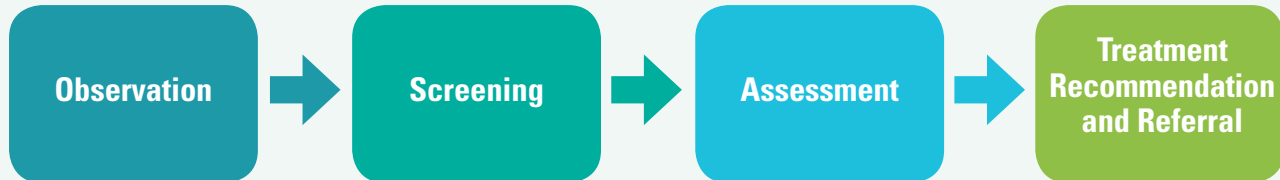


Practical Considerations Related to Release and Sentencing for Defendants Who Have Behavioral Health Needs

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

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 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
- Call defendants to the bench to discuss sensitive personal information quietly, after first alerting your bailiff and court staff of your plan to alleviate their security concerns

DON'T

- 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 peer specialists to assist with engagement and treatment connection

DON'T

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

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) with minimal or no 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

- DON'T**
- Rely on instinct alone 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

- DON'T**
- 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

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

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

- DON'T**
- Overcomplicate conditions or mandate the defendant attend many appointments 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/bail setting:

Considerations:

- 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, psychiatrically unstable, and/or under significant stress due to a recent arrest.

Tips:

- Review initial screening information, if available.
- Consider ordering a behavioral health evaluation, if behavioral health needs are suspected.
- After first appearance, attempt to access information about prior treatment.
- After first appearance, seek more information related to jail housing, observation, and possibly the results of a pre-trial risk assessment.
- After first appearance, utilize court staff and/or clinicians to contact and involve members of the defendant's family and support system.
- Be creative and flexible with condition setting during this pre-adjudication phase.

Sentencing/Update/Hearing Appearances:

Considerations:

- 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 court- or community-based treatment personnel.

Tips:

- Manage 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.