



Effective Responses to Defendants with Mental Illnesses:

Judicial Resources and Considerations Guide

December 12th, 2017



Welcome and Introductions

- **Judge Steven Leifman**, Eleventh Judicial Circuit Court (FL)
- **Dr. Fred Osher**, Director of Health Systems and Services Policy, the Council of State Governments (CSG) Justice Center
- **Chris Seeley**, Program Director of School and Justice Initiatives, the American Psychiatric Association Foundation (APAF)
- **Dr. Allison Upton**, Senior Policy Analyst, the Council of State Governments (CSG) Justice Center

Overview of the American Psychiatric Association Foundation (APAF)



Judicial Resources and Considerations Guide

Overview and Project Process

Why Collaboration between Judges and Psychiatrists is Essential

Considerations to Guide Judicial Decision-Making

Questions & Answers

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Training Objectives

Judges will:

- Learn about the existing Judges' and Psychiatrists' Leadership Initiative (JPLI) resources
- Hear about the JPLI training available for judges in their jurisdictions
- Discuss strategies to become involved in systems-level work

WHY do we do the work we do?

The number of people with mental illnesses in the criminal justice system are staggering.

In a YEAR'S time:

- **2 million arrests** in the U.S. involve persons with serious mental illness
- **550,000** people with serious mental illness are in jails and prisons
- **900,000** are in some kind of community supervision

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

The Issue is In the Courtroom

- Defendants with serious mental illnesses can:
 - provide incoherent/nonsensical responses to questions
 - be disruptive
 - create time management issues for your docket
 - come back in again and again

Judges' and Psychiatrists' Leadership Initiative (JPLI): Project Origins

- Judges wanting more information on special needs of these defendants
- Judges asking for more information about available treatment options in their community
- Psychiatrists wanting to understand legal requirements for their patients under court supervision
- Communities looking toward leaders to address intolerable circumstances

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 with behavioral health needs who are involved in the justice system.
 - ▶ Create a community of informed judges and psychiatrists
 - ▶ Increase the reach of trainings
 - ▶ Develop educational resources

Forgotten Floor Video



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Overview and Project Process

**Why Collaboration between Judges
and Psychiatrists is Essential**

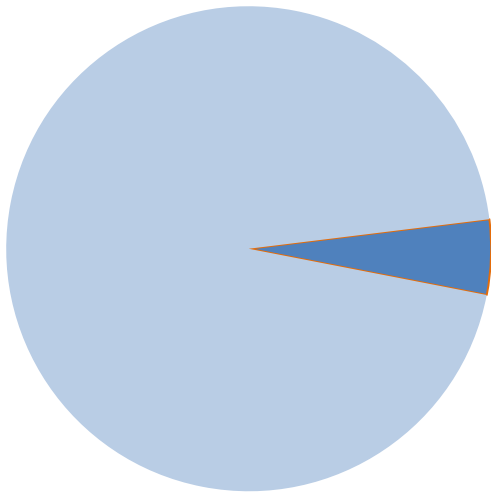
Considerations to Guide Judicial
Decision-Making

