
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Identifying Potential Legal Routes

- ◆ Will the case likely proceed beyond a competency exam?
- ◆ Are there alternative programs available for a case like this?
 - ▶ Pretrial release
 - ▶ Mental health court
 - ▶ Specialized probation
- ◆ How might evidence-based decision making play into how you handle the case if it moves forward?

Factors to consider:

- ◆ Charge type and level
- ◆ Criminal history
- ◆ Any info on violence
- ◆ Degree of functional impairment due to mental illness/ substance use
- ◆ Recidivism risk assessment

Making Decisions Based on Risks and Needs

R for **RISK**

Provide more intensive supervision and prioritize treatment for those at the higher risk of recidivating

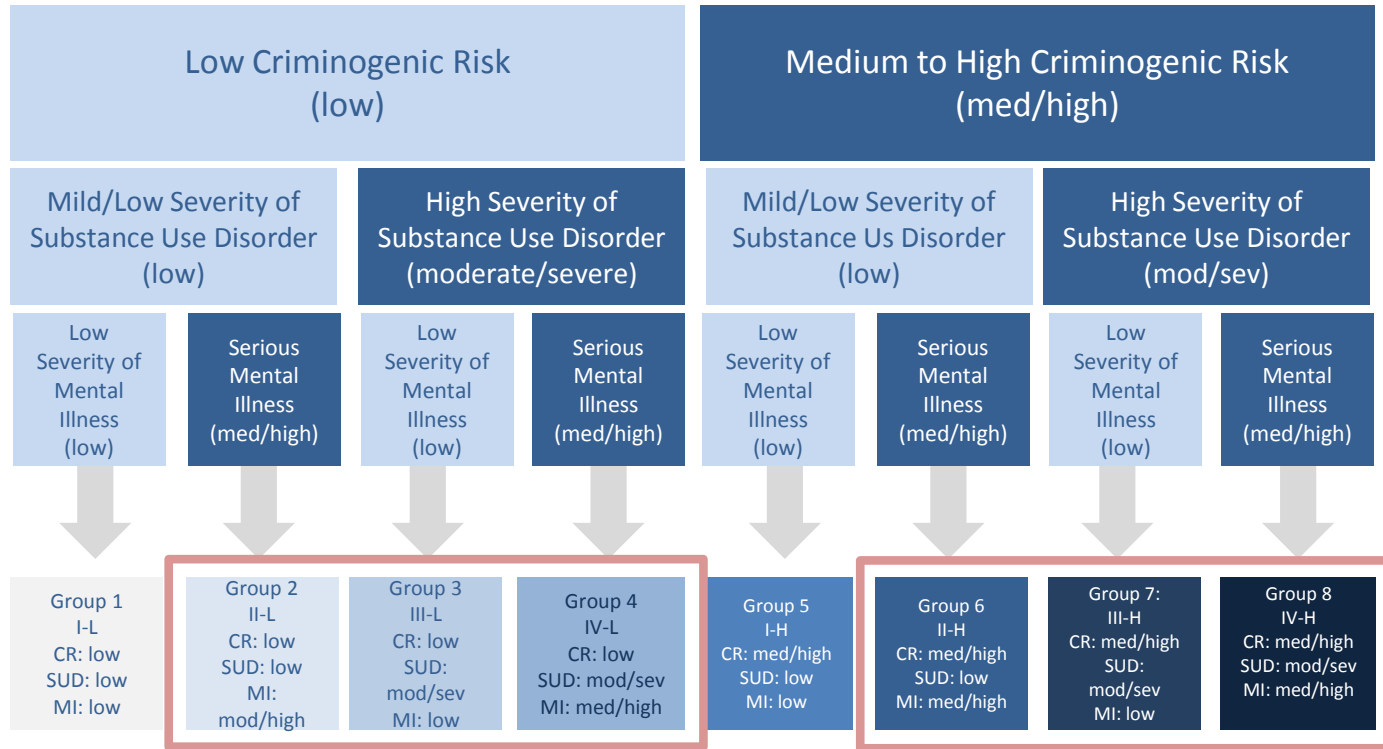
N for **NEED**

Understand and target the things you can change that are contributing to the likelihood of reoffending (“target dynamic criminogenic risk factors”)

R for **RESPONSIVITY**

Focus on clear communications and remove barriers that may prevent the individual from understanding and complying with treatment and conditions of supervision

A Framework for Prioritizing Target Population




Source: Fred Osher, et al., *Adult with Behavioral Health Needs under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery* (New York: The Council for State Governments Justice Center, 2012).

