

*Litigants with Mental Health Issues and Their Access to the American Judicial System:  
A Comparative Analysis between Judges' and Mental Health Professionals' Views*

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**Introduction:**

Some may view the legal and mental health fields as wholly separate, with dissimilar focuses and distinct missions. Yet, these two fields are quite interrelated, especially when individuals who have mental health issues find themselves caught up in the judicial process. Questions centered on due process and justice naturally arise when such individuals must navigate the judicial system, which even those who are not mentally ill find complex and overwhelming. Difficulties may also arise when a system designed and prepared to handle purely legal challenges must adjust to dealing with the often unfamiliar and stigmatized area of mental illness. To gain a better understanding of how exactly litigants with mental health issues access the judicial system, we wanted to gather information from the professionals who know and work with these kinds of issues on a daily basis. Due to the multifaceted nature of this topic, we wanted professionals from both the legal and psychological ends of the spectrum to share their perspectives. Both professions offer a unique perspectives specific to their training and experiences. This paper will present a comparative analysis between the perspectives of judges and mental health professionals and their responses to questions addressing the ability of litigants with mental health issues to access the judicial system equitably.

**Background:**

The rising significance of the relationship between mental health and the justice system can be illustrated by a 2013 report published by the Treatment Advocacy Center.<sup>1</sup> This report

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<sup>1</sup> *Massachusetts: An Assessment on the Commonwealth's Access to Treatment for Persons with Severe Mental Illness*, TREATMENT ADVOCACY CENTER (October 2013), <http://www.treatmentadvocacycenter.org/storage/documents/2013-massachusetts-assessment.pdf>.

focuses specifically on Massachusetts and evaluates the nature of this interrelationship.<sup>2</sup> The study found that “7.26% of the male inmate population identified as having serious mental illness [and] 24% of men in prison have open mental health cases.”<sup>3</sup> The statistics are even higher for women in prison, 24.9% of which “have serious mental illness,”<sup>4</sup> and 59% of which “have open mental health cases.”<sup>5</sup> These statistics are not only concerning, but they also raise serious questions about the processes that lead such mentally ill individuals to be incarcerated. The study reported that “the likelihood of being jailed vs. hospitalized for symptoms and behaviors associated with severe mental illness [is] 1.2x.”<sup>6</sup> Therefore, individuals who suffer from severe mental illnesses have a greater likelihood of ending up incarcerated rather than receiving the appropriate treatment.<sup>7</sup>

Although one of the Judges who participated in this survey provided background information on mental health courts, these courts are the exception rather than the rule.<sup>8</sup> According to the Treatment Advocacy Center Report, only 13% of Massachusetts residents “liv[e] where mental health courts are available to divert qualifying individuals with severe mental illness from jail into treatment.”<sup>9</sup> Not only does a small portion of the public actually

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<sup>2</sup> The report is “An Assessment on the Commonwealth’s Treatment for Persons with Severe Mental Illness” *Id.*

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> While the article mentions that this statistic is from 2008, it notes that “[b]ecause of hospital bed reductions since this data was developed, likelihood of being jailed vs. hospitalized had increased.” *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

have access to mental health courts, but Massachusetts has also received a grade of “F” for “diverting people with severe mental illness from [the] criminal justice system to treatment.”<sup>10</sup>

Although these outcomes speak volumes, to better inform our understanding of the quantitative data, we wanted to gather qualitative data from professionals actually involved in the system to determine *how* and *why* this is the case.

**Research Methodology:**

We gathered data by distributing surveys to five judges and five mental health professionals working in Massachusetts. The judges who responded to the surveys are Massachusetts state court judges, some of whom are district court judges, and others superior court judges. We first created a survey tailored specifically towards the judges, aiming primarily to discover what specific safeguards are the most significant in their viewpoint for protecting mentally ill litigants within the judicial system, and whether such safeguards were adequate in their view. We wanted to elicit responses that reflected \_\_\_ each judge’s opinions and personal experiences handling litigants with mental health issues, as well as any trends they may have noted. After we received the survey responses from the judges, we then crafted a survey tailored specifically for the mental health professionals. We identified the safeguards that the judges found to be most significant and asked mental health professionals to share their opinions on such safeguards, and whether they found them to be adequate. We also attached information describing one of the programs<sup>11</sup> that the District Court offers to mentally ill litigants so that mental health professionals could better understand the services provided. We also asked some

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<sup>10</sup> *Id.* It is significant to note, however, that there are some programs which provide those on *probation* the opportunity (if eligible) to receive an individualized treatment plan. See Appendix 3, 4, and 5.

<sup>11</sup> See Appendix 4.

mirroring questions (similar to the judges survey), so that we could specifically compare and contrast the responses in our analysis.

Our research will be presented comparatively, first looking at the judges' responses, and then comparing and contrasting them to those of the mental health professionals. Part I will focus on what exactly a mental health issue is. Part II will discuss the current safeguards in the judicial system for mentally ill litigants and the adequacy of those safeguards. Part III will examine specific situations where the safeguards in place may be less effective. Part IV will touch on handling individuals with mental health issues in the courtroom. Part V will explore the various forms of sentencing for litigants with mental health issues. We will then conclude by summarizing our findings and sharing recommendations based upon both the judges' and mental health professionals' responses taken together.

***Part I:***

*An Understanding of Mental Health Issues and What They Encompass*

In beginning our exploration of individuals with mental health issues who are involved in the judicial process, we wanted to first understand what exactly a mental health issue *is*.

Although it is easy to generalize the definition, different kinds of professionals define “mental health issues” differently. Because our research primarily focuses on a comparative view of how mental health issues may impact litigants, we wanted to frame our analysis by asking both judicial officers and mental health professionals [to] define the term. Such a definition, although seemingly simple, can have a direct impact on the viewpoint and scope of our research.

Therefore, we first asked the judges: how would you define the term “mental health issue?”

Each judge provided a distinct definition of the term. These are some of the responses we received:

**Judge A:** “A ‘mental health issue’ is an issue that either affects a defendant’s ability to comprehend what’s occurring and/or an individual’s ability to understand or control his actions. Mental health issues may impact decision-making. Homelessness goes hand in hand with mental health issues.”

**Judge B:** “I would say that it is a condition which interferes with the person’s ability to process information in a rational way.”

**Judge C:** “In the criminal context- an issue that affects a defendant’s ability to be competent to stand trial or ability to conform behavior to the requirements of the law. In the civil context- an issue that may result in the subject’s civil commitment.”