Questions & Answers

Serious Mental Illness: Overrepresented in Our Jails

General Population

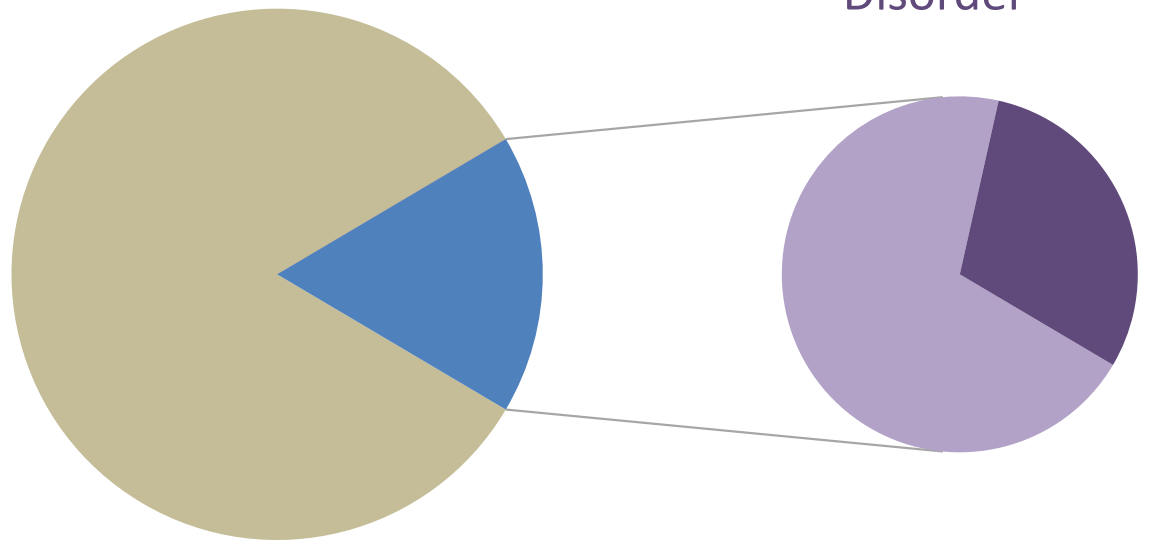
5% Serious Mental Illness



Jail Population

17% Serious Mental Illness

72% Co-Occurring Substance Use Disorder



Factors Driving the Crisis



Disproportionately higher rates of arrest



Longer stays in jail and prison



Limited access to health care



Higher recidivism rates

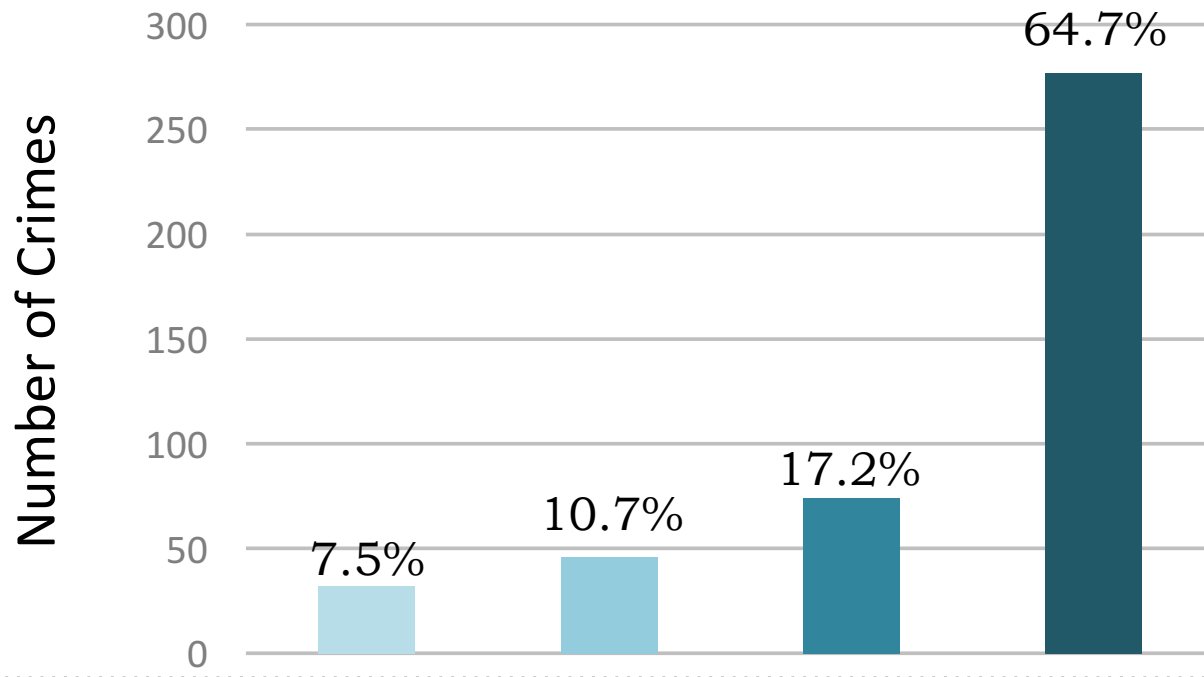


Low utilization of EBPs



More criminogenic risk factors

Incarceration is Not Always a Direct Product of Mental Illness



Continuum of Mental Illness Relationship to Crime

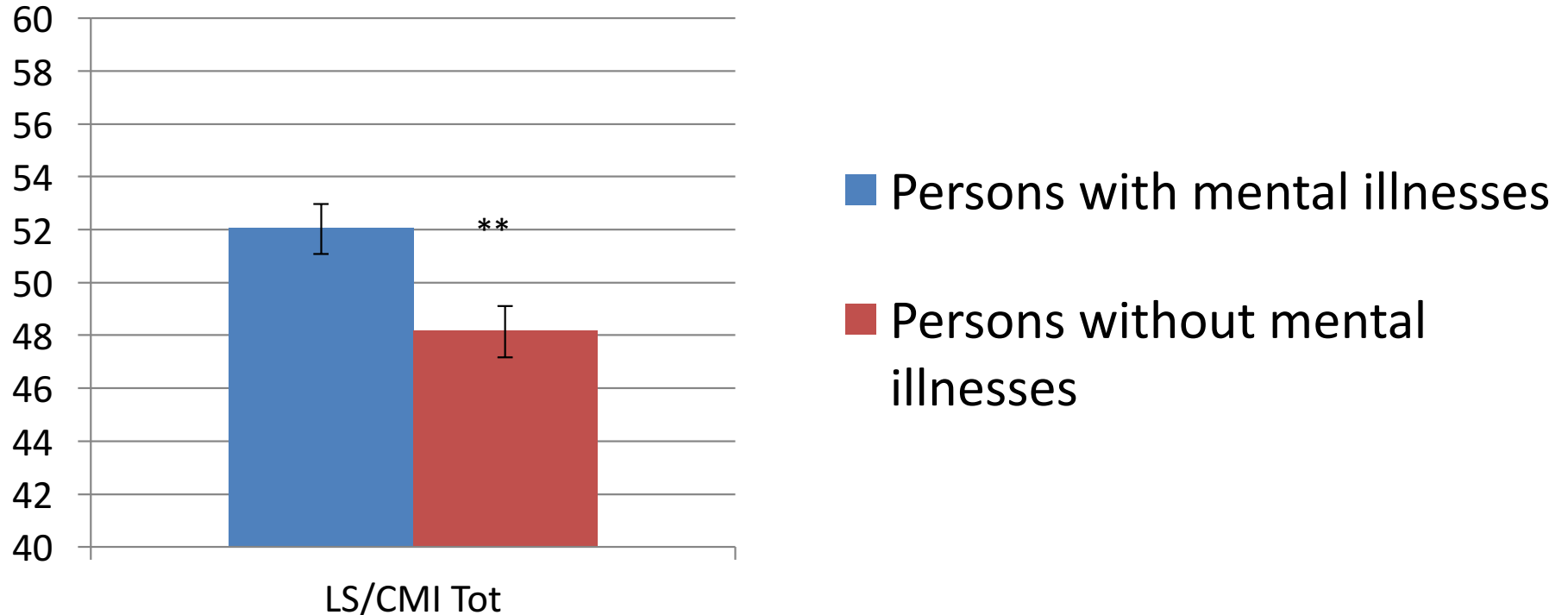
**Completely
Direct**

Mostly Direct

**Mostly
Independent**

**Completely
Independent**

Those with Mental Illnesses Have More “Central 8” Dynamic Risk Factors



....and these predict recidivism more strongly than mental illness

Recidivism is Not Simply a Product of Mental Illness: Criminogenic Risk

Risk:

- ≠ Crime type
- ≠ Failure to appear
- ≠ Dangerousness
- ≠ Sentence or disposition
- ≠ Custody or security classification level

Risk = How likely is a person to commit a crime or violate the conditions of supervision?

What do we measure to determine risk?

Conditions of an individual's behavior that are associated with the risk of committing a crime.

Static factors – Unchanging conditions

Dynamic factors – Conditions that change over time and are amenable to treatment interventions

Criminogenic Risk Factors

Static

Criminal History

- Number of arrests
- Number of convictions
- Type of Offenses

Current Charges

Age at first arrest

Current age

Gender

Dynamic (the “Central 8”)

1. Substance abuse
2. History of antisocial behavior
3. Antisocial personality pattern
4. Antisocial cognition
5. Antisocial associates
6. Family and/or marital discord
7. Poor school and/or work output
8. Few leisure/recreation outlets