Considering Effects of Actions on Outcomes


Time in jail can have unforeseen collateral consequences for individuals who have mental illnesses:

- ◆ Decompensation
 - ▶ Trauma
 - ▶ Suicide risk
- ◆ Treatment disruption
 - ▶ Loss of benefits (statutory)
 - ▶ No continuity of care
- ◆ Loss of supports in the community
 - ▶ Housing (misses rent payment)
 - ▶ Loss of employment (misses work)

In the Courtroom: Changing Individual Behavior

1. Understand the problem(s)
2. Identify an appropriate approach
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Judges' Guide to Mental Illnesses in the Courtroom



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 a person 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.
- People may not be prepared to navigate a system as complex and demanding as the criminal justice system.
- People may come to court with skills that have allowed them to survive in their communities but are not conducive to interacting with the court (e.g., toughness, argumentativeness, silence).

| Categories of Observation: Do you see something in one of the following areas <u>that does not make sense</u> in the court context? | Courtroom Observations: Examples of how behaviors in the observational areas can indicate that the person may have a mental illness: |
|--|--|
| 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 defendant.**
- **What is being asked and said in open court and how this may affect future proceedings.**



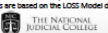
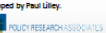
While Interacting with a Defendant, Consider:

| Courtroom Situations: Examples of commonly-observed scenarios | Immediate Responses: Recommendations for immediate situation management |
|---|---|
| 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 the defendant with the respect you would give other adults • If appropriate, use principles of Motivational Interviewing:⁸ <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** When the defendant appears confused or disoriented | <ul style="list-style-type: none"> • Ground defendant in the here and now** |
| Loss of Hope: When the defendant appears sad, desperate | <ul style="list-style-type: none"> • As appropriate, instill hope in positive end result • To extent possible, establish a personal connection |
| Loss of Control: When the defendant appears angry, irritable | <ul style="list-style-type: none"> • Listen, defuse, deflect • Ask defendant about why s/he is upset • Avoid threats and confrontation |
| Loss of Perspective: When the defendant appears anxious, panicky | <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 the defendant have the capacity to understand conditions?
 - Does the defendant have the 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?

⁸ Motivational Interviewing is a counseling approach initially developed by William R. Miller and Stephen Rollnick.
^{**} Loss of Reality, Hope, Control, and Perspective and the immediate responses are based on the LOSS Model developed by Paul Utley.

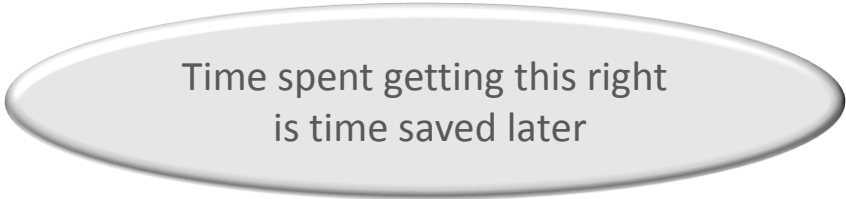
Avoiding Aggravating the Situation

- ◆ Ensure that court staff understand how sudden movements and loud noises may aggravate the situation
- ◆ Identify whether defense attorney, family members, case managers or others are in courtroom and may be able to assist in defusing any situations

Adapting Interaction Approach

Your attitude

- ◆ Calm
- ◆ Patient, even though it seems to be slowing things down
- ◆ Slow, clearly enunciated speech
- ◆ Treat adults like adults
- ◆ Understanding of the fear, anxiety, and maladaptive behaviors that may be triggered by involvement with the courts and the criminal justice system