Although each definition is slightly distinct, every response focuses on the defendant’s comprehension skills and degree of understanding. Interestingly, Judge C focused the defendant’s ability to be *competent to stand trial*<sup>12</sup>—a seemingly narrower definition than the others provided. Judge A also touched on the notion of homelessness being interconnected with mental health issues, somewhat broadening the generalized view. With these definitions in mind, we then asked the mental health professionals to define a “mental health issue,” and these are a sample of their responses:

**Mental Health Professional A:** “A mental health issue stems from how one tolerates or experiences events. It becomes a true issue when there is a decline in functioning over a duration of time.”

**Mental Health Professional B:** “Emotional issues that do not resolve in two weeks and/or continue to cause discomfort that affects your functioning on a day to day basis.”

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<sup>12</sup> See M.G.L. ch. 123, § 15 (2001).

**Mental Health Professional C:** “ A mental health issue could be seen from an individual or cultural viewpoint; an individual with emotional, cognitive or behavioral deficits, or disturbances to their ability to function, would be having a mental health issue. Form a societal perspective, there may be a mental health issue when people are in need of treatment and are denied services, or are inappropriately incarcerated or harm others.”

In contrast to the judges, the mental health professionals did not focus on comprehension levels and the ability to process information. Rather, they shared a broader perspective that centered on the ability to function over time. Mental Health Professional C also raised the issue of viewing a mental health issue from a cultural and societal viewpoint, further broadening the scope of what a “mental health issue” is. The ability to process information and comprehend judicial proceedings is certainly a significant facet of a mental health issue; however, the mental health professionals’ definitions call into question the narrow nature of such definitions. Individuals may be able to comprehend or process information, be competent to stand trial, and yet still have a “mental health issue.” The nature of the judges’ responses is understandably intertwined with a legal perspective, yet the mental health professionals’ definitions seem to stretch the judges’ perspectives to wider bounds. Therefore, it is important to keep the scope of both types of professionals’ definitions in mind to better understand their responses throughout this analysis.

## **Part II:**

### *Current Safeguards for Litigants with Mental Health Issues in the Legal Process and Evaluations of their Adequacy*

With the various definitions of a “mental health issue” in mind, we turned next to examining the potential safeguards for individuals with mental health issues, and if they actually serve to equalize the judicial process for such individuals. We first wanted to explore the judges’

perspective of the safeguards that currently exist in the system for litigants with mental health issues. Specifically, we wanted to know what judges viewed as the most significant safeguards in the system and how they utilized them. We then wanted to determine the judges' view on whether the safeguards that they found to be the most significant were adequate to protect the interests of litigants with mental health issues involved in the judicial system. The first question we asked the judges was: "What procedural safeguards are in place to make sure that individuals with mental health issues are presented an equal opportunity for justice in the judicial process?"

These are all of the responses we received:

**Judge A:** "We are fortunate to have a court clinic housed in our courthouse where potential issues are readily addressed. Defendants are appointed an attorney on their first court appearance who [has] some awareness of mental health issues. Of course, the judge should always be conscious of possible mental health issues."

**Judge B:** "Every courthouse should house a court clinic at the very least. I can call on them for help often. Our court is also in the process of beginning a mental health session and have hired a social worker who will be exclusively dedicated to that session to follow through with compliance."

**Judge C:** "The Court has created a complex statutory scheme to deal with mental health issues."

**Judge D:** "Chapter 123 assures counsel and due process safeguards vis a vis addition, mental illness, criminal responsibility and competency. Section 18 provides for incarcerated defendants. Judges also rely heavily on counsel, court clinics, and probation offices to identify mental health issues."

**Judge E:** “Every defendant and every individual facing commitment is assigned an attorney. Every District Court has a court clinic or access to a court clinic to consult with a mental health professional.”

Based upon the judges’ responses, we found that the most significant safeguards identified were: (1) the ability to be represented by counsel and (2) the assistance of a court clinic. A few of the Judges identified chapter 123, the statutory scheme that specifically deals with individuals who have mental health issues. Chapter 123 generally addresses “the standards for reception, examination, treatment, restraint, transfer and discharge of mentally ill persons in departmental facilities.”<sup>13</sup> The statute outlines the procedures for transfer to another facility (i.e. Bridgewater State Hospital), gives individuals with mental illness the right to counsel for commitment proceedings, and allows an examination for “competence to stand trial.”<sup>14</sup> One judge also reported that her specific Court has begun a mental health session.<sup>15</sup> After having the judges identify the most significant safeguards in their view, we then asked whether they believed the identified safeguards were adequate in addressing any disadvantages that a mentally ill litigant may face. Every judge that we surveyed believed that the current safeguards in place were adequate, with three qualifying answers:

**Judge A:** “ [The safeguards are] adequate . . . [but] not enough is done to ensure that if a court is involved, there are qualified probation officers, good clinicians, and people with the understanding of how people with mental health issues have skilled advocates.”

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<sup>13</sup> M.G.L. ch. 123, § 2 (2001).

<sup>14</sup> See M.G.L. ch. 123, §3, 5, 8, 15 (2001).

<sup>15</sup> See Appendix 5.



**Judge B:** “[They are adequate] many times. Better trained doctors [are necessary] who are familiar with various medications or more facilities that are staffed by persons who are trained in how to approach mentally ill.”

**Judge C:** “[The safeguards are] adequate. However, the quality and depth of meaningful care is often compromised by inadequate funding.”

Overall, the primary concern that the judges expressed with respect to the efficacy of the safeguards seems not to be about the process itself, but the quality of the professionals involved. The lack of funding issue that Judge C highlighted plays directly into the ability to hire qualified staff, the quality of the treatment provided, and the efficacy of the care received. In general, however, the judges unanimously agreed that the system adequately protects the rights of those with mental health issues. With this viewpoint in mind, we then asked the mental health professionals whether the safeguards that the judges had identified were adequate to give mental health litigants an opportunity for equal justice. We began specifically by focusing on the presence of an attorney in the proceedings:

**Mental Health Professional A:** “The presence of an attorney alone does not mitigate the inequities. I’m sure attorneys could ensure equal opportunity for justice for individuals with mild mental health issues, but for those who represent clients with severe mental illness that may impair their judgment/insight, additional training in recognizing symptoms would be very helpful.”

**Mental Health Professional B:** “Lawyers would be more qualified for the role if they had training in assessing mental health symptoms.”

**Mental Health Professional C:** “Not every attorney has dealt with the mental health issues of defendants, and have not necessarily had any training in what constitutes mental illness, or what

forms of disorders result in behavior threatening to others. Misconceptions could result in the over and under predicting the person's threat to self or others, for example. Also if the attorney in the case considers committing the defendant to treatment, they are not necessarily capable of (1) prescribing the most advantageous treatment/setting; or (2) matching the problems with the preferred treatment methods. The attorneys would need to be educated in the psychological disorders and the current research on the most effective treatments and settings for the particular disorder.”