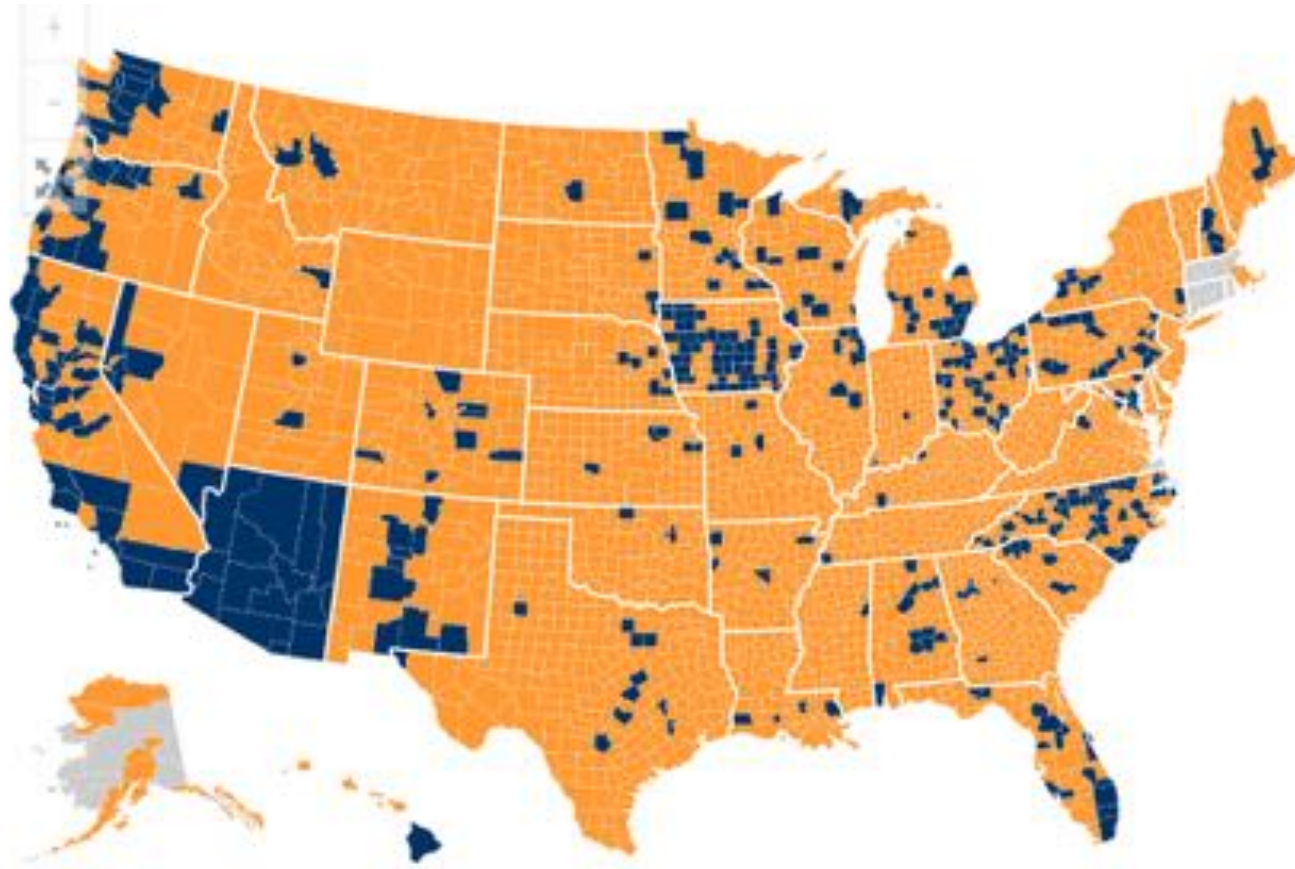
Risk-Need-Responsivity Model as a Guide to Best Practices

Principle	Implications for Supervision and Treatment
Risk Principle	Focus resources on high RISK cases; limited supervision of lower RISK people
Needs Principle	Target the NEEDS associated with recidivism such as antisocial attitudes, unemployment, substance use
Responsivity Principle	General and specific factors impact the effectiveness of treatment. Be RESPONSIVE to learning style, motivation, culture, demographics, and abilities of the offender

THE STEPPING UP INITIATIVE

The screenshot shows the homepage of the Stepping Up Initiative. At the top, there are logos for the American Psychiatric Association (APF), the National Alliance on Mental Illness (NAMI), and the Justice Center. Below these is the main navigation menu with links for 'TOOLKIT', 'NEWS & UPDATES', 'THE PROBLEM', 'THE PEOPLE', and 'WHAT YOU CAN DO', along with a red 'Take Action Now' button. The main content area features a large heading: 'Stepping Up: A National Initiative to Reduce the Number of People with Mental Illnesses in Jails'. To the right of the text is a stylized map of the United States where different states are colored and labeled with mental health conditions: Bipolar Disorder, Schizophrenia, Major Depression, and PTSD. A play button icon is overlaid on the map, and the word '2.5 million' is partially visible. A red 'Take Action Now' button is located at the bottom left of the main content area. A YouTube logo is visible in the bottom right corner of the main content area.

Number of Counties Continues to Grow, and Reaching Critical Mass



Source: NACo County Solutions & Innovation as of October 31, 2017.

Approximately 130 million people reside in Stepping Up counties

Judicial Challenges

- Undetermined treatment need and inadequate risk assessment
- Treatment referral does not match clinical need
- Treatment may not be available to defendant
- Collaboration mechanisms between the courts and community providers does not exist

Judicial Resources and Considerations Guide

Overview and Project Process

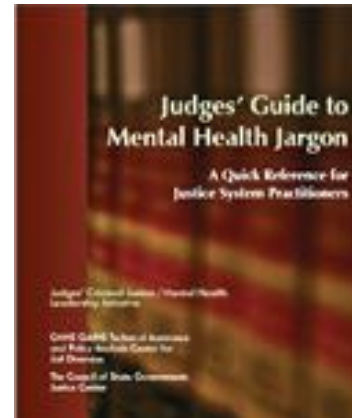
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Considerations to Guide Judicial Decision-Making

