

Understanding and Managing Risks for People with Behavioral Health Needs

FAQs for Local Prosecutors

Prosecutors play an important role in determining how the criminal justice system responds to people with behavioral health needs. Understanding the needs of these individuals when they come into contact with the criminal justice system can help prosecutors make informed decisions across their work, such as whether to file charges, recommend diversion, or agree to other alternatives to incarceration. These decisions also impact the courts, victims, corrections, and the community at large. This brief provides research about people with behavioral health needs and the stigmas they face. It also presents practical steps prosecutors can implement to improve the outcomes for this population, reduce risk, and maintain public safety.

Q. What do prosecutors need to know about people with behavioral health needs?

People with behavioral health needs are over-represented in the criminal justice system.

People with behavioral health needs are arrested and booked into jail at a disproportionate rate.¹ Indeed, as of 2009, approximately 15 percent of men and 31 percent of women booked into jails in the U.S. had a serious mental illness (SMI),² compared to 4.5 percent in the general population.³ Additionally, a 2017 report by the Bureau of Justice Statistics found disproportionate rates of adults with substance use disorders in state prisons (58 percent) and jails (63 percent) compared to a rate of 5 percent in the general adult population.⁴ People with behavioral health needs are also detained in jails significantly longer than people without behavioral health needs while awaiting trial, even when they do not pose a more significant public safety risk.⁵ And they are more likely to have their parole and probation revoked and are more likely to be re-incarcerated.⁶

- ▶ This over-representation is partially rooted in the deinstitutionalization of mental health care in the 1970s and 80s, which came without a corresponding increase in community-based services.⁷
- ▶ Access to quality mental health services remains limited for certain racial groups because of barriers to care such as lack of insurance, language barriers, stigma around mental illness, and distrust of the health care system.⁸ In particular, Black Americans are less likely to receive quality care than White Americans across a number of dimensions.
- ▶ And Black Americans with SMI—especially bipolar disorder, schizophrenia, and other psychotic disorders—are more likely to be incarcerated than people of other races with these disorders.⁹

There are many misconceptions about the relationship between people who have behavioral health needs and risk of violence.

A common misconception is that there is a clear, causal link between mental illness and violence; however, research shows that the relationship is nuanced and public perception is often inaccurate.¹⁰ For example, SMI alone does not predict future violence.¹¹ Here are some important facts to consider:

- ▶ The vast majority of people with mental illnesses are not violent and only about 4 percent of violent crime can reasonably be attributed to people with a mental illness.¹²
- ▶ For the small subset of people for whom there is a relationship between SMI and violence, research shows that the relationship is complex and is associated with criminogenic factors such as substance use¹³ and environmental stressors such as poverty and housing instability.¹⁴
- ▶ While people with co-occurring mental illnesses and substance use disorders have higher incidences of violent acts than people with just a substance use disorder,¹⁵ people with behavioral health needs are more likely to be victims of violence than the general population.¹⁶

Treatment can help reduce recidivism among people with behavioral health needs.

Research shows that tailored behavioral health treatment can effectively address criminogenic risk and needs and reduces chances of recidivism more than a traditional criminal justice intervention.¹⁷ Whether it's providing people with coping skills, medication, or support services, treatment can give them the tools they need to stay out of jail and on a path of recovery.

Recovery is not always linear and setbacks are a normal and common part of recovery for people with behavioral health needs.¹⁸

Indeed, relapse rates for people with substance use disorders range between 40 and 60 percent.¹⁹ Additionally, people with SMI may experience recurring symptomatic episodes of illness throughout their lives. Fortunately, the severity and frequency of relapses and of mental illness episodes can be effectively managed to minimize risk of recidivism. Given the chronic nature of behavioral health disorders, sustained recovery can require ongoing connections to care and the ability to step someone up or down to more or less intense levels of treatment as needed.

Q. Why should prosecutors consider recommending alternatives to incarceration for people with behavioral health needs?

To advance individual outcomes.

Providing appropriate community-based care is critical to helping a person through a crisis so that they can move forward in their recovery.²⁰ Prosecutors are uniquely positioned to make connections to treatment for people who may not be capable of seeking it on their own due to the severity of their illness.

To protect public safety.

Connecting defendants with behavioral health treatment can be the most effective way to advance public safety, because it can stabilize the person and address the criminogenic behaviors that might lead to their rearrest.²¹

To save money.

Expanding the use of community-based services and prioritizing costly response time, transport, emergency response resources, and incarceration for the people who do pose a significant public safety risk also helps communities conserve finite resources, particularly in this time of budget shortfalls.²²

Q. What can prosecutors do in cases involving people with behavioral health needs?

Obtain assessment results early to determine whether the person can safely be treated in the community and released.