The mental health professionals seem to take issue with the fact that attorneys, who are expected to be the advocate for their clients, may not actually understand or even be able to recognize their clients' symptoms. Mental Health Professional C makes the point that misconstructions of certain kinds of mental illnesses, as well as the concept of mental illness in general, could pose problems for estimating the danger that a defendant poses to himself and society in general. According to the mental health professionals, the quality of the attorney in this situation not only depends on *legal* knowledge, but also knowledge regarding *psychological disorders*. Although clinicians would certainly be able to assist with this task *once brought to their attention*, an attorney cannot effectively advocate for his or her client if s/he is unaware of a mental illness or is unable to identify it. Although every judge identified the appointment of an attorney as one of the most significant safeguards for litigants with mental health issues, mental health professionals emphasize that the efficacy of the attorney's representation is dependent on a deeper understanding of mental health issues. After examining the mental health professionals' perspective regarding attorneys serving as a procedural safeguard, we asked whether these professionals agreed with the judges' unanimous sentiment that the safeguards *as a whole* are

adequate to give mental health litigants an equal opportunity for justice. They responded with the following statements:

**Mental Health Professional A:** “No, a mental health professional should be available [for the defendant] throughout the court proceedings—someone who is familiar with working with those who are intellectually impaired or have poor judgment.”

**Mental Health Professional B:** “No, the procedures are not adequate. The proportion of mentally ill individuals who end up incarcerated (and the proportion of incarcerated people who are mentally ill) is alone an indicator that justice is not equally available—more options for treatment need to be available as part of sentencing.”

**Mental Health Professional C:** “No, [they are not adequate.] Individuals should undergo psychological/psychiatric treatment before any court appearance, and should return to the judicial process upon certification by their psychologist that their mental status is improved to the point that they can lucidly participate in the court. [The defendants must also have] advocates and a thorough mental health evaluation and treatment prior to court appearance, including evaluations for psychotropic medications and assurance that they are able to procure.”

**Mental Health Professional D:** “Yes, they are adequate.”

**Mental Health Professional E:** “Not sure—as long as [there is] consistent and ongoing management of their conditions. I feel that mental health experts need to be present in the courtroom.”

A number of the mental health professionals’ answers contrasted significantly with the judges’ responses regarding the adequacy of the current safeguards. Three out of the five mental health professionals disagreed with the judges that the identified safeguards were adequate, although one professional did agree with the five judges. Some of the mental health

professionals focused on the need for the presence of a qualified mental health professional or clinician throughout the proceedings and in the courtroom, not just in a court clinic, for increased access and consultation. The mental health professionals' responses suggest that rather than just having an attorney as an advocate, the attorney should be paired in any case with a qualified mental health professional. This would ensure that *both* the legal and psychological dimensions of the issue are given proper attention. In this case, having a legal advocate as well as an advocate who understands the nature, extent, and consequences of the defendant's mental illness would make the current safeguards more powerful. However, as some of the judges previously identified, qualified clinicians are often hard to come by due to financial or other reasons.

The mental health professionals also focused on the need for defendants to be assessed and treated *prior* to any appearance in the courtroom. Although the judges pointed to the statutory framework of section 123, which allows a medical evaluation as part of a commitment proceeding<sup>16</sup>, this does not address the evaluation and treatment of an individual before a court appearance. This notion is underscored by the fact that an individual has “not less than two days” after s/he is appointed counsel to prepare for a commitment hearing with his or her attorney—therefore, the possibility of treatment or (in some cases) meaningful evaluation may be compromised.<sup>17</sup> It is also significant to note that one of the mental health professionals emphasized the number of mentally ill who are currently incarcerated. This professional suggests that if the procedures in place were truly adequate, then the percentages of incarcerated

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<sup>16</sup> See M.G.L. ch. 123, § 5 (2001).

<sup>17</sup> *Id.* (“The person shall be allowed not less than two days after the appearance of his counsel in which to prepare his case and a hearing shall be conducted forthwith after such period unless counsel requests a delay.”). This procedure may also differ in courts that have a Recovery With Justice type program, such as the Cambridge District Court and the West Roxbury Division of the Boston Municipal Court. However, the Recovery with Justice Program gives individuals on probation the opportunity to serve their probation through treatment (if they are eligible). They still must regularly appear in Court throughout their participation in the program. A number of Courts have instituted such programs, but they primarily focus on giving treatment alternatives in sentencing /probation, rather than removing the individual from the judicial process completely. See Appendix 3, 4, & 5.

individuals who are affected by mental illness would not be so high. Although the judges and mental health professionals share opposing views regarding the adequacy of the current safeguards, their contrasting perspectives align with the idea that the efficacy of these safeguards depends highly on qualified clinicians and a keen sensitivity to the effects of mental illness on the defendant.

### **Part III:**

#### ***Specific Challenging Situations when Judging Litigants with Mental Health Issues***

Our next inquiry asked the judges to share specific challenges that they face when judging litigants with mental health issues. The judges shared that judging litigants with mental health issues can be challenging for a variety of reasons on multiple levels. However, despite facing such challenges, all five judges unanimously reported that they do not judge litigants with mental health issues differently from their peers. The following are the responses that we received:

**Judge A:** “Defendants with mental health issues have always presented challenges because the goal of our criminal justice system is to ensure that a person convicted of a crime has a consequence that will help guide their future behavior towards leading a law abiding life. Continuing mental health issues impede change frequently.”

**Judge B:** “Chapter 123 - Section 7 & 8 Commitment hearings are challenging because most respondents are very sympathetic and as a judge, you must determine facts based on evidence, not emotion.”

**Judge C:** “I had a vet who clearly had mental health issues and the VA was not providing mental health services—even though VA was not a party— I had them brought an order to provide those services. I may not have had the legal authority, but I did it.”

Interestingly, Judge A highlighted the competing tensions between punishing an individual for his or her crime(s) and rehabilitating an individual to become a “law abiding” citizen. This judge touched on the idea that although punishment may have various purposes, including specific deterrence and punishment, an individual’s mental health issues may impede the success of long-term deterrence or rehabilitation. Therefore, this idea leaves one wondering whether different forms of sentencing are more effective for litigants with mental health issues in comparison with their peers. Judge B highlighted another competing tension—separating one’s sympathy and emotional response from one’s interpretation of the facts and evidence. Taken together, these responses highlight the importance of judicial impartiality and judging upon the facts, not the defendant’s story. Judge C shared a specific case in which he compelled a local VA to provide therapy services to a litigant who was not receiving such services. Interestingly, this judge indicated that he did not know whether he had the judicial authority to do so, and this response highlights the question of whether or not judges should be intervening with or policing the implementation of mental health services. This response also emphasizes the notion that judges may be put in difficult situations when they know that an individual *needs* treatment, but they are unsure whether they have the *legal authority* to compel it. Such a tension supplements Judge B’s comments on the challenges of separating emotions and sympathy from legality.