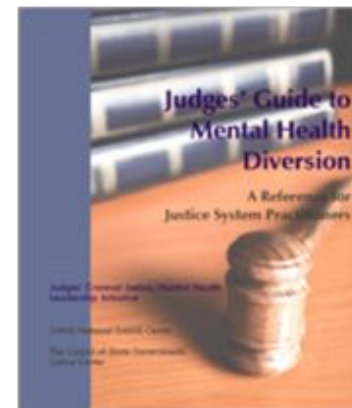
Questions & Answers

Available Resources: Judicial Guides

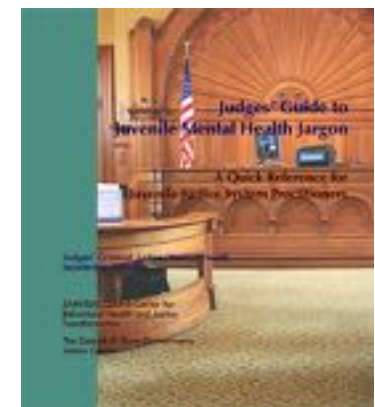
- Mental Health Jargon



- Mental Health Diversion



- Juvenile Mental Health Jargon



Project Goals for Newest Judicial Resources:

- Create practical tools for judges
 - Recognize when defendants have behavioral health needs
 - Understand the process for screening and assessing people for these needs
 - Strategies for collaboration with community providers
 - Identify when to refer to behavioral health clinicians
 - Integrate risks and behavioral health needs of defendants into sentencing and conditions of release decisions
- Provide tips/considerations & resources for judges that will:
 - Improve public safety outcomes
 - Enhance court compliance with treatment conditions
 - Minimize delays in case processing
 - Improve behavioral health treatment outcomes

Convening held: May 1, 2017

- Advisory group included judges, psychiatrists, people with lived experience and/or in recovery, and family members
- In depth discussions on:
 - Successful strategies and potential challenges for judges when interacting with defendants with behavioral health needs in their court rooms
 - Information judges need to know about behavioral health resources in their jurisdictions and ideas to enhance collaboration with care providers in their communities
 - Tips and to help inform judges' decision-making when sentencing and setting conditions of release with this target population
- Thought through format and content for judicial resources

Quotes from the Convening

“I see more people with mental illnesses in my courtroom in a day than a doctor might see in a month,” said Judge Steven Leifman of the Eleventh Judicial Circuit Court of Florida. “That’s a sad commentary on the system.”



Judge Steven Leifman, Associate Administrative Judge, Criminal Division, Eleventh Judicial Circuit of Florida &
Dr. Fred Osher, Director of Health Systems and Services Policy, the CSG Justice Center

“Hopefully one day the criminal justice system will be the last resort for people with serious mental illness, not the front door,” Leifman said.

Family Member Perspective



Jayette Lansbury, *Criminal Justice Chair, the National Alliance of Mental Illness–New York State and family member*

“Families are often the first first responders,” Jayette Lansbury said. “And when one person is arrested, in a way, the whole family is arrested.”

Quotes from the Convening

For Paton Blough—*as simple as the language a judge uses when speaking about mental illness could make a big difference in the courtroom.*

“We don’t say ‘Are you heart disease?’” Paton Blough said. “So why do we say ‘Are you bipolar?’ We are not our illness.”



Paton Blough, a mental health advocate and founder of Rehinge.com, speaks at the May 1 convening of the Judges’ and Psychiatrists’ Leadership Initiative at the CSG Justice Center headquarters.

Newest Judicial Guide:

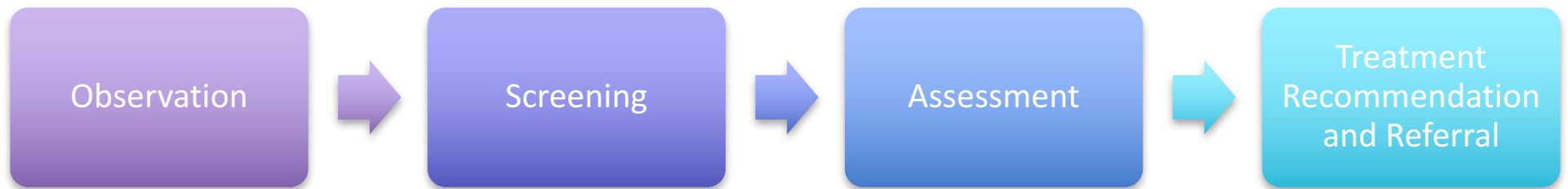


Understanding Community Treatment & Improving Access to Treatment through Collaboration

