

Judicial Work at the Interface of Behavioral Health and the Court System

Today's Trainers

Today's Training

Welcome

Interacting with Defendants with Behavioral Health Needs from the Bench

Getting the Best Information to Inform Decision-Making

Fostering Positive Change in Your Community

Discussion with Trainers



**Justice
Center**

**Judges
Psychiatrists**
Leadership Initiative

AMERICAN
PSYCHIATRIC
ASSOCIATION
FOUNDATION



**THE JUSTICE SYSTEM
AND MENTAL HEALTH**



**Opioid
Response
Network**

AAP
American Academy of
Addiction Psychiatry
Translating Science. Transforming Lives.

SJI
State Justice Institute

Learning Objectives

1

Understand why behavioral health knowledge is critical for judges

2

Recognize how behavioral health needs impact people's trajectories into the court system

3

Identify strategies that judges can implement in the courtroom to improve outcomes for individuals with behavioral health needs

4

Locate resources/contacts for education and more information about efforts related to the intersection of behavioral health and the justice system

Skills from the Bench

“I see more people with mental illnesses in my courtroom in a day than a doctor might see in a month. That’s a sad commentary on the system.”

—Judge Steven Leifman, Eleventh Judicial Circuit Court of Florida, JPLI Co-Chair



American Bar Association Criminal Justice Standards on Mental Health

“Criminal justice officials should **work with community mental health treatment providers** and other experts to **develop valid and reliable screening, assessment, diversion, and intervention strategies** that identify and respond to the needs of individuals with mental disorder who come into contact with the justice system, whether the setting is traditional criminal court, problem-solving court, a diversion program, or post-adjudication supervision and monitoring.”

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

[American Bar Association Criminal Justice and Mental Health Standards](#)

Common Mental Health and Substance Use Diagnoses and Symptoms

Substance Use Disorder

Alcohol Use Disorder

Stimulant Use Disorder

Schizophrenia

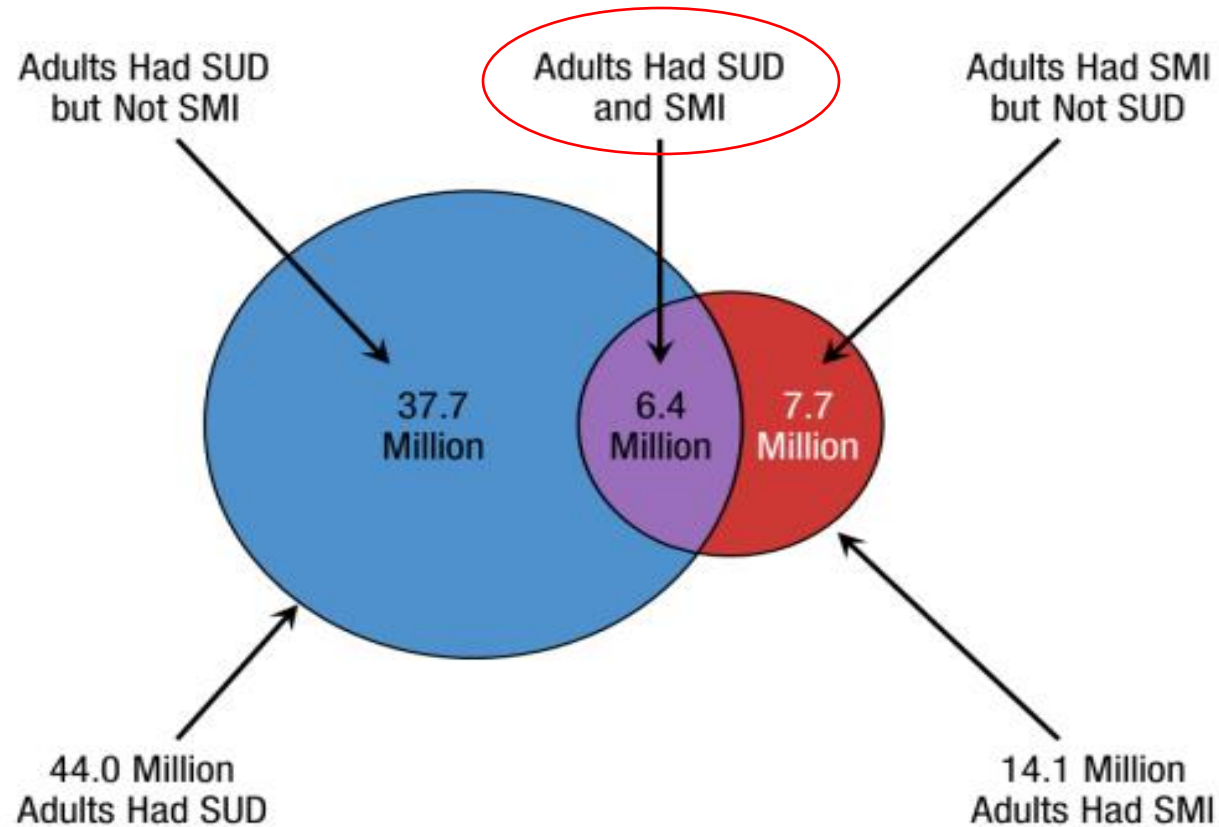
Major Depressive Disorder

Bipolar Disorder

Post Traumatic Stress Disorder

Trauma

Past Year Substance Use Disorder (SUD) and Serious Mental Illness (SMI): Among Adults Aged 18 or Older; 2021



51.7 Million Adults Had Either SUD or SMI

Source: Substance Abuse and Mental Health Services Administration, National Survey on Drug Use and Health 2021.

Judges Can Use a Trauma-Informed Perspective in Their Courtrooms



How the courtroom environment is affecting the defendant



Safety



What is being asked and said in open court



This Issue Is in the Courtrooms . . .

Disorganization symptoms

Perceptual abnormalities

Impaired cognition

Mood symptoms

Affect



Photo by [David Veksler](#) on [Unsplash](#)

Resource: 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 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).