In contrast, the mental health professionals listed a host of situations in which litigants with mental health issues may not be able to understand the legal process and their rights. The mental health professionals enumerated a number of mental health disorders that may interfere

with one's ability to understand the legal process and their rights, even if such rights were clearly explained to them by his or her attorney. The mental health professionals included the following diagnoses in their responses: psychosis, schizophrenia, Autism Spectrum Disorders, severe depression and severe anxiety. Their responses included the following:

**Mental Health Professional A:** "There are many situations in which someone who is experiencing full blown symptoms and is unable to process or comprehend what an attorney is actually telling them. If the defendant is unable to understand his or her legal rights to psychotic illness or other psychiatric illness, I do not think an attorney can mitigate inequities, unless the attorney is well aware that the client's insight/cognitive judgment is impaired and has access to adequate resources."

**Mental Health Professional B:** "Psychosis: the person may appear fine, but if they are having auditory or verbal hallucinations, paranoid ideations, this will affect their sense of reality."

**Mental Health Professional C:** "Autism Spectrum Disorders where intellectual impairments are an obstacle, and psychosis involving intrusive thoughts, paranoia, and delusional thinking caus[e] a break from reality."

**Mental Health Professional D:** "A person with schizophrenia may be too disorganized, or may be paranoid and misinterpret information that he or she is being told. A person with severe depression may also be too cognitively foggy to follow proceedings. A person with mania may not be able to focus and may also misinterpret information."

**Mental Health Professional E:** "[I]f the patient was in a psychotic state and could not understand what was being asked, then this would interfere with his or her ability to understand."

These responses are somewhat troubling because they cover a number of diagnoses that affect a wide variety of litigants with mental health issues. If these mental health professionals

are claiming that such diagnoses interfere with one's ability to understand the legal process and their rights, then this suggests that the majority of litigants with mental health issues have tremendous difficulty accessing the legal system equitably. Therefore, this raises the question: Even if a litigant has the assistance of a competent lawyer or Guardian Ad Litem, how do such professionals assess whether his or her client *truly* understands the legal process and their legal rights, even when a client claims to understand? This situation is especially troubling in Mental Health Professional B's response, highlighting that an individual may appear as if he or she is in a normal state when, in reality, he or she is experiencing psychosis. As previously discussed, attorneys who are not trained in identifying mental illness may not even know that their client is experiencing such symptoms. Touching on this very same concept, Mental Health Professional A returned to the idea that there may be limitations to an attorney's ability to mitigate inequities due to his or her client's mental illness. Mental Health Professional A also emphasized the availability of adequate resources, one of the main concerns that judges touched on earlier in the analysis. Overall, these responses highlighted a variety of situations in which the procedural safeguards may prove to be inadequate due to the debilitating nature of some mental health illnesses.

As a result, our next inquiry asked the mental health professionals to elaborate on what improvements could be made to address the inequities that they had identified, if any. The mental health professionals unanimously emphasized increased participation of trained mental health professionals as part of the judicial process. The following are their recommendations in further detail:



**Mental Health Professional A:** “Having mental health trained professionals available right away to help negotiate the process would make [litigants’] participation in the process more equitable.

**Mental Health Professional B:** “Having a team consisting of both mental health and legal professionals” would be helpful for litigants to navigate the legal process.

**Mental Health Professional C:** “If they have an outside evaluation possibly . . . this would allow their competency to be fully assessed. A guardian ad litem could then be appointed.”

These responses highlight the need for collaboration between attorneys and mental health professionals to work together in the interest of assisting litigants with mental health issues. Mental Health Professional B suggests the possibility of creating an attorney-clinician team that could work with individual defendants, as the professionals had previously emphasized in part II of the analysis. These responses seem to emphasize, once again, the idea that litigants with mental health issues are still unable to equally access the legal system, even with the assistance of a lawyer, no matter how competent a lawyer may be handling such litigants.

#### ***A. Concerns about self-medication and substance abuses***

When asked to elaborate on “any potential disadvantages that individuals with mental health issues may face during the judicial process,” the judges overwhelmingly expressed a unanimous concern for litigants with mental health issues engaging in self-medication and substance abuse. The judges all considered self-medication and substance abuse to be a leading factor that contributes to individuals’ inability to equally participate in the legal system, which may consequently raise recidivism concerns. These judges shared the following responses:

**Judge A:** “In my experience, 85% of district court cases involve mental health issues and substance abuse issues. [C]ompetency is always fluid. If one stops taking meds then they will again be incompetent. It’s difficult to resolve cases at all when competency is an issue.”

**Judge B:** “Too many people are self-medicating which leads to substance problems and crimes to support their habits. A common condition of probation is mental health evaluation and follow through which on its face seems appropriate. Homelessness is an obstacle to this. It is also not uncommon for diagnosed individuals to stop taking their meds when they begin to feel better and thus the spiral begins again . . . [i]f defendants don’t have health coverage then it’s nearly impossible to get services.”

**Judge C:** “It is challenging to keep defendants attending court ordered treatment if out patient and taking meds [are] prescribed.”

**Judge D:** “Frustrations associated, in the main, with funding e.g. section 35 commitments only providing detox as opposed to treatment.”

These responses highlighted a theme that a greater opportunity for justice exists when mentally ill litigants are consistently taking their medication. However, this highlights the issue of access to *medication* itself. A few judges highlighted the issues of homelessness and a lack of access to health insurance as potential concerns. Both of these issues can hinder a mentally ill litigant’s ability to receive required medication, which may cause the individual to engage in self-medication. Such self-medication may then lead to a violation of probation and an increased dependence on the chosen form of self-medication. The dependence on self-medication not only can trigger but also can perpetuate their misconduct, locking mentally ill litigants into a cyclical pattern. Thus, the socioeconomic status of mentally ill litigants also has a large impact on their ability to navigate the system equitably. Judge B specifically noted this issue, highlighting the near impossibility of individuals without access to health insurance receiving appropriate services. Judge A touched on the dilemma that individuals with mental health issues face between underusing medication (ceasing to take medication as prescribed) and turning to self-

medication (due to lack of access to medication). Judge D expressed his “frustrations” for only providing litigants with mental health issues facing section 35 commitments “detox as opposed to treatment,” which may stem from a lack of funding. This idea returns to the recidivism issue, as detox may only keep the individual from reoffending for a short time but does not address the litigant’s issues in the long term. Judge D’s response also returns to the theme of competing tensions between the various purposes of sentencing and raises the question: if treatment is one of the main goals, is detox alone appropriate? Together, these responses reflect that there are a number of inequitable circumstances for litigants with mental health issues that may be rooted in varying degrees of financial status and funding.