Newest Judicial Guide:

- Overview of the RNR Model
- Overview of treatment referral process
- Resources to help recognize indications of a behavioral health need
- Tips about when to refer for further evaluation
- Identifying BH resources in your community
- Guidance on how to find community treatment providers and enhance collaboration

Determining Behavioral Health Treatment Needs



Recognizing Indications of a Behavioral Health Need

- **Use Judges' Guide to Mental Illness in the Courtroom**
- Categories of observation
- Observations are not definitive signs of mental illness
- Threshold for judicial action: referral to clinician

Judges' Guide to Mental Illnesses in the Courtroom

JUDGES'
CRIMINAL JUSTICE MENTAL HEALTH
LEADERSHIP TRAINING

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 locked into jail (31% of women; 13% 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 illness 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 Observations Do you see something in one of the following areas that does not make sense 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	- 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	- 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	- Stays distant from attorney or bench - Acts belligerent or disrespectful - Is not attentive to court proceedings
Affect/Mood: Eye contact, outbursts of emotion/indifference	- 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 (Note: Can this be explained by discomfort with English language?)	- 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	- Seems to respond to irrelevant questions - 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	- 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: ¹ <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	- Ground defendant in the here and now**
Loss of Hope When the defendant appears sad, hopeless	- As appropriate, instill hope in positive and result - To extent possible, establish a personal connection
Loss of Control: When the defendant appears angry, irritable	- Listen, defuse, deflect - Ask defendant about why s/he is upset - Avoid threats and confrontation
Loss of Perspective: When the defendant appears envious, jealous	- Seek to understand - Reassure and calm defendant - Deflect concerns

When Taking Action, Consider:

- Stating defendant approach the bench: Would this de-escalate the situation or create a safety risk?
- Re-calling the case later in the session/standoff: 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?

¹ Motivational Interviewing is a counseling approach initially developed by William R. Miller and Stephen Rollnick.
² The Loss of Reality, Hope, Control, and Perspective and the immediate responses are based on the LIES Model developed by Paul Utley.

Newest Judicial Bench Card: Practical Considerations

Judges & Psychiatrists
Learning Initiative

Practical Considerations Related to Release and Sentencing for Defendants Who Have Behavioral Health Needs

A JUDICIAL BENCH CARD

Determining Behavioral Health Treatment Needs

Judge can benefit from information on treatment needs placed through four steps:

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    graph LR
      A[Information] --> B[Screening]
      B --> C[Assessment]
      C --> D[Treatment Recommendations and Referrals]
  
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- Make observations from the bench based on several categories—the defendant's appearance, cognitive, thought patterns/ processes, attitudes, speech, facial expressions—which may point to the presence of a behavioral health need.
- Refer people who may have a mental illness or substance use-related need for a formal screening conducted by a person trained to use a validated screening instrument.
- Have a trained clinician conduct full assessments of people who screen positive for a mental illness or substance use-related need in order to develop a diagnosis and treatment recommendations.
- Receive recommendations for treatment and referrals from the clinician that are tailored to the needs of the defendant.

Practical Considerations for Judicial Decision-Making Related to Conditions of Release and Sentencing for Defendants Who Have Behavioral Health Needs

Collaborate with court staff, behavioral health treatment providers, defendants, and their family members.

DO

- Allow defendants to have a voice in treatment decisions, when possible.
- Gather information from defendants' support systems to inform decisions about release and sentencing.
- Ask defendants what has worked for them in the past.
- Consider calling specialized or other community-based providers for people with known behavioral health needs at the beginning or end of the docket to minimize stress for defendants and court staff.
- Call defendants to the bench to discuss sensitive personal information quickly, after first starting your hearing and court staff of your plan to alleviate their security concerns.

DONT

- Question a defendant about sensitive behavioral health-related information in open court when the courtroom is filled with other litigants and attorneys.

Engage with the defendant to promote treatment participation and compliance.

DO

- Set a calm and consistent tone in your courtroom, even when disruptive behavior occurs.
- Use inclusive and respectful language on the bench.
- Consider engaging your specialists to assist with engagement and treatment connection.

DONT

- Use language on the bench that could be perceived as demeaning, judgmental, or disrespectful.
- Use legal jargon that may not be understood by the defendant.

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Use reliable information provided by qualified professionals, as well as defendants and their support systems to inform decision making.

DO

- Set a reasonable deadline for clinicians to submit treatment recommendations to the court that ensures sufficient time for their review and clarification if needed, without normal or to disruption to the expected case processing schedule.
- Incorporate assessments of criminogenic, mental health, and substance use-related needs prior to setting release conditions and/or sentencing.
- Consider what services are available in the community that match the specific needs of the defendant.