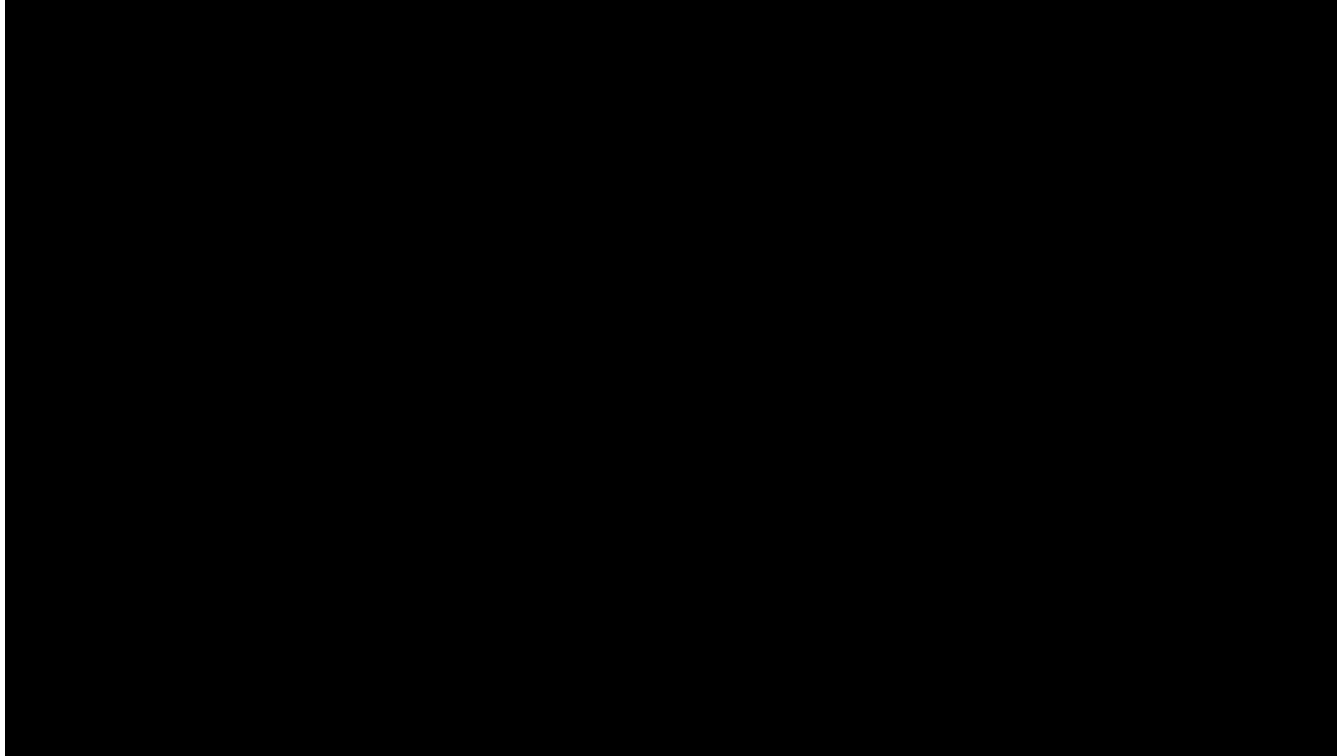
Categories of Observation: <i>Do you see something in one of the following areas <u>that does not make sense</u> in the court context?</i>	Courtroom Observations: <i>Examples of how behaviors in the observational areas can indicate that the individual may have a mental illness:</i>
Appearance: Age, hygiene, 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

What do you observe? What should the judge do?



Source: CBS News, "Mom Accused of Killing Family Shows Bizarre Behavior in Court," July 7, 2017, YouTube video, <https://www.youtube.com/watch?v=LGIUUurlfY>

Criminal Court Video—Plea



Interaction Tips: Make a Safe Space



<https://www.ozarkal.gov/municipal-court>

Four Central Features of Procedural Justice

Respect



Neutrality

Voice

Trustworthiness

Interaction Tips for Judges



Word Choice & Tone

- Be sensitive to how common court words may sound to a new person (e.g., “your screen is dirty,” “we’re done with you”)
- Your attitude should remain calm
- Lower your voice and keep your tone even
- Use the individual’s name, often/more than usual
- Paraphrase and summarize
- Use verbal cues like “mm’s” and “ah’s
- Don’t use Jargon
- Avoid unnecessary intrusion
- Give positive feedback

Tips For Communicating with a Person Who May Be Experiencing Psychosis

Language

- Use language that normalizes the person's experience, e.g. 'stress'.
- Use the same terminology that the person uses to describe their experiences.
- Do not use stigmatizing terms (e.g. crazy, nuts, psycho)

Listening

- Convey empathy when and listen to them non-judgmentally
- Recap what the person has said to check that you have understood correctly.

Source: Mental Health First Aid Australia, *Psychosis: First Aid Guidelines*, (Melbourne: Mental Health First Aid Australia; 2019).

Bringing training into practice

Things you can do in the next couple of days:

- Pick 3 specific interaction strategies that you will intentionally use
- Put the bench card in an easy-to-see place
- Walk around your courtroom to see what the physical space looks like for a defendant
- Talk with clerks, bailiff and others in your courtroom(s) about their experiences with defendants with behavioral health needs about what can be done to make the space feel safer and more accessible

Getting the Best Information to Inform Decision-Making

“Where possible, focus resources on prevention, recovery, and reintegration back into the community.”

—Dr. Michael Champion, Medical Director, Adult Mental Health Division, Behavioral Health Administration, State Of Hawaii Department Of Health, JPLI Co-chair



Case Study: Lisa

40-year-old Latina woman, experiencing homelessness



Photo Credit: Eco.Lassi Pensikkala from Pixabay

Diagnosis

- Schizoaffective Disorder
- Cocaine Use Disorder (moderate)

Case Study: Lisa

40-year-old Latina woman, experiencing homelessness

Appearance

- Easily distracted and not responding to attorney
- Speaking to invisible people
- Shuffling papers on desk

Charges

- Felony criminal mischief

RAP sheet

- 3 mis., 1 felony, 2 failure to appear
- Convicted of felony assault 2015
- Competency Restored— served 2 years



Photo Credit: Eco.Lassi Pensikkala from Pixabay

“Everyone is on a continuum between mental illness and mental health, and everyone can go one direction or the other on that continuum based on certain risk factors and protective factors.”