The mental health professionals shared a similarly heightened concern for litigants with mental health issues engaging in self-medication and substance abuse. They reported the following when asked how an individual’s self-medication and substance abuse problems may affect his or her ability to understand his or her actions and the legal consequences that follow:

**Mental Health Professional A:** “If they are under the influence or using regularly the defendant will be impaired so they may not understand the implications of their actions and behaviors.”

**Mental Health Professional B:** “This is a difficult issue in light of our current trend - what I feel is an opiate epidemic. When an individual is using substances daily it can exacerbate mental illness or self-medication. An addict’s choice will be affected by their desire to continue/need to continue using; their judgment is affected.”

**Mental Health Professional C:** “While intoxicated individuals are likely to have impaired judgment and are less able to consider consequences, *the addiction may be more powerful than the legal consequences*. Those without health care providers are not receiving diagnosis and are more likely to self medicate.” (emphasis added).

**Mental Health Professional D:** “It would vary depending on the substances the person used; certainly those using psychotropic meds from a licensed provider (without current prescription), though possibly under medicated, would fare better than those self-medicating with alcohol or street drugs. In the latter case, their drug usage would possibly interfere with their ability to think coherently and to assist in their defense.”

**Mental Health Professional E:** “This would have a large effect. Alcohol and substance use persistently over time affects “executive function,” which encompasses social reasoning, judgment, and connecting behaviors to consequences.”

Because these responses mirrored the responses that the judges provided, it was interesting that the judges and mental health professionals we surveyed see eye-to-eye with respect to this issue and also identify self-medication and substance abuse as significant barriers to equally accessing the legal system. Mental Health Professional C’s response that “*the addiction may be more powerful than the legal consequences*” was particularly thought provoking, returning to the idea as to whether one’s mental health issues should be addressed along with or independent of an individual’s conduct. This statement highlights the issue of the competing purposes of sentencing—are we punishing an individual for their *actions* or are these actions really just extensions of an untreated mental health issue? Furthermore, does committing an individual actually achieve the result of specific deterrence?

We also asked the mental health professionals to respond to Judge B’s claim that health insurance coverage is a contributing factor to substance abuse and self-medication patterns amongst litigants with mental health issues. Sharing even stronger opinions, all the mental health professionals echoed Judge B’s sentiments:

**Mental Health Professional A:** “If people are assessed by mental health professionals or paraprofessionals that can educate someone that would then value what they are doing as self medicating; and that there is treatment so they don’t need to do this. This is a huge issue.”

**Mental Health Professional B:** “It is a small part with the prolific free care and Commonwealth care and class Health Components for the most financially afflicted. It is those that have lost insurance due to a job change or move or cannot afford the co-payment who are more at risk.”

**Mental Health Professional C:** “Quite directly: no insurance, no prescription, no evaluation by a qualified mental health or medical provider. It would increase the chances of the person self-medicating or buying substances on the street.”

**Mental Health Professional D:** “This is a factor but not the total problem. If people are out of work and/or do not have a spouse with health coverage, they do not have access to appropriate care to manage their distress so they can resort to self-destructive “quick-fixes.” I do feel that there are individuals that are prone to abuse substances (“addictive personalities”) whether they have health coverage or not.”

Overall, the mental health professionals agreed with the notion that health coverage plays a major role in an individual’s propensity to engage in substance abuse and self-medication because access to professional treatment depends on insurance coverage or financial flexibility. Therefore, in conjunction with their other responses, both the judges’ and mental health professionals’ responses identified that access to health insurance is a significant barrier for litigants with mental health issues being able to access the judicial system equitably. Once again, their responses highlighted the correlation that exists between access to the justice system, access to health insurance, access to medical treatment, and socioeconomic status. Although each factor plays a separate role in a defendant’s life, they can create a destructive cyclical

pattern when the three interact. One's economic status may affect one's access to health insurance, which then may affect one's access to receive proper medical treatment, which may ultimately affect one's access to and experience with the judicial system. Therefore, this cyclical pattern may undermine the power of specific deterrence and punishment because the prospect of receiving consequences may not influence an individual who is overpowered by addiction or mental illness.

Touching on a similar idea, we then asked the mental health professionals to respond to Judge D's frustrations regarding committed individuals only being provided "detox as opposed to treatment." This is how they responded to the question, "Do you think that providing detox rather than ongoing treatment makes it more likely than not for an individual with mental health issues to re-offend?":

**Mental Health Professional A:** "Yes, detox is a band-aid, not "treatment," detox does not fix the problem, it only serves to get the individual drug or alcohol "free" and out of their systems, it does not accomplish anything."

**Mental Health Professional B:** "For addictions, detox alone without ongoing treatment is not likely to change the addiction in the long term, so if individuals are committing crimes due to their addiction (to support their addiction for example) they seem quite likely to reoffend."

**Mental Health Professional C:** "[S]taying 'clean' or sober is a process, which requires ongoing commitment and work. There is a need for these individuals to develop connections (long-lasting) in 1:1 treatment and group treatment rather than just being 'in and out' of an institutional setting. They need to learn to cope outside the confines of an institutional setting."

**Mental Health Professional D:** “Now they are coping with additional mental health issues related to the trauma of confinement and its related dangers. Due to their mental health issues proceeding this they may not be equipped to overcome this.”

**Mental Health Professional E:** “Absolutely, once detox is complete, the person would need mental health treatment as recommended based on their diagnostic profile. The treatment should be specific to the person not simply commitment to a facility per se. The treater should be a licensed professional and there should also be a licensed prescriber assigned to each person, and the prescriber should monitor whether or not the meds are being taken. Some very compromised individuals may require a guardian ad litem or closer oversight by family/friends or medical personnel.”

These responses were incredibly enlightening, speaking very candidly and yet unfavorably about detox in lieu of actual treatment. Their overwhelming responses against detox presented the dilemma: as litigants with mental health issues are being committed, this essentially locks them away from accessing the treatment and the “closer oversight” that Mental Health Professional E indicates they need. Therefore, commitment may not only feed into the cycle of litigants re-offending but also may even exacerbate their mental illness while in confinement. Therefore, the idea that detox is a form of treatment is misinformed. According to the mental health professionals, detox has a negligible effect. These mental health professionals seem to argue that in order for addiction to be properly treated, the treatment should be long term and individualized. Detox may not necessarily mean the mental aspect of the addiction is gone, but rather, the physical effects of the substance within the body have faded. Once again, we return to the question: What is the sentencing purpose(s) for litigants with mental health litigants?