DONT

- Rely on a "one-size-fits-all" approach to guide decision making.

Individualize release and sentencing decisions to the defendant's unique needs and the resources that are available and accessible in the jurisdiction of residence.

DO

- Identify defendants' specific needs prior to setting treatment-related conditions of release or making sentencing decisions.
- Maximize potential for success by setting treatment conditions that are relevant, reasonable, and achievable.

DONT

- Set conditions that are difficult for defendants to achieve due to lack of resources, treatment availability, health insurance coverage, or other barriers.
- Adopt a "one-size-fits-all" approach to decision making.

Adjustment and supervision requirements as needed based on changing legal circumstances and clinical recommendations.

DO

- Set treatment conditions and supervising parameters that are commensurate with the duration and severity of possible jail/prison case dispositions and community supervision experiences.
- Understand that behavioral health treatment is a chronic process, rarely perfect, and temporary setbacks or relapses are part of the stabilization and recovery process.

DONT

- Overcomplicate conditions or modify the defendant's court-ordered requirements in a short timeframe, which may lead to confusion or non-compliance from the defendant.
- Assume that a recommended change in treatment means that a defendant isn't being compliant.

Suggested Considerations and Tips at Judicial Points of Contact

First appearance/arraignment/hearing setting

Considerations	Tips
<ul style="list-style-type: none"> • Typically, this is the judicial point of contact where the least background information about the defendant is available. • During first contact, the defendant may be under the influence of substances, withdrawing from substances, neurologically unstable, and/or under significant stress due to a recent arrest. 	<ul style="list-style-type: none"> • Review initial screening information, if available. • Consider ordering a behavioral health evaluation, if behavioral health needs are suspected. • After first appearance, attempt to do case information about prior treatment. • After first appearance, seek more information related to jail housing observation, and generally the results of a practical risk assessment. • After first appearance, advise court staff and/or clerks to contact and invite members of the defendant's family and support system. • Be creative and flexible with condition setting during the pre-adjudication phase.

Sentencing/Update/Hearing Appearance

Considerations	Tips
<ul style="list-style-type: none"> • You may be able to access treatment progress and compliance information and updates from community-based treatment providers if a behavioral health evaluation was conducted inside the correctional facility or has been conducted recently by courts or community-based treatment personnel. 	<ul style="list-style-type: none"> • Arrange the logistics of the transition to mandated behavioral health treatment in the community to ensure that the defendant is successfully engaged in services. • Rely on trained clinicians to provide assessment information. • Consider input from clinicians to guide decision making related to treatment.

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Judicial Bench Card: Practical Considerations

Newest Judicial Bench Card:

- Determining Behavioral Health Treatment Needs
- Overview of Treatment Recommendation and Referral Process
- Practical Considerations for Judicial Decision-Making Related to Conditions of Release and Sentencing for Defendants with Behavioral Health Needs
- Do's and Don'ts
- Tips for Judicial Point of Contact:
 - First appearance/arraignment/bail setting and
 - Sentencing/Update/Hearing Appearances

Newest Judicial Bench Card

“Do’s”:

- Allow defendants to have a voice in treatment decisions, when possible
- Set a calm and consistent tone, even during disruption
- Rely on qualified clinicians to conduct screening and needs assessments
- Incorporate results of assessments into decision-making
- Set conditions that are appropriate and achievable
- Consider calling complicated or time-consuming cases for people with known behavioral health needs at the beginning or end of the docket, to minimize stress for defendants and court staff

Newest Judicial Bench Card

“Don’ts”:

- Rely on instinct alone to guide decision-making for setting conditions and sentencing
- Use language on the bench that could be perceived as threatening, confrontational, or disrespectful
- Use legal jargon that may not be understood by defendants
- Adopt a “one size fits all” approach to decision-making
- Impose legal fines and fees that are likely to be unaffordable for a target population that has significant challenges around financial resources and employment
- Overcomplicate when setting conditions (i.e. too many appointments may become overwhelming and result in non-compliance despite best intentions)

Strategies to Learn About Behavioral Health Treatment In Your Community

Cultivate relationships with the existing experts in the behavioral health field

- Consult with a court resource coordinator or specialty court personnel
- Inquire among colleagues through councils and advisory groups
- Seek out local psychiatrist, community behavioral health provider, or provider affiliated with a local hospital
- Judges can convene leaders in their jurisdiction to help problem solve

Questions to Ask Behavioral Health Providers in Your Community

- What types of outpatient mental health and/or substance use disorder treatment do you provide?
 - What are the eligibility criteria for these programs?
- Do you have experience working with people in the justice system or are you interested in gaining this experience?
- With proper consent, do you have capacity to provide consistent, accurate reporting to the court about participant attendance, engagement, and other details of court-ordered treatment?