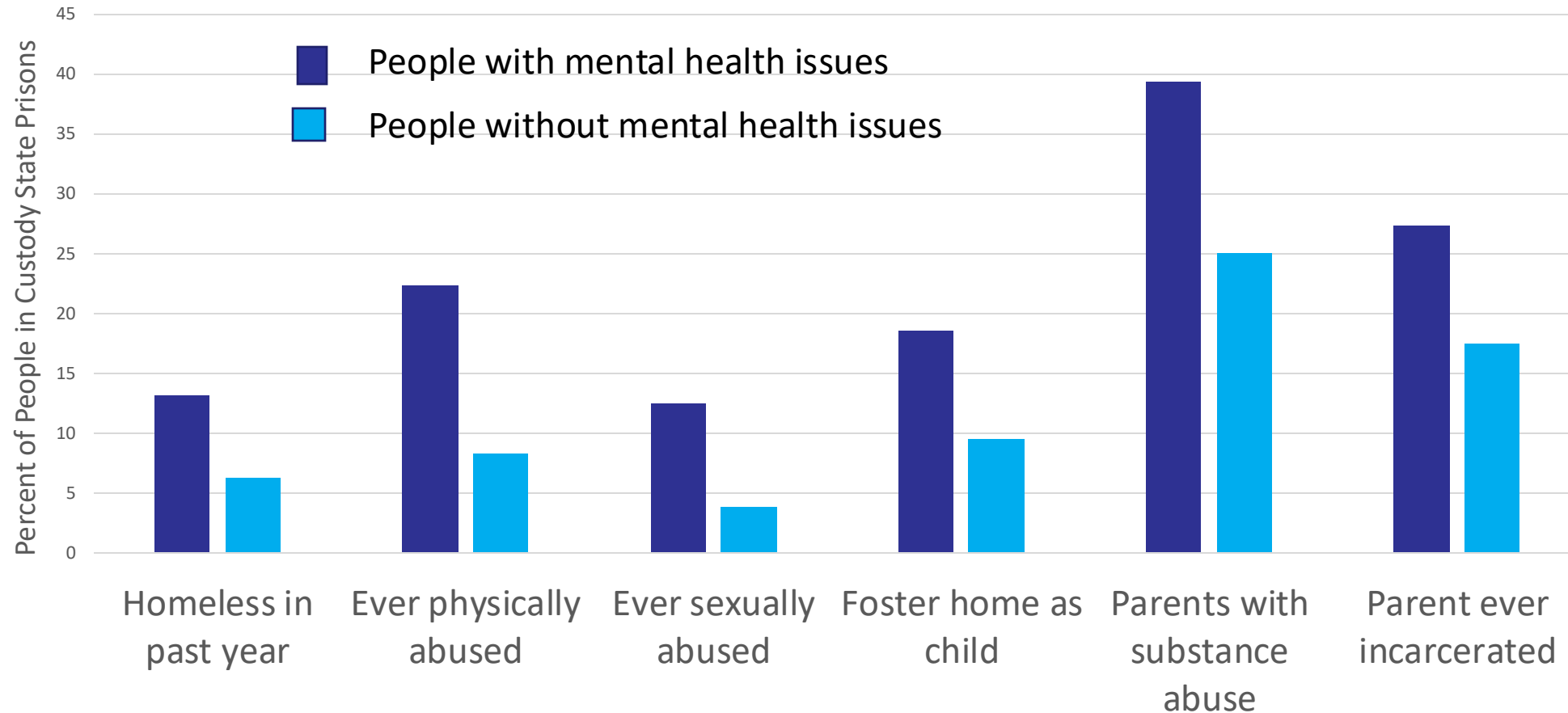
- Dr. Sarah Vinson, Triple Board-Certified Child & Adolescent, Adult and Forensic Psychiatrist, JPLI Co-Chair

Social Determinants of Health



Source: U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, “Healthy People 2030.” accessed, September 22, 2021, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health>

People with Mental Illnesses in Prison have More Factors Associated with Trauma and Risk of Justice-System Involvement



Source: United States Dept. of Justice, Bureau of Justice Statistics, "Mental Health Problems of Prison and Jail Inmates" (Washington DC, BJA, 2006)

Social Determinants of Health



Photo Credit: Eco.Lassi Pensikkala from Pixabay

Education Access and Quality

- Attended k-12 at a school in a low-income community, lack of resources led to unaddressed learning deficits.
- Did not complete the 12th grade

Health Care and Quality

- No insurance
- Inconsistent treatment history for mental health and primary care

Neighborhood

- Lives on the streets

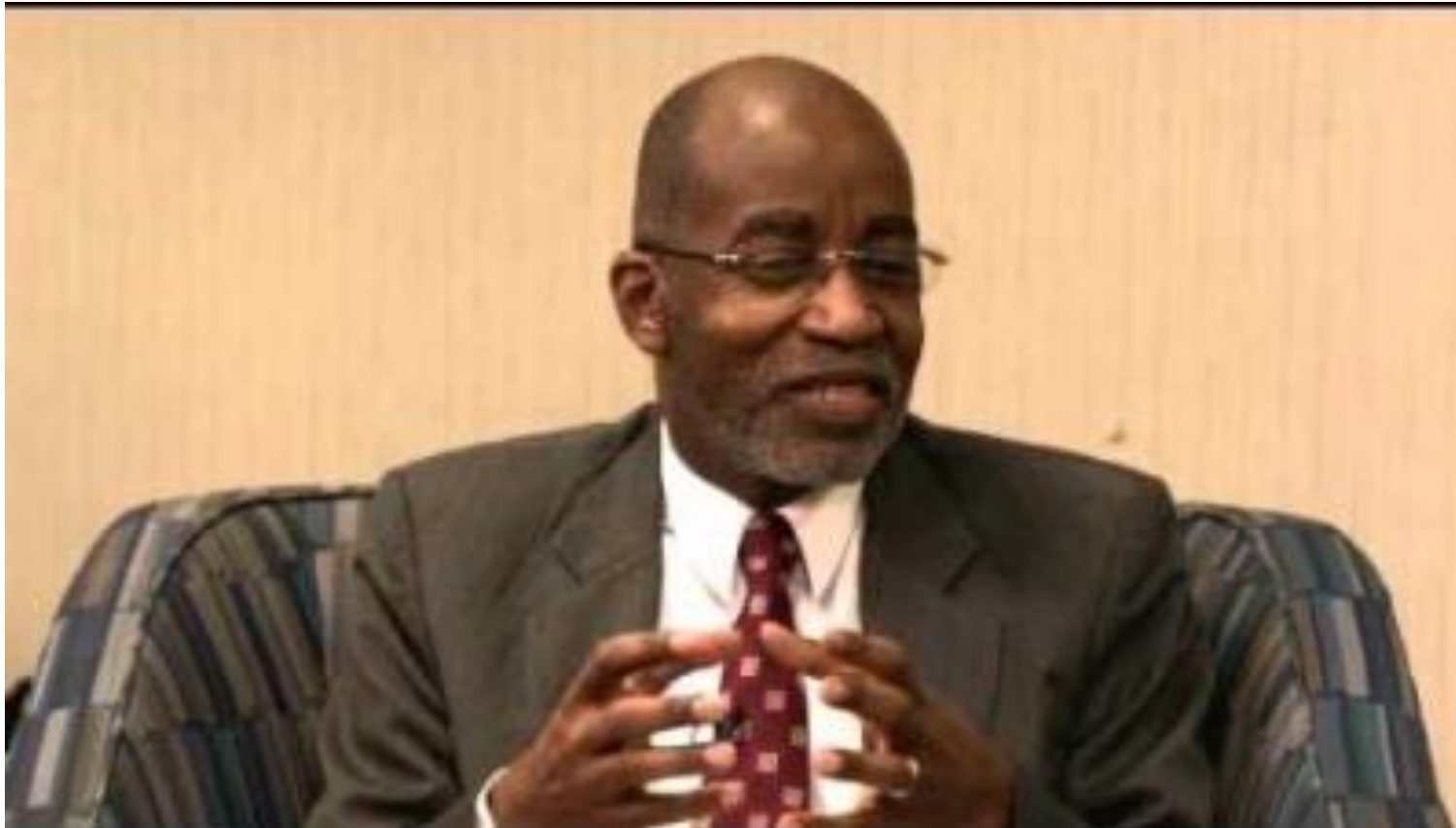
Social and Community Context

- Minimal natural supports
- Strained/abusive family relationships

Economic Stability

- Limited education/vocational skills
- Pending application for social security disability benefits

Does Racism Play a Role in Health Inequities?