**Part IV:**

*Sentencing Litigants with Mental Health Issues*

Consistent with the notion that one of the theoretical goals of sentencing is rehabilitation, we were interested in how judges treated mental health issues in the sentencing process. Thus, we asked the judges to elaborate on various forms of sentencing that litigants with mental health issues may receive. They noted the following:

**Judge A:** “If a defendant is found to be competent and criminally responsible and a sentence is imposed, defendants serve their sentences within the regular evaluation system.”

**Judge B:** “[Mental health issues] are an additional complicating factor to consider during sentencing. Are mental health issues the reason why they are committing crimes and/or violating probation? Then the focus has to be on mental health issues if rehabilitation is the goal. The court also has to be aware of competency and criminal responsibility issues.”

**Judge C:** “Section 18 of ch. 123 permits the petition to the court for transfers from penal facilities where they are being held, in lieu of serving sentences to hospital settings.”

**Judge D:** “Options include: financial consequences, probationary terms, incarceration. The nature of the crime and the level of mental health issues affect the disposition of cases.”

These responses indicate that there may be various purposes to sentencing individuals with mental health issues depending on the “nature of the crime and the level of mental health issues,” as Judge D noted. This dichotomy between the “nature of the crime” and the “level of mental health issues” seems to suggest that there may even be a diverging interest between addressing the individual’s crime and addressing an individual’s mental health issues. It is interesting to note, however, that Judge A assesses all “competent” individuals within one evaluation system. As noted in Part I, some mental health professionals’ definitions of “mental



health issue” were much more expansive than the notion of “competency” by itself. The breadth or narrowness of “competency” is also significant to the consideration as to whether litigants who are competent, yet still may have a less severe mental health issue, should still be evaluated at the same level as other litigants in terms of sentencing. Overall, however, the judges raise the idea that different forms of sentencing may offer varying degrees of rehabilitative services. Of all the responses, Judge B’s response seems to be the most striking. Stating that the “focus has to be on mental health issues if rehabilitation is the goal” raises the question as to whether commitment is the best means to reaching rehabilitation as the goal. This is also a salient point because Judge B is the only judge who mentioned rehabilitation as a goal of sentencing. In contrast, Judges A and D seemed to suggest that they both sentence defendants with mental health issues in a similar way to regular defendants.

As indicated in their aforementioned responses, the mental health professionals all seem to favor rehabilitative treatment over incarceration and seem very skeptical about the rehabilitative supports that individuals can receive in commitment. One mental health professional presented the following idea:

**Mental Health Professional A:** “[defendants] should be screened for substance use and if found to be actively using substances that interfere with ability to think and respond rationally, they should be enrolled in a residential detox facility and should be tried after completion of that program is certified by staff.”

We interpreted this idea of sending individuals to residential detox facilities before being tried as a suggestion that perhaps individuals’ mental health issues must be addressed *before* they can access the justice system equitably. The other mental health professionals also expressed this notion in their previously discussed responses.

**Part V:**

*Handling Litigants with Mental Health Issues in the Courtroom*

Only one judge answered the question asking what support judges may receive to communicate with and handle litigants with mental health issues. The responding judge presented the idea that judges could be better equipped to handle litigants with mental health issues in a courtroom setting. This judge shared the following response:

**Judge A:** “To the extent possible, it would be helpful if judges and other court personnel were dealing with individuals with mental health issues so we would always be prepared instead of on alert. It is not uncommon for individuals with mental health issues to bring with them security issues. Are they belligerent because they are angry and upset or because of mental health issues?”

This judge’s response indicated a desire to have a greater understanding of how to manage an individual’s behavior inside the courtroom. Specifically, this judge expressed the underlying challenges of distinguishing between the manifestation of one’s mental illness and one’s actual emotions. This judge’s response presents the barrier that judges may face: not understanding the root of the behavior. This is an issue that a mental health professional raised previously in part II—mainly, that the mental health issues may be under or over estimated by people who are unfamiliar with the field. As this judge seems to be suggesting, perhaps judges would benefit from some sort of in-person training of how to deal with individuals with mental health issues via increased exposure and increased interactions. Therefore, this judge’s response presents some of the shortcomings of the trainings that the judges receive with regard to judging litigants with mental health issues. Moreover, it raises the idea that judges may have varying

degrees of exposure, and thus varying degrees of understanding, regarding individuals with mental health issues.

The mental health professionals also noted the following challenges that individuals with mental health issues present inside the courtroom and recommendations to address such challenges:

**Mental Health Professional A:** “Psychotic process, hallucinations, delusions, severe anxiety or depression, inability to think clearly, process new information, fear of answering questions wrongly, impairment in focus, memory, panic attacks in court settings. Also, some may be detoxing from certain street drugs or prescription meds causing illness and confusion.”

**Mental Health Professional B:** “Those with mental health issues may have more intensity in their emotions. Hospital staff are trained in de-escalation and modes of communication that promote this--perhaps this would be helpful for court staff”

**Mental Health Professional C:** “Screen patients at arraignment cases to identify those in need of further evaluation. Have the assessments computed so the judges and attorneys have this information prior to the hearing. Even people with mental health issues can have normal reactions to upsetting situations. Because of their illness their sense of reality and therefore urgency may be heightened. Having trained professionals always available [is important] and even educating the legal staff in assessment of mental illness”

**Mental Health Professional D:** “Psychological or neuropsychological testing to be done beforehand -- to screen for any potential situations.”

**Mental Health Professional E:** “If a person is confused or psychotic they may believe they are at risk and refuse to participate, or wish to flee the setting. They would need to be accompanied by an advocate they know well who could help them understand the proceedings. Litigants

should be screened prior to any appearance and if unable to participate helpfully, they should be given treatment necessary until they are calmer, less angry, and clear.”

Similar to the judges’ responses, the mental health professionals supported the idea of legal staff receiving such training. A number of them also advocated for screenings prior to hearings for *both* substance abuse problems and mental illness to assess whether they are able to participate in the proceedings. These responses, therefore, returned to the idea of addressing one’s mental health issues not only separately from but also before one’s appearance in court and participation in the legal process.

## **Conclusion**

### *Summary of Findings*

Upon conducting a comparative analysis between judges and mental health professionals with respect to litigants with mental health issues in the judicial system, we identified several themes and inferences from their responses. These findings are summarized below:

First, we noted that although all judges responded that they believed that the current procedural safeguards to be adequate, all mental health professionals seemed to highlight various inadequacies. All five judges relied on the competency of lawyers as one of the most significant safeguards, but nearly all the mental health professionals expressed concerns about the competency of lawyers to overcome the challenges presented when handling litigants with mental health issues.

Second, both judges and mental health professionals agreed that self-medication and substance abuse are major concerns that may interfere with one’s ability to fully understand the legal process and his or her rights. Therefore, this sentiment highlighted the idea that there may

be two layers to this issue. On one hand, there is the individuals' mental health issue that is presenting challenges for the litigants to fully comprehend the legal process and their rights. And on the other hand, there may be the individuals' self-medication or substance abuse problems that further exacerbate their inability to access the judicial system equitably.