Considerations to Guide Judicial Decisions

1. Collaborate

- Between the court, behavioral health providers, the defendant, and their family members (when appropriate)

2. Engage

- Maximize trust and engagement with defendants and support system in both court and treatment processes

3. Use Reliable Information

- Base decisions on information from tested tools, qualified professionals, and knowledgeable people within the defendant's family and larger support system

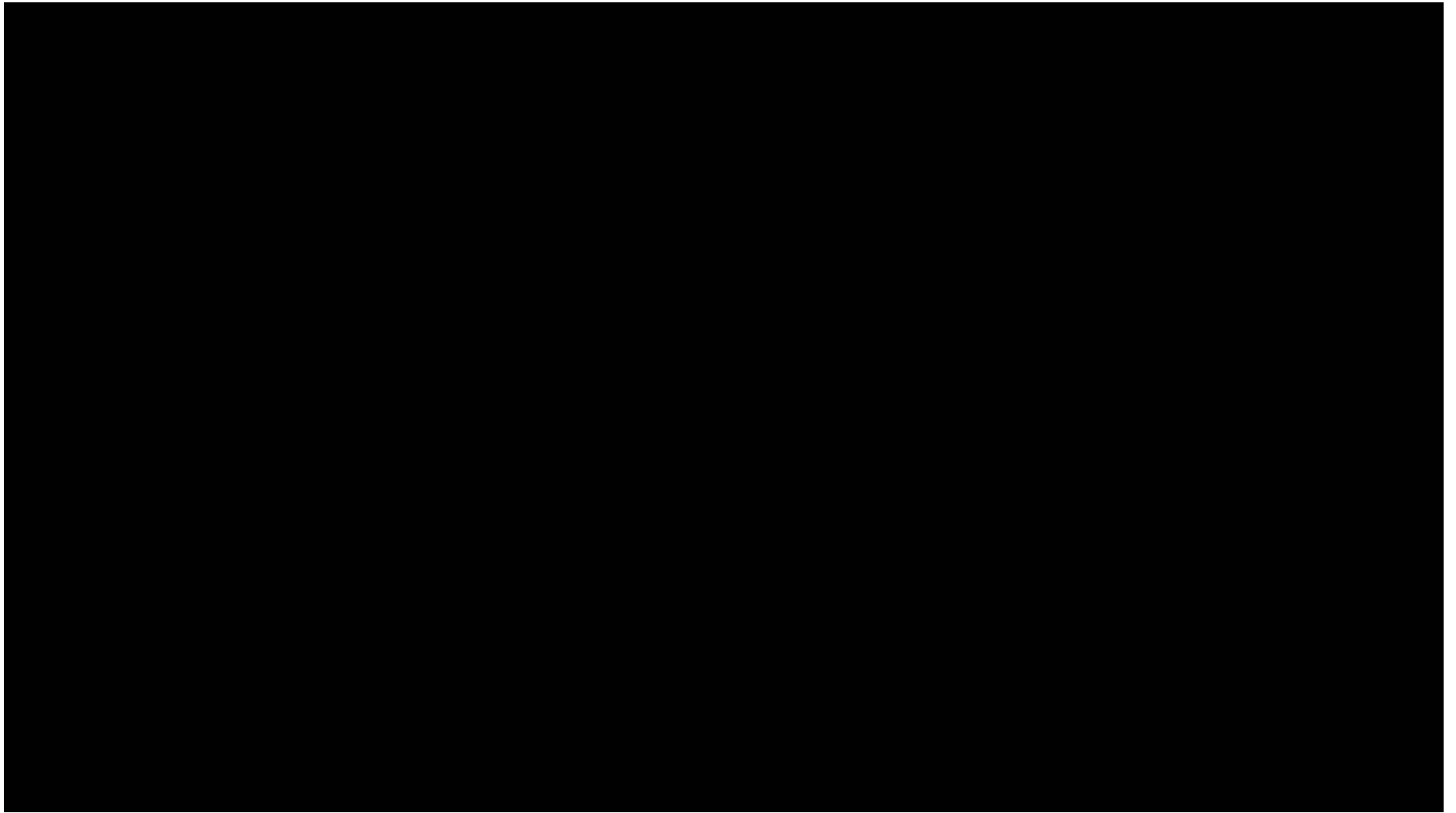
4. Individualize

- Relevant to the defendant's unique needs and mindful of the resources that are available and accessible in the jurisdiction of residence

5. Adapt

- Be aware that treatment conditions may need to be adapted over time in response to dynamic legal circumstances and clinical recommendations

Forgotten Floor Video - Update



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CONTACT US!

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