Source: Institute for Healthcare Improvement, "Does Racism Play a Role in Health Inequities," February 17, 2016, YouTube video, <https://www.youtube.com/watch?app=desktop&v=Mudlev9tTIY&feature=youtu.be>

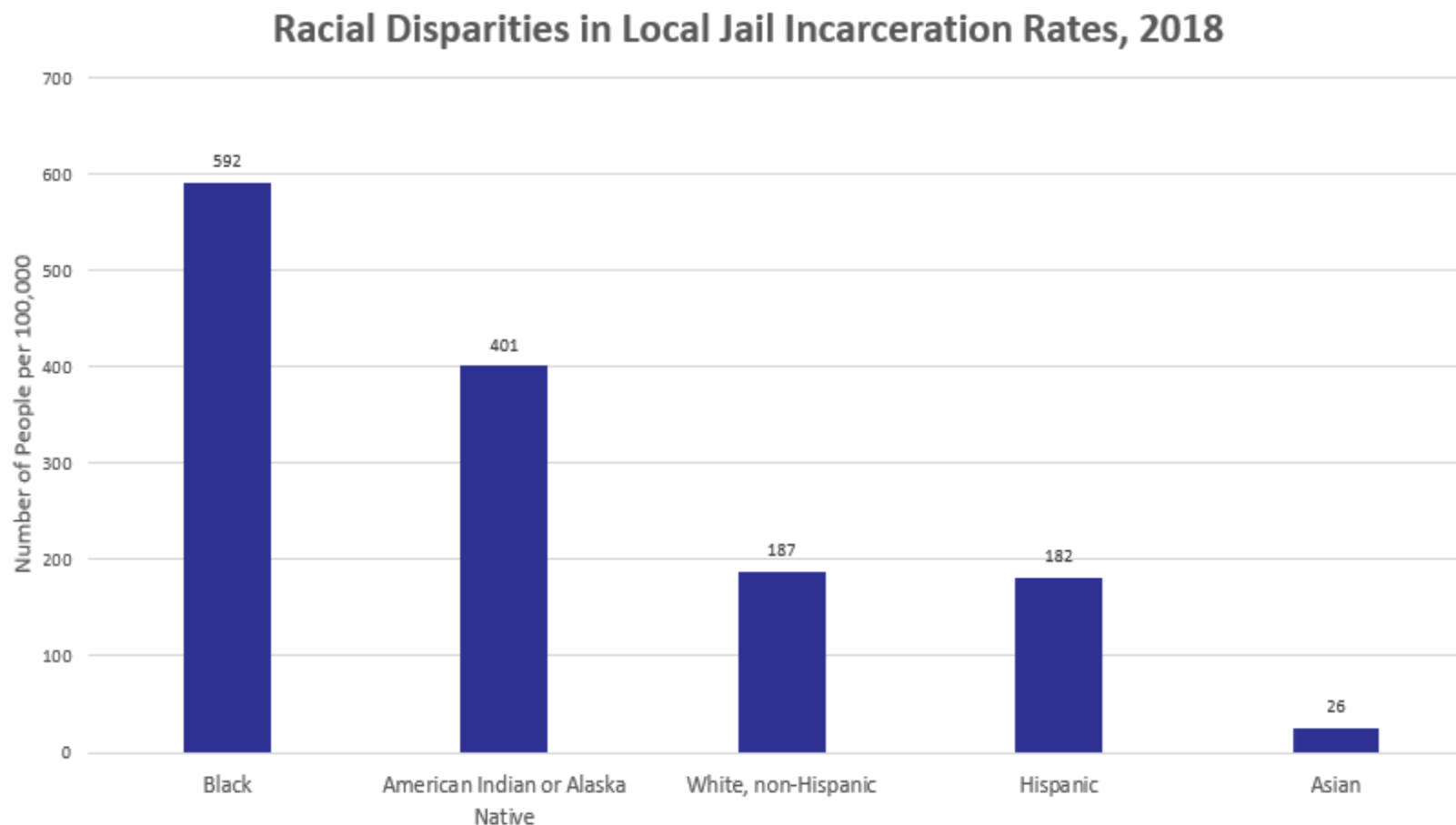
Criminal Justice System and Mental Health

- **People of color in the criminal justice system are 44 percent less likely** to be referred for a mental health evaluation than people in other racial or ethnic groups.
- **People of color are more likely to receive misdiagnoses**, not be diagnosed, or not referred for a mental health evaluation despite exhibiting behavior indicative of a mental illness.
- **People of color who are exhibiting behaviors indicative of mental illnesses are more likely to be seen as being “suspicious” or “criminal”** rather than as having a mental health need.

See Resource Slide

An Overrepresentation in Our Jails

Black Americans are jailed at almost 4x the rate of White Americans



See Resource Slide

Implicit Bias and Judicial Decision-Making

Factors that increase the influence of implicit biases on judicial decision-making:

- Limited cognitive capacity
 - Examples: hunger, fatigue, multi-tasking, interruptions
- Habitual, intuitive, spontaneous decisions
 - Examples: decisions made under time pressure or based on “gut feelings”
- Ambiguous or subjective decision criteria
 - Examples: decisions made using broad judicial discretion, decisions without structure or guidance

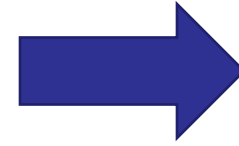
It's important to minimize these factors!

Source: Judge Joseph McGraw, Dr. Andera Miller, “Addressing Implicit Bias in the Judiciary,” (PowerPoint presentation Biennial Judicial Education Conference, Illinois)

Addressing Misconceptions about Mental Health and Violence

60%

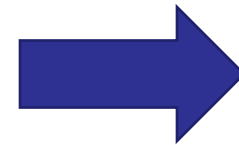
of those surveyed believe schizophrenia is directly related to violence against others



People with mental illnesses are generally not more likely to be violent than the general public.

40%

of those surveyed believe that depression is directly related to violence against others

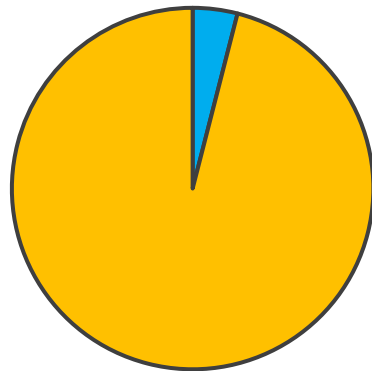


People with mental illnesses are more likely to cause self-harm or be victims of violence than to inflict harm on others.

