

Institutionalize Alternative Pathways to Treatment and Recovery and Improve Outcomes

ESSENTIAL ELEMENT 5: Courtroom Practices

POLICY

Judges and court personnel must be trained and educated on effective practices for interacting with individuals with behavioral health needs. All individuals should be treated in a dignified and compassionate manner.

EVIDENCE-BASED PRACTICES

Implementing procedural fairness techniques leads to better compliance with court orders and reduces recidivism, including for individuals with behavioral health needs. The key elements of procedural fairness for those with serious mental illness include providing all individuals with a voice and neutral and respectful treatment that promotes trust in the justice system.

GETTING STARTED

Judges and court personnel who observe indications of behavioral health needs in individuals before the court should recommend screening and/or clinical assessments to confirm the existence of the individuals' needs. Judges should consider the existence of behavioral health needs in individuals prior to and during interaction with defendants in criminal proceedings and when taking action on cases. Bench cards can assist judges in guiding interactions in the courtroom with individuals who have behavioral health needs.

To determine behavioral health treatment needs for individuals in the courtroom, judges should observe individuals, coordinate screenings and assessments, and make referrals based on clinical diagnoses and treatment recommendations. Judges should be familiar with available community behavioral health treatment resources and providers.

When interacting with a court user with behavioral health needs, judges should speak slowly and clearly, avoid threats and confrontation, and seek to calm the person and establish a personal connection, if possible.

NEXT GENERATION

Innovation, Technology, New Practice

Measures of "success" in meeting the needs of individuals with behavioral health issues vary from court to court, jurisdiction to jurisdiction, and state to state. Success should be measured in terms of access, use, and delivery of treatment. In addition, engagement, not traditional notions of failure, are a critical measure of success. More research is needed to determine the effects of criminal justice and mental health outcomes of individuals with behavioral health needs, and research could also help inform how to improve court responses to people with behavioral health needs.

Institutionalization, Sustainability, Funding

The use of diversion and mental health courts – where resources and funding are available – are important tools to assist in guiding individuals with behavioral health needs through the criminal justice system. Coordination and communication between courts and community treatment providers is critical to success.

RESOURCES

[Practical Considerations Related to Release and Sentencing for Defendants Who Have Behavioral Health Needs \(Bench Card\)](#) (Judges & Psychiatrists Leadership Initiative)

[Judges' Guide to Mental Illness in the Courtroom](#) (Judges' Criminal Justice/Mental Health Leadership Initiative)

[Procedural Fairness/Procedural Justice – A Bench Card for Trial Judges](#) (Council of State Governments Justice Center)

This document was developed under the Mental Health Initiative: Phase II Grant #SJI-20-P-054 from the State Justice Institute and approved by the Task Force Executive Committee. The points of view expressed do not necessarily represent the official position or policies of the State Justice Institute.

May 2022