Prosecutors can aim to make sure people are assessed as quickly as possible, because people with behavioral health needs are particularly vulnerable to decompensation and trauma in custody.²³ Information from these assessments will help the prosecutor understand a defendant's behavioral health condition(s) and likelihood of success on pretrial release, as well as whether they would be appropriate for diversion or another alternative to incarceration. Assessments should guide the development of a treatment plan, ideally prior to arraignment so that it can inform decisions about conditions of release (or connections to care upon release) and potential plea deals. The presence of behavioral health needs should not, on its own, be a reason for pretrial detention. Establishing clear policies that assessment information can only be used for treatment planning and case resolution—and not for prosecuting new charges—can help ease defense counsel concerns and facilitate cooperation in using these results for treatment planning.

Understand the availability of behavioral health diversion programs.

Prosecutors may not always have an understanding of what behavioral health diversion interventions exist in their community and the capacity limits and eligibility criteria for each. To better understand what options are available, they should partner with behavioral health and criminal justice professionals and create an inventory of services and programs. When working with someone who has a behavioral health disorder, prosecutors should consider whether the person is eligible for such programs and facilitate their entrance into a program if they are deemed appropriate.

Work with partners to ensure comprehensive case planning.²⁴

In collaboration with treatment providers, prosecutors can obtain treatment plan information as early as possible to facilitate pretrial release, diversion, and reentry, as appropriate for public safety.²⁵ Prosecutors can also work to ensure that behavioral health and criminal justice partners are engaging in a comprehensive case planning process. This process often involves gathering information from behavioral health, criminogenic risk, and psychosocial assessments so that people receive appropriate care in a coordinated manner.

Ensure the development of relapse prevention plans for people with behavioral health needs.

Prosecutors can work with treatment providers to ensure relapse prevention plans are developed for people who need them. These plans can be used to identify a person's individual triggers for using substances again and/or warning signs and early symptoms of past acute psychiatric episodes. Additionally, these plans often include a person's strategies for increasing their chances of recovery and reengaging in treatment after a setback.²⁶

Utilize a procedural justice framework.

Often, a defendant's willingness to comply with treatment and follow through with guidance from courts and prosecutors hinges on positive and trust-based interactions.²⁷ Because of this, prosecutors should consider procedural justice practices,²⁸ which can help establish conditions of release that people are more likely to understand and voluntarily comply with.²⁹ For example, clear agreements—whether written or verbal—that spell out the defendant's obligations and the consequences of both compliance and non-compliance can help increase buy-in and success.³⁰ Additionally, prosecutors can advocate for and encourage the judge to apply evidence-based practices related to sanctions and incentives.³¹

Q. How can prosecutors help advance further systemic change?

Lead by example.

Executive level prosecutors have a responsibility to ensure that their vision for responding to people with behavioral health needs is being realized in individual decisions made by line prosecutors. Successful behavioral health diversion often depends on cultivating early adopters, developing new policies that encourage connecting people with behavioral health needs to community-based treatment, and establishing meaningful measures of success that reflect these policies. Even utilizing respectful and person-centered language when referring to people with behavioral health needs can demonstrate executive level prosecutors' commitment to combatting the stigma associated with behavioral health disorders.

Encourage and participate in relevant training.

Both profession-specific and interdisciplinary training can give prosecutors the knowledge and relationships to facilitate connections with community-based treatment and supports, such as housing. In addition to training that covers legal standards and procedures relevant to mental illness and substance use, prosecutors can seek out training on topics like cultural competency and trauma-informed care.

Monitor for racial disparities and use their influence as a prosecutor to increase equal access.

African Americans are significantly less likely than non-African American defendants to receive a psychiatric evaluation and an accurate diagnosis.³² Research also shows that all defendants of color, whether Black American, Latino American, Asian American, or Native American, are less likely to be granted pretrial diversion opportunities than White defendants with similar legal characteristics.³³ Prosecutors can play an important role in reducing these racial disparities in both the behavioral health and criminal justice systems by monitoring for racial disparities and ensuring that defendants have equal access to psychiatric assessments, treatment referrals, and alternatives to incarceration.

Promote interdisciplinary collaboration.

Treatment success and subsequent recidivism reduction for people with behavioral health needs in the criminal justice system takes collaboration between behavioral health and criminal justice partners. Prosecutors can utilize their convening power to build and sustain partnerships with treatment providers and develop data sharing agreements to enhance care coordination and system efficiency. The voice of a prosecutor can be very compelling in encouraging others to work together to improve outcomes for people with behavioral health needs who become involved with the criminal justice system.

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Endnotes

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