See Resource slide

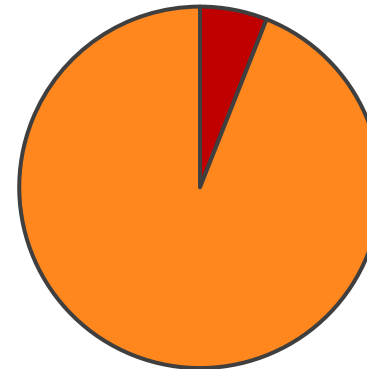
Myth Busting: Mental Illness and Violence

Most violence is NOT committed by people with a serious mental illness
(only 4% of all violence)



■ MI ■ No MI

Most people with a serious mental illness do not commit violence
(only 6% of SMI individuals)



■ Violence ■ No violence ■

Individuals with SMI are more likely to be VICTIMIZED

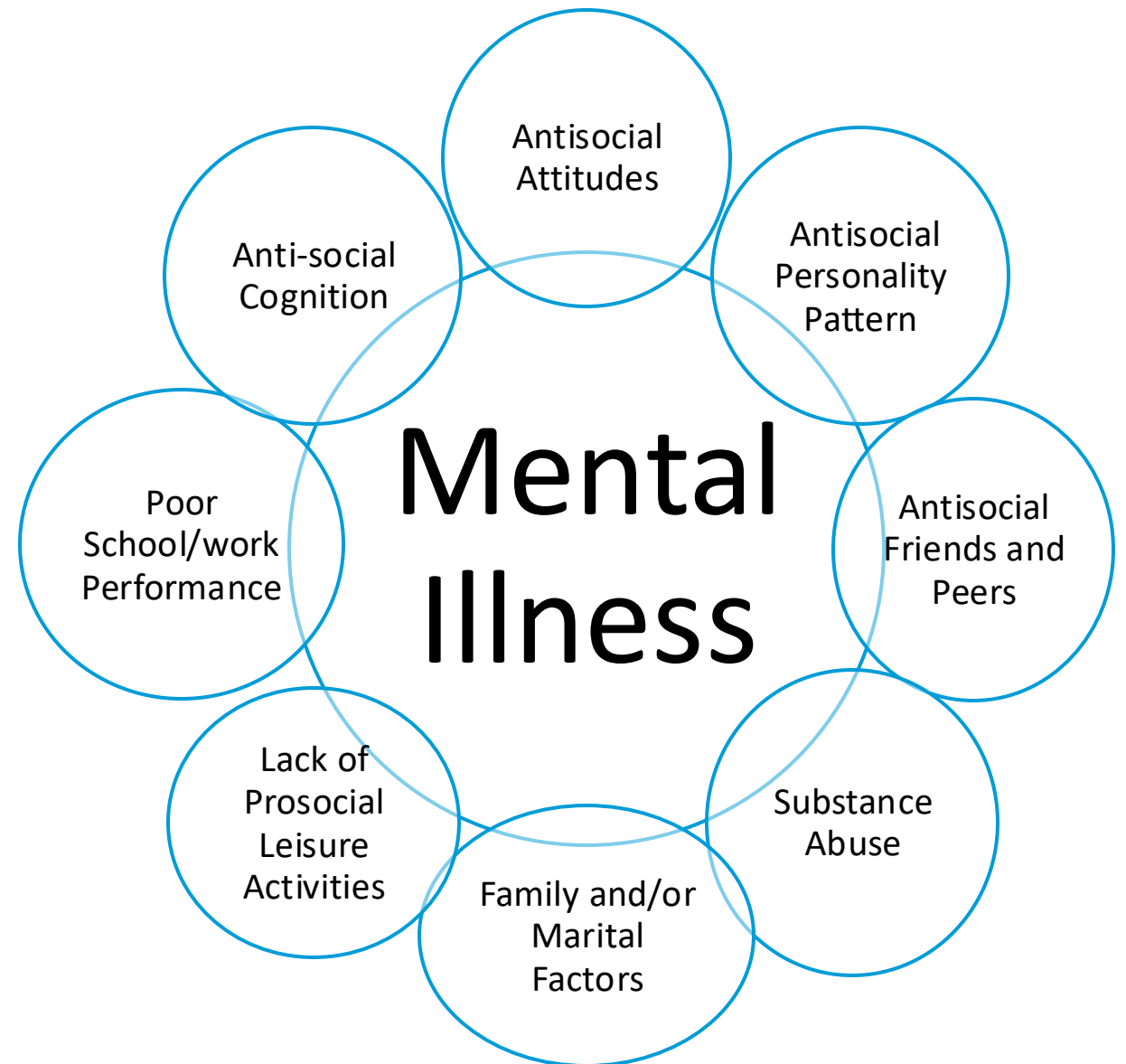
See resource slide

Risk-Need-Responsivity (RNR) Model as a Guide to Best Practices

Principle		Impact on Practice
R isk Principle	Match the intensity of individual's intervention to their risk of reoffending (WHO to target)	Focus resources on high <u>RISK</u> cases
N eeds Principle	Target criminogenic needs, such as antisocial behavior, substance abuse, antisocial attitudes, and criminogenic peers (WHAT to target)	Target criminogenic <u>NEEDS</u> , such as antisocial behavior, substance abuse, and antisocial attitudes
R esponsivity Principle	Tailor the intervention to the learning style, motivation, culture, demographics, and abilities of the offender (HOW to best target)	Address the issues that affect <u>RESPONSIVITY</u> (e.g., mental disorders)

Source: James Bonta, D.A. Andrews, *Risk-Need-Responsivity: Model for Offender Assessment and Rehabilitation*, (Her Majesty the Queen in Right of Canada, 2007)

Responsivity: Address Dynamic Risk Factors While Attending to Mental Illness



Getting the Right Information

Mental health treatment

Competency to stand trial evaluation



Addressing behavioral health needs

Continue with legal process

Competency Evaluation  **Legal Restoration**

Restoration Services Are More Narrowly Focused

- *Stabilization*
 - Addressing most severe symptoms contributing to a person's inability to understand their legal situation
- *Symptom management*
 - Medication regimen for maintaining stability to proceed with legal case
- *Legal education*
 - Basic understanding of formal court proceedings and ability to participate in their own defense

Limitations of All Competency Restoration

- Expanding outpatient restoration services is important, but it won't solve all our problems.
 - Does not address the cycle of stopping treatment and getting rearrested
 - Widens the reach of the criminal justice system
- Need to address *root causes* of arrest and invest in comprehensive mental health care that is not tied to the criminal justice system.

Mental Health Evaluation  **Treatment Plan**

Case Study: Lisa

40-year-old Latina woman,
experiencing homelessness



Photo Credit: Eco.Lassi Pensikkala from Pixabay

Diagnosis

- Schizoaffective Disorder
- Cocaine Use Disorder (moderate)

Ideal Treatment

- Evaluation to address primary condition-residential/inpatient setting.
- Medication management
- Comprehensive discharge planning to address co-occurring needs and social determinants