Third, one theme that we identified from the responses was that there may be competing purpose(s) for sentencing individuals with mental health issues and, thus, various means to achieve such ends. For example, for individuals with substance abuse problems that stem from their mental health issues, there may be a dual need to rehabilitate their substance abuse problems *and* their mental illness. The mental health professionals seemed to all resoundingly suggest that such rehabilitation cannot be achieved while litigants are being committed and that detox should not be considered as an actual form of treatment.

Fourth, all of the mental health professionals advocated for increased training for legal staff, and the judges seemed very receptive to the idea of attending further training. The judges all reported that they have participated in trainings in the past but one judge noted that these trainings are still "being developed," perhaps acknowledging that they may not be as fully developed or even as informative that they could be. While judges have full dockets and limited time, this may be a question as to whether it is even feasible for judges to attend further trainings.

Fifth, a number of the judges' responses reflected that funding is perhaps one of the greatest barriers to providing screenings, trainings, and the other recommendations that the mental health professionals noted in their surveys. Therefore, this raises the question as to whether improvements in the judicial system depend on financial backing, like many areas of social change that cannot happen without increased funding and more resources.

### *Recommendations*

In light of these findings, the survey responses shed light onto what improvements could be made for litigants with mental health issues to access the judicial system equitably. These recommendations are summarized as follows:

First, increased trainings may help inform and position judges to handle litigants with mental health issues in their courtrooms. It is important for judges to be able to communicate effectively with such litigants and also be able to manage their behaviors in the courtroom, maintaining control over their courtrooms. Therefore, with increased exposure and greater understanding of mental health issues, judges may be able to handle such cases with even greater confidence and command.

Second, increased collaboration between legal and mental health professionals as a team may help ensure that a litigant is able to better navigate the legal process and understand their rights. One mental health professional even suggested that a team consisting of a mental health professional and an attorney could be particularly effective for difficult cases. Having such a team would ensure that trained professionals are able to properly address *both* the legal and mental health aspects of the case. It is important for attorneys to receive support when handling the extreme challenges that litigants with mental health issues present, as the attorneys' ability to understand and identify such issues can directly affect their ability to represent their clients. In order to help attorneys understand and advocate for their client to the best of their ability, mental health professionals can provide insight and support for attorneys who lack such training.

Third, in addition to this collaborative effort, increased access and consultation with outside experts may offer a greater level of expertise to assist with various cases. One mental health professional highlighted this in the "additional comments" section of the survey: "If not already in place, it would be great to have a resource manual listing local mental health

professionals with expertise and specialties. These people could be called upon and hired as consultants to assist with various cases.”

Lastly, we believe that the legislature should continue to explore offering litigants with extreme mental health issues and substance abuse problems alternative forms of sentencing in lieu of commitment that may provide greater rehabilitative support. The 2013 Treatment Advocacy Center’s Report highlighted the following: “The state’s only statutory option for mandated treatment is involuntary hospitalization. To meet the state standard for involuntary hospitalization, a person must be a danger to self/others or be at a very substantial risk of physical impairment or injury because they are unable to protect themselves in the community. The state has failed to recognize conditions other than danger to self or others or ‘very substantial risk’ of same as grounds to providing access to treatment via the courts.”<sup>18</sup> Therefore, as it stands, it seems as though the threshold to receive mandated treatment is extremely high, and thus may be inaccessible for many individuals that are in need of treatment. The implementation of programs similar to the Recovery with Justice Program and the Recovery Sessions would also be significant in providing alternatives to hospitalization.<sup>19</sup>

### *Final Considerations*

Although we were able to draw some conclusions from the aggregated responses of five judges and five mental health professionals, these responses seem to touch on issues that are the subject of ongoing debates and challenges in the judicial system today. We acknowledge, however, that there may be a competing interest between wanting to treat litigants with mental health issues equally to others within the judicial system and also wanting to provide extra

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<sup>18</sup> *Massachusetts: An Assessment on the Commonwealth’s Access to Treatment for Persons with Severe Mental Illness*, TREATMENT ADVOCACY CENTER (October 2013), <http://www.treatmentadvocacycenter.org/storage/documents/2013-massachusetts-assessment.pdf>.

<sup>19</sup> See Appendix 3, 4, and 5.

supports and resources for such individuals to navigate the system that others may not receive. We further acknowledge that many of the issues identified by the judges and mental health professionals are rooted in a lack of financial resources. Although our research identifies many of the inequitable aspects of the judicial system for mentally ill litigants, such factors are largely a result of competing forces rather than the judicial system itself. Socioeconomic status, access to health insurance, and stigmatization of mental illness, all contribute to the issues we have identified with our research. It should, therefore, be a project not only for the judicial system, but also for our society as a whole to create a more equitable and accepting environment for those who are affected by mental health issues. We are hopeful that our society, as well as the judicial system, is moving in this direction.



# APPENDIX 1

To Whom It May Concern:

We write you with the interest of collecting qualitative data for a research paper that we are writing for our “Judging in the US Legal System” class that Judge Young of the US District Court for the District of Massachusetts currently teaches at Boston University School of Law. We are exploring the comparative perspectives between judges and mental health professionals with respect to addressing litigants with mental health issues in the judicial system.

We would be incredibly honored and grateful for your participation and would appreciate your responses by **April 15**. We understand that these questions may touch on controversial issues, therefore we understand if you would like your responses to remain anonymous. However, if you would like to be credited for your responses we welcome that as well. Feel free to include your name if you wish, if not--we understand! We look forward to receiving your responses and learning more about this incredibly dynamic topic.

Thank you kindly in advance for your time and consideration.

Sincerely,  
Paige Moscow ‘17, BULaw  
Julia Kim ‘17, BULaw

1. In your view, what is considered a “mental health issue”?

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2. What, if any, procedural safeguards are in place to make sure that individuals with mental health issues are presented an equal opportunity for justice in the judicial process? Please elaborate on if and how there are ways to make sure such individuals actually understand the process and their rights.

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3. If so, do you believe that the safeguards that you identified (if any) adequately address any potential disadvantages that individuals with mental health issues may face during the judicial process? \_\_\_\_\_
- a. If yes, please elaborate why you think these procedural safeguards are effective enough.
  - b. If not, what changes do you think could be made to improve inequity that individuals with mental health issues my face in the judicial process?

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4. Is there any trend in charges or convictions that you observe in judging individuals who you believe have mental health issues? If so, please elaborate.

