

# JUDGE'S GUIDE TO MENTAL ILLNESS IN THE COURTROOM



## When Mental Illness Appears to be a Factor, Consider:

### Prevalence:

**Serious Mental Illness:** 4% of all adults in the United States have a serious mental illness.

**Any Mental Illness:** 17.9% of all adults in the United States have a mental illness.\*

\*2015 Data from National Institute of Mental Health <https://www.nimh.nih.gov/>

**Contextualizing observations:** *While these categories of observation are provided to alert judges that an individual may have a mental illness that requires 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 justice system.
- Individuals may exhibit skills that have allowed them to survive in their communities but are poor fits for interacting with the court (e.g. toughness, argumentativeness, silence).

<b>Categories of Observation:</b>	<b>Courtroom Observations:</b>
<i>Do you see something in one of the following areas that does not make sense in the court context?</i>	<i>Examples of how behaviors in the observational areas can indicate that the individual may have a mental illness:</i>
<b>Appearance:</b> Age, hygiene, attire, ticks/twitches	<ul style="list-style-type: none"> <li>• Looks older/younger than the listed date of birth</li> <li>• Wears inappropriate attire (e.g. multiple layers of clothing in the summertime)</li> <li>• Trembles or shakes, is unable to sit or stand still</li> </ul> *Please be mindful that other disabilities may also impact appearance.
<b>Cognition:</b> Understanding/appreciation of situation, memory, concentration	<ul style="list-style-type: none"> <li>• Does not understand where s/he is</li> <li>• Seems confused or disoriented</li> <li>• Has gaps in memory of events</li> <li>• Answers questions inappropriately</li> </ul> *Please be mindful that other disabilities may also impact cognition and memory.
<b>Attitude:</b> Cooperativeness, appropriate participation in court proceeding	<ul style="list-style-type: none"> <li>• Stays distant from attorney or bench</li> <li>• Acts belligerently or disrespectfully</li> <li>• Is not attentive to court proceedings</li> </ul> *Please be mindful that other disabilities may impact attitude and behavior.
<b>Affect/Mood:</b> Eye contact, outbursts of emotion/indifference	<ul style="list-style-type: none"> <li>• Does not make eye contact with judge or court staff</li> <li>• Appears sad/depressed, or too high-spirited</li> <li>• Switches emotions abruptly</li> <li>• Seems indifferent to severity of proceedings</li> <li>• Appearance of responding to voices (or other stimuli)</li> <li>• Lack of emotional response</li> </ul> *Please be mindful that other disabilities may also impact affect/mood.
<b>Speech:</b> Pace, continuity, vocabulary (Note: Can this be explained by discomfort with English language?)	<ul style="list-style-type: none"> <li>• Speaks too quickly or too slowly</li> <li>• Misses words</li> <li>• Uses vocabulary inconsistent with level of education</li> <li>• Stutters or has long pauses in speech</li> </ul> *Please be mindful that other disabilities may also impact speech. **Special care may be necessary if a language interpreter is being used.
<b>Thought Patterns and Logic:</b> Rationality, tempo, grasp of reality	<ul style="list-style-type: none"> <li>• Seems to respond to voices/visions</li> <li>• Expresses racing thoughts that may not be connected to each other</li> <li>• Expresses unusual ideas</li> </ul>

Adapted with permission from "Judges' Guide to Mental Illnesses in the Courtroom," The Council of State Governments Justice Center, 22 January 2012. <https://csgjusticecenter.org/courts/publications/judges-guide-to-mental-illnesses-in-the-courtroom/>. Additional information can be found in the 2017 Handbook for Georgia Court Officials on Accessibility for Individuals with Disabilities and in the 2018 Companion Guide for Mental Illness and Cognitive Disabilities.

# JUDICIAL INTERACTIONS

## Before Interacting with a Court Participant, Consider:

- **How the courtroom environment is affecting the defendant:**
  - Are there noises or distractions in the courtroom that are negatively affecting the court participant?
  - Is there a family member or defense attorney who can help calm the person?
- **Safety** for yourself, the court staff, and the individual.
- **What is being asked and said in open court** and how this may affect future proceedings.

## While Interacting with a Court Participant, Consider:

Courtroom Situations: <i>Examples of commonly observed scenarios</i>	Immediate Responses: <i>Recommendations for immediate situation management</i>
<b>When a mental illness is affecting a person's courtroom participation:</b>	<ul style="list-style-type: none"> <li>• Speak slowly and clearly</li> <li>• Avoid jargon</li> <li>• Explain what's happening</li> <li>• Write instructions down if dates/addresses are involved</li> <li>• Treat the individual with the respect you would give other adults</li> <li>• If appropriate, use principles of Motivational Interviewing. (developed by Drs. William Miller and Stephen Rollnick).               <ul style="list-style-type: none"> <li>-Express empathy</li> <li>-Point out discrepancies between goals and current behavior</li> <li>-Roll with resistance</li> <li>-Support self-efficacy</li> </ul> </li> </ul>
<b>Loss of Reality:</b> <i>When the person appears confused or disoriented</i>	<ul style="list-style-type: none"> <li>• Ground person in the here and now (based on LOSS Model developed by Paul Lilley)</li> </ul>
<b>Loss of Hope:</b> <i>When the person appears sad, desperate</i>	<ul style="list-style-type: none"> <li>• As appropriate, instill hope in positive end result</li> <li>• To the extent possible, establish a personal connection</li> </ul>
<b>Loss of Control:</b> <i>When the person appears angry, irritable</i>	<ul style="list-style-type: none"> <li>• Listen, defuse, deflect</li> <li>• Ask the person about why s/he is upset</li> <li>• Avoid threats and confrontation</li> </ul>
<b>Loss of Perspective:</b> <i>When person appears anxious, panicky</i>	<ul style="list-style-type: none"> <li>• Seek to understand</li> <li>• Reassure and calm person</li> <li>• Deflect concerns</li> </ul>

## When Taking Action, Consider:

- **Have the person 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 court participant calm down?
- **Determining whether to proceed:** Is a fitness or competency evaluation appropriate?
- **Entering orders:**
  - Does the person have the capacity to understand the order?
- **Bond conditions/sentences in criminal cases:**
  - What effect will bond/conditions have on regularity of treatment?
  - What effect will time in jail have on mental health, access to medication, benefits maintenance, etc.?
  - How will bond/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).