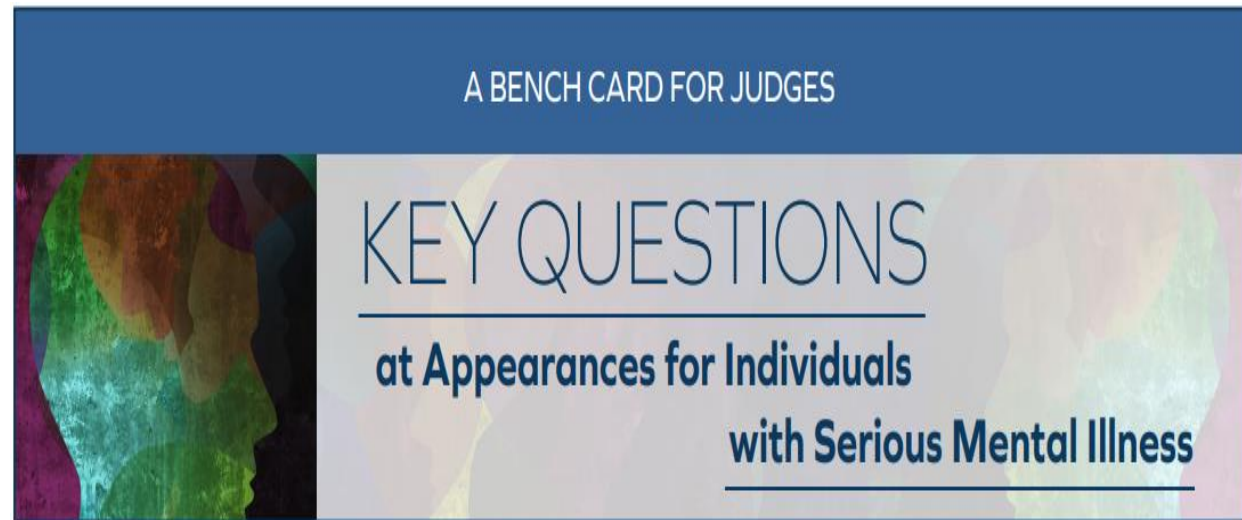
Criminogenic Risk/Needs

- “High” risk for recidivism for failure to appear based on the Ohio Risk Assessment

Strengths/Protective Factors

- Interest in reconnecting with biological child
- Gains insight into mental health when stable on medications

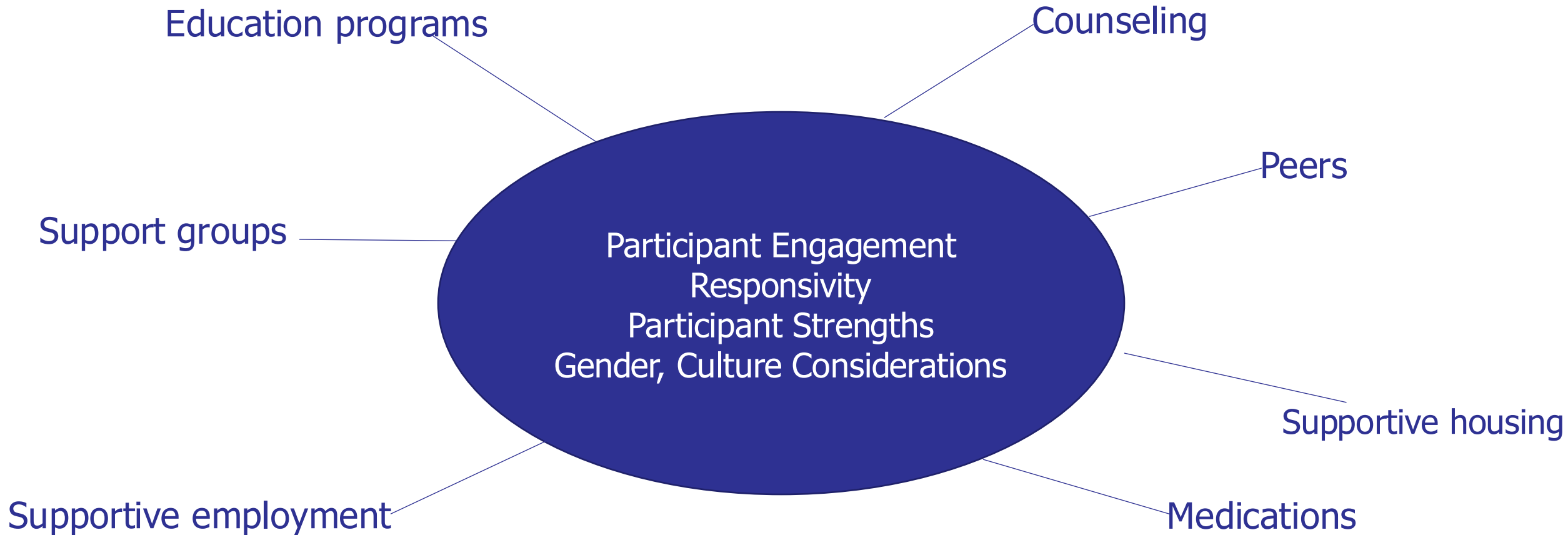
Bench Card for Appearances



Key Resource

Comprehensive Outpatient Services

A well-rounded and integrated treatment plan:



Mental Health Treatment Options for Justice-Involved Individuals

Assertive Community Treatment

- 24/7 multidisciplinary team

Pharmacotherapy

- Combine medication with treatment interventions to reduce symptoms

Permanent Supportive Housing

- Professional and peer supports to help person live independently in the community

Therapy

- Mental health assessments can help to determine best modality.

Case Management

- Focus on responsivity factors

See resource slide

Substance Use Treatment Options for Justice-Involved Individuals

Relapse Prevention

- A plan for managing triggers/stressors

Psychosocial Approach

- Interventions to target psychological development to include structured counseling, motivational enhancement, case management, and psychotherapy

Medication-Assisted Treatment

- Comprehensive treatment plan for reducing symptoms related to the use of some substances (opiates, alcohol).

Harm Reduction

- A set of practical strategies and ideas aimed at reducing negative consequences associated with drug use

Peer Support

- Support programs such as Alcoholics Anonymous or Narcotics Anonymous

See resource slide

Case Study: Lisa

40-year-old Latina woman, experiencing homelessness

Lack of
Prosocial
Leisure
Activities

Lisa- Schizoaffective
Disorder/Cocaine
Use Disorder
(moderate)

Poor
School/Work
Performance

Family and
/or Marital
Factors



Photo Credit: Eco.Lassi Pensikkala from Pixabay

Understanding What is Available Locally



My Community Resources

Get to know the resources available in your community by filling out this chart. The column responses are as follows:

- **Domains** are types of services that may be helpful to justice-involved persons with mental illnesses. The precise combination of treatment and services provided for each individual should be guided by a thoughtful assessment of his/her needs.
- **Y/N:** If your community has the specified services, mark the column with a Y. If not, mark it with an N. For domains you mark with an N, try to identify alternative sources of supports.
- **Agencies/Providers:** Specify the person or organization where the service or resource can be found.
- **Capacity:** State the capacity the agency/provider has to accept new clients, provide quality care, and work with new partners.
- **Connection:** Choose a representative from your team to establish a connection with the agency/provider and pursue a Memorandum of Understanding (MOU) with the new partner.

For more information on the mental health and substance abuse treatment services listed below, please see the handout *A Checklist for Implementing Evidence-Based Practices and Programs (EBPs) for Justice-Involved Adults with Behavioral Health Disorders*.