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5. What are the various options for where such individuals serve their sentences? How do you determine whether an alternate form of serving a sentence is appropriate? (i.e. mental health care)

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6. Do you handle cases with individuals with mental issues any differently than you do with a regular case? If so, how and why?

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7. Are there specific examples that you can provide that speak to any challenges or frustrations in handling a case with a litigant with mental health issues? Can you describe the situation and how you handled it?

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8. Have you ever received any form of training in handling or communicating with individuals who have mental health issues? \_\_\_\_\_

a. If so, what did it include? Do you feel as if the training materialized in any changes in the way you interacted with litigants with mental health issues? How?

b. If not, what are your thoughts on a training program for Judges which featured psychologists or mental health specialists on how to better handle and communicate with litigants with mental health issues?

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Do you have anything else to add on the topic?

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## APPENDIX 2

1. In your view, what is considered a “mental health issue”?

2. Attorneys are relied upon greatly in our judicial system to ensure that individuals with mental health issues are presented an equal opportunity for justice in the judicial process and understand their legal rights. Do you think that the presence of an attorney alone mitigates the inequities an individual with mental health issues may face in the judicial system (especially in the criminal context)?

a. If yes, what makes them qualified for this role?

b. If no, why? What would make them more qualified for this role?

c. Are there situations in which even the presence of an attorney would not mitigate inequities like understanding legal rights and the legal process?

3. Judges consider the following safeguards to be instrumental in making sure that individuals with mental health issues are presented an equal opportunity for justice in the judicial process:

- a. Opportunity to be evaluated in a court clinic for any potential mental health issues
- b. The potential to be referred to a restorative justice program by a clinician as a condition for probation or part of sentencing (please see attachment for more information on a restorative justice program)

Do you think these safeguards are adequate? If not, why? Do you have any suggestions as to what else can be offered?

4. Judges have reported that individuals with mental health who are undiagnosed are commonly engaging in self-medication. What effect does this have on their ability to understand their actions and the legal consequences of them?

- a. How does the lack of health coverage play into self-medicating?

5. Are there any kinds of mental health issues that would make it more difficult for an individual to be able to understand a judicial proceeding and their rights, even if completely explained? What are they and why?

a. For these individuals, do you have any specific suggestions that would make their participation in the judicial process more equitable?

6. One judge reported, "To the extent possible, it would be helpful if judges and other court personnel were dealing with individuals with mental health issues so we would always be prepared instead of on alert. It is not uncommon for individuals with mental health issues to bring with them security issues. Are they belligerent because they are angry and upset or because of mental health issues?"

a. How can judges be better equipped to handle litigants with mental health issues- both in terms of communication and security?

b. Can being angry and upset while also having a mental health issue be interrelated?

7. All the judges we surveyed indicated that they believed the current procedural safeguards (i.e. counsel, court clinic, and probation and sentencing conditions), to be adequate in terms of providing individuals with mental health issues an equal opportunity for justice in the judicial process. Do you agree?

a. If so, why?

b. If not, what would you say to persuade them otherwise?

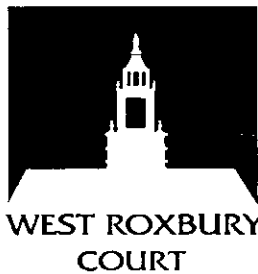
8. Judges express frustration in response to individuals with mental health issues being committed, as they are often only given detox as opposed to treatment. Do you think that providing detox rather than ongoing treatment makes it more likely than not for an individual with mental health issues to re-offend? Please elaborate on your answer.

9. Do you have anything else to add on the topic?



APPENDIX 3

*Recovery with Justice Program*  
*WEST ROXBURY SPECIALTY COURT:*  
*MENTAL HEALTH SESSION*



Participant Information Handbook

## APPENDIX 3 CON'T

### *A. What is the Recovery with Justice Program?*

The **Recovery with Justice Program** is a special session of the West Roxbury Division of the Boston Municipal Court. The **Recovery with Justice Program** is a court ordered condition of probation or term of release for defendants before the court who have serious mental health issues or co-occurring mental health and alcohol/substance abuse issues. Participation will be for individuals who have been placed on pre-trial probation or post-disposition probation. Participation is voluntary and your decision to participate is made in consultation with your attorney. If you have been found incompetent to stand trial but wish to participate in the program after consultation with an attorney, the **Recovery with Justice Program** may also be available to you as a term of release.

### *B. How do I get involved in RWJ and what happens after I'm involved?*

A judge will order you to participate in a brief screening with the Specialty Court Clinician, who will make a recommendation as to whether or not you should be part of the **Recovery with Justice Program** at your next court date. You will be asked to sign releases of information for the Specialty Court Clinician, in order to gather all the information he/she needs from outside agencies. If you are determined to be an appropriate participant for **Recovery with Justice Program**, you will discuss your desire to participate with your attorney. If you are ordered to attend the **Recovery with Justice Program** it will become a condition of your probation or a condition of your release and this will be explained to you by your Attorney. Once you have decided to participate and have been ordered to the **Recovery with Justice Program** by a judge, a Specialty Court Clinician will perform an assessment of what services you need. From the assessment an individual service plan will be designed. In order to participate in this program, you must agree to comply with this Service Plan, and with all of the terms and conditions of your probation or conditions of release. You may also be required to report to your probation officer.

### *C. How long will I be involved in the Recovery with Justice Program?*

The length of your participation in the **Recovery with Justice Program** is determined by a Judge and usually lasts between 3 and 12 months. It is a condition of probation, pre-trial probation, or term of release. While you are participating in the program, the court will monitor your participation and progress in services through regular updates from a Specialty Court Clinician and the probation officer assigned to work with you.

#### *Graduation Requirements*

In order to graduate, you need to be involved in the **Recovery with Justice Program** for at least 3 months. You need to remain alcohol/drug free for 3 months, take prescribed medication, attend all scheduled **Recovery with Justice Program** appearances, and participate in treatment.

### *D. What's in it for me?*

*Services:* You will get case management services, referrals to mental health treatment, and if your service plan calls for it, referrals to substance abuse treatment. The program will also help connect you to educational and/or employment opportunities.

*Recognition of Progress:* As you progress your achievements will be recognized during court sessions.

*Peer Support:* You will be eligible to receive peer support.

## APPENDIX 3 CON'T

*Opportunity:* The Program offers you a chance to avoid jail on your current charges and to move forward in your life, based upon full cooperation with all conditions of probation. If you are on pre-trial probation or terms of release, the **Recovery with Justice Program** offers you the chance to have your case dismissed and no conviction entered on your criminal record.

### *E. What are the Rules of the Recovery with Justice Program?*

*Report to your Probation Officer as required under the terms and conditions of your probation contract.*

Your probation officer will work closely with the Specialty Court Clinician and the Judge to make sure