Time spent getting this right
is time saved later

Adapting Word Choice

Your words

- ◆ Simple (no jargon)
- ◆ Explain what's happening and why, including procedure and movement of court personnel
- ◆ Where possible, provide written instructions where dates/locations are involved
- ◆ Be sensitive to how common court words may sound to a new person (e.g., “your screen is dirty,” “we’re done with you”)

In the Courtroom: Changing Individual Behavior

1. Understand the problem(s)
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3. Communicate the approach to maximize likelihood of compliance
- ➡ 4. Monitor compliance and adjust as needed

Having Fair and Realistic Expectations

- ◆ Setbacks are possible, even likely, for many individuals with mental illnesses
- ◆ Remember that recovery does not mean that an individual is “cured” of a mental illness
- ◆ For many, mental illness is a lifelong issue that they must constantly work to manage
- ◆ Be aware of and sensitive to the reality of mental illness in making decisions about probation or parole revocation

How Judges and Lawyers Can Assist in an Individual's Recovery

- ◆ Believe in the capacity of people to change and heal
- ◆ Try to involve the individual in developing his/her court-ordered treatment plan, if applicable
- ◆ Work with service providers to ensure access to treatment and supports
- ◆ Be aware of manifestations of stigma and how recovery can be compromised
- ◆ Try to understand the person's experience and culture

Connecting to Community Mental Health Services

- ◆ Be familiar with what services are available in your community
 - ▶ Establish community partnerships with key stakeholders
 - ▶ Invite community providers to meeting to share expectations (client and system level)
- ◆ Be familiar with the quality and effectiveness of services individuals under court supervision receive
 - ▶ Ongoing communication with treatment providers and other court-based staff
 - ▶ Monitor outcomes

American Bar Association (ABA)

Criminal Justice Standards on Mental Health

Standard 7-1.2. Responding to persons with mental disorders **in the criminal justice system**

- (a) “...recognize that people with mental disorders have **special needs** that must be reconciled with the goals of ensuring accountability for conduct, respect for civil liberties, and public safety.”
- (b) “...work with community mental health treatment providers and other experts to **develop valid and reliable screening, assessment, diversion, and intervention strategies**

American Bar Association (ABA)

Criminal Justice Standards on Mental Health

Standard 7-1.5. Role of the **judge and prosecutor** in cases involving defendants with mental disorders

(a) “...consider treatment **alternatives to incarceration...**”

(b) “...**facilitate meetings among community organizations** interested in assuring that services are provided to justice-involved persons with mental disorders”

(e) In determining which defendants should be selected for participation in diversion programs, **rely on evidence-based practices, including valid and reliable appraisals of relevant risk and treatment needs.**

American Bar Association (ABA)

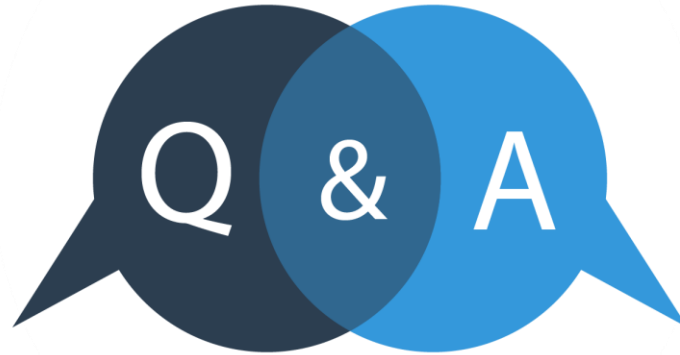
Criminal Justice Standards on Mental Health

Standard 7-1.7. Education and training

(c) **Judges**. Each jurisdiction's highest appellate tribunal or its judicial supervisory authority with responsibility for continuing judicial education should **develop and regularly conduct education and training programs** on the topics identified in (b)(i) and include:

- ▶ **strategies for presiding over judicial proceedings** involving defendants or witnesses with mental disorders,
- ▶ **methods of identifying and communicating with participants in the courtroom** who have a mental disorder, and
- ▶ **the role of judges in criminal justice/mental health collaborations.**

Questions and Answers





**Justice
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Thank you!

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<https://csgjusticecenter.org/courts/judges-leadership-initiative>

To learn more about the ABA Criminal Justice Section, visit:

https://www.americanbar.org/groups/criminal_justice