Domains	Y/N	Agencies/Providers	Capacity	Connection
MENTAL HEALTH TREATMENT SERVICES				
<i>Evidence-Based Practices</i>				
Assertive Community Treatment (ACT)				
Illness Management and Recovery (IMR)				
Integrated Mental Health and Substance Abuse Services for Co-occurring Disorders				
Supported Employment				
Psychopharmacology				
<i>Promising Practices</i>				

Key Resource

Resource: Judges' Bench Card on Release & Sentencing



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

A JUDICIAL BENCH CARD

Determining Behavioral Health Treatment Needs

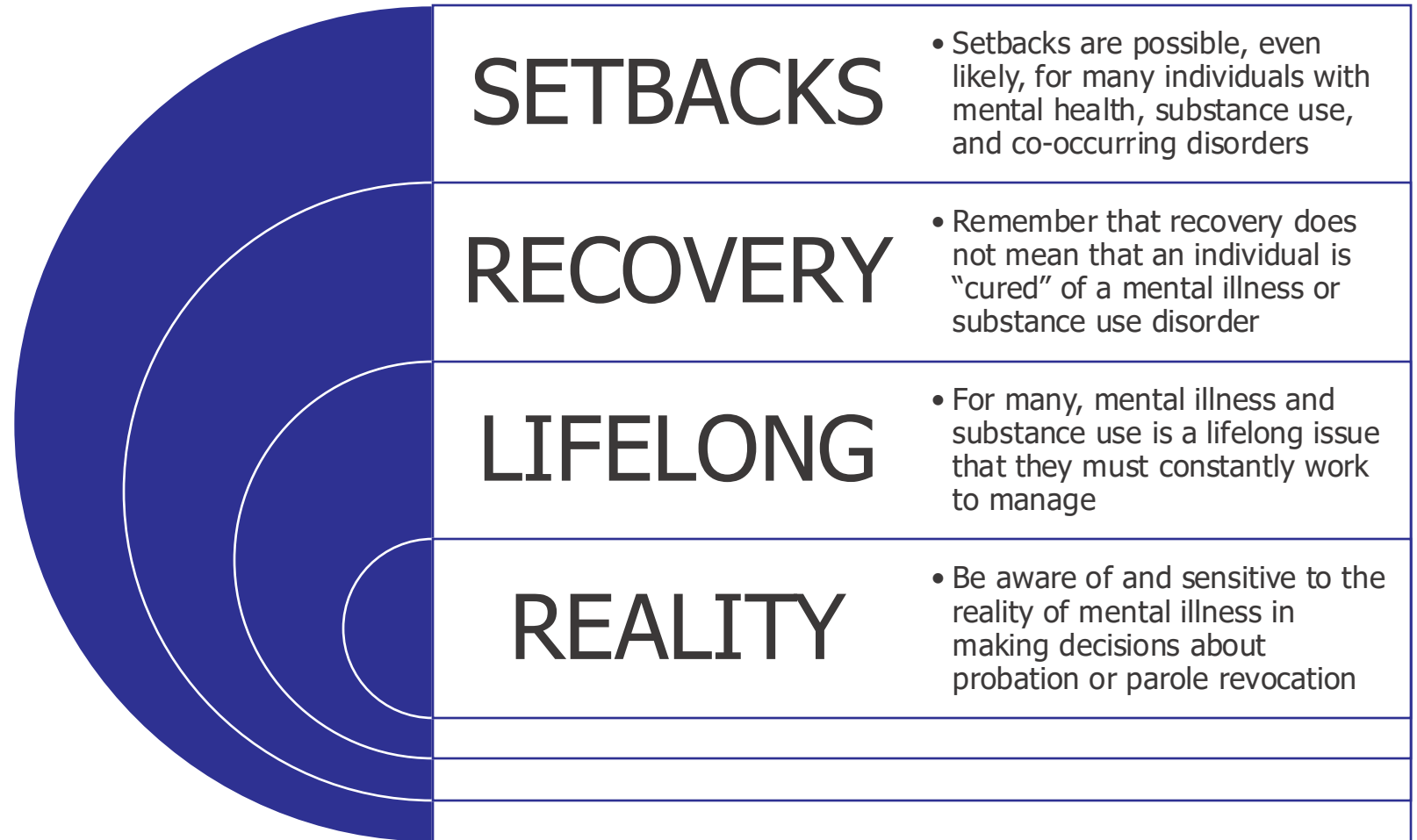
Judges can benefit from information on treatment needs gleaned through four steps:



- Make **observations** from the bench based on several categories—the defendants' appearance, cognition, 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

Having Fair and Realistic Expectations



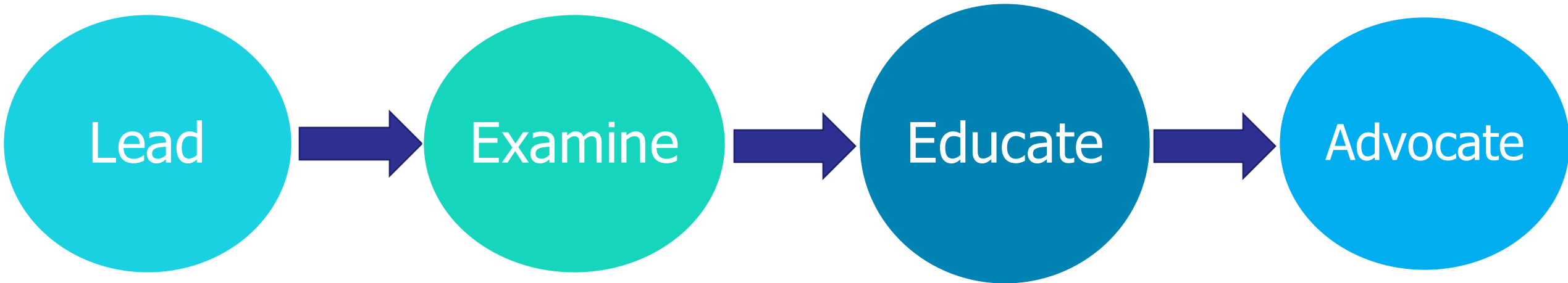
Designing a System That Works

“I believe that judges need to serve as catalysts for change and transformation not only in our communities, but also at the state and national levels if there is to be continued progress.”

—Justice Kathryn Zenoff, Appellate Judge, Fourth District of Illinois,
JPLI Co-Chair



Conference of Chief Justices & Conference of State Court Administrators: Resolution 1 2022

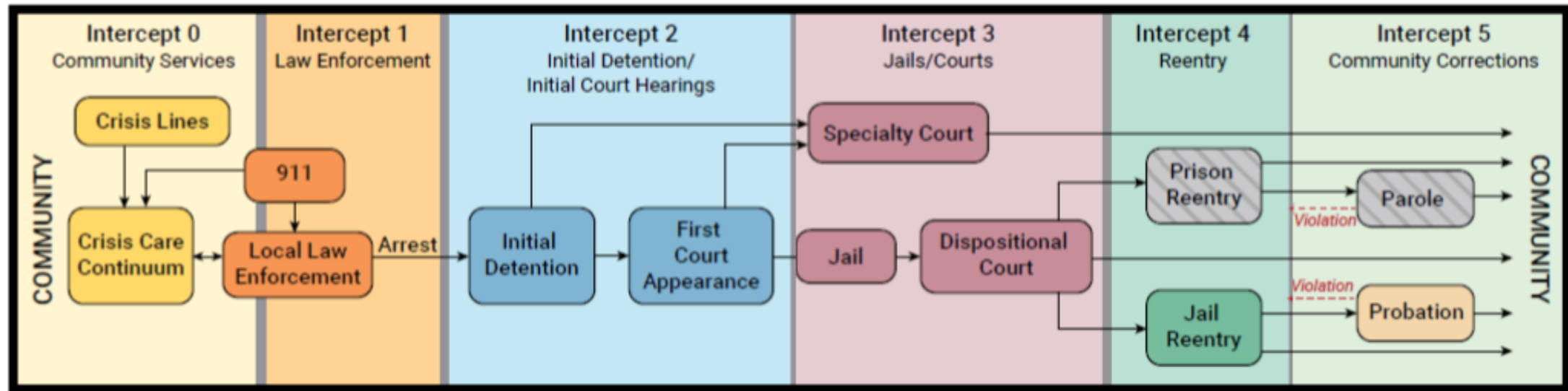


“Judges are not only permitted to engage in reform efforts, but also have an ethical obligation to do so. That is, a judge cannot ignore inequities once she becomes aware of them.”

— *Chief Justice Bridget Mary McCormack, Michigan Supreme Court*

Judges can be leaders and key champions to identify system changes from crisis response through reentry

The Sequential Intercept Model (SIM)



M. R. Munetz and P. A. Griffin, "Use of the Sequential Intercept Model as an approach to decriminalization of people with serious mental illness," *Psychiatric Services* 57, no. 4 (2006): 544–549. Updated version available online at: <https://www.prainc.com/sim/>.

What is one step you can take to address system-level improvement on this issue?

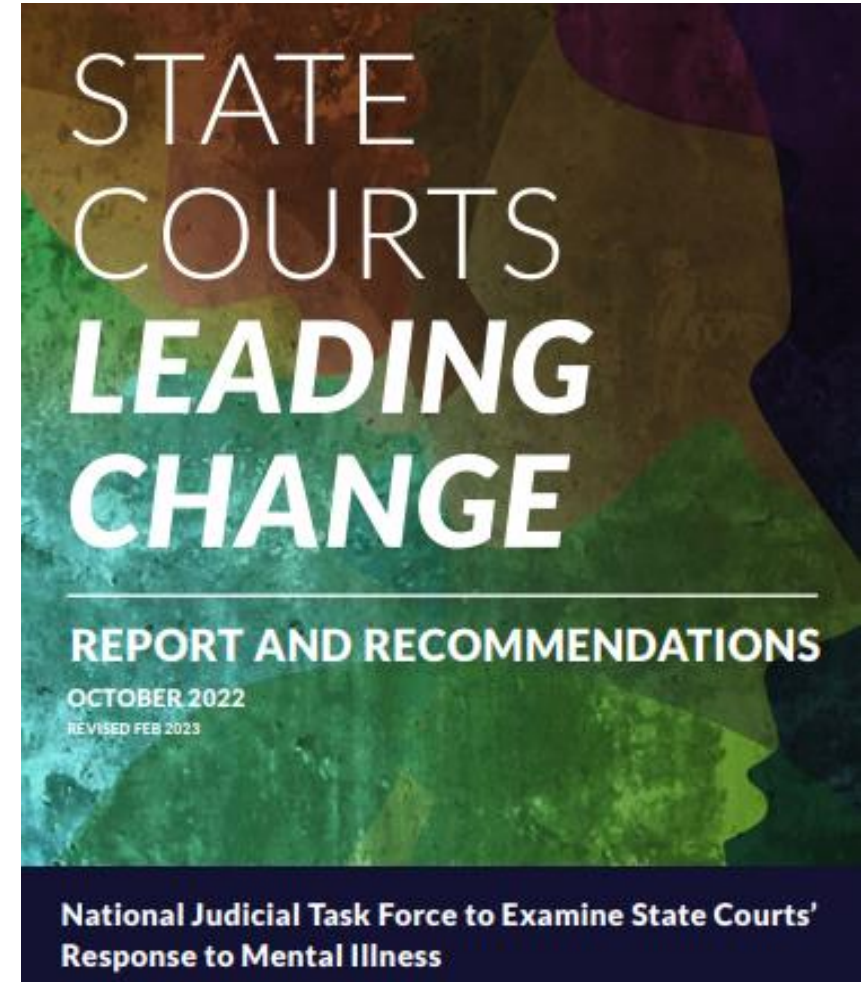
- Join or Convene** diverse stakeholders to develop a shared understanding of the intersection of criminal justice and behavioral health.

- Assess** the current process and any relevant data to identify where gaps and opportunities exist:
 - Crisis response?
 - Diversion?
 - Case processing?
 - Competency to Stand Trial?

- Improve and Expand** opportunities for diversion to treatment at all points in the criminal justice system, including after competency has been raised.

All the Resources a Judge Needs to Lead Change

[State Courts' Leading Change: National Judicial Task Force Examine State Courts' Response to Mental Illness Publications and Resources](#)



Questions and Answers

Sign Up Now for Our JPLI Newsletter and Judges Training

...



A square QR code is centered within a rounded square frame. The frame has a thick black border. The words "SCAN ME" are printed in a sans-serif font at the top, bottom, left, and right edges of the frame, each centered relative to its respective side.

SIGN UP FOR THE MONTHLY NEWSLETTER

...



A square QR code is centered within a rounded square frame. The frame has a thick black border. The words "SCAN ME" are printed in a sans-serif font at the top, bottom, left, and right edges of the frame, each centered relative to its respective side.

APPLY FOR THE TRAINING

Thank You!

Join our distribution list to receive updates and announcements:

<https://csgjusticecenter.org/resources/newsletters/>,

<https://www.ncsc.org/newsroom/behavioral-health-alerts>

Funding for this initiative was made possible (in part) by grant no. 1H79TI083343 from SAMHSA. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government

JPLI Contacts

- Hallie Fader-Towe at hfader@csg.org
- Michelle O'Brien at mobrien@ncsc.org
- Marilyn Leake at mleake@csg.org
- Ethan Kelly at ekelly@csg.org
- Jeri Thuku at jthuku@psych.org
- Christopher Chun-Seeley at cseeley@psych.org

Resource Slide 31

- Varshney, M., Mahapatra, A., Krishnan, V., Gupta, R., & Deb, K. S., *Violence and mental illness: what is the true story?*. J Epidemiol Community Health, 70(3), 223-225: 2016 referencing:
- Swanson JW, Holzer CE III, Ganju VK, et al., *Violence and psychiatric disorder in the community: evidence from the Epidemiologic Catchment Area surveys*, Hosp Community Psychiatry 41:761–70:1990
- Whiting, D., Lichtenstein, P., & Fazel, S., *Violence and mental disorders: a structured review of associations by individual diagnoses, risk factors, and risk assessment*, The Lancet Psychiatry, 8(2), 150-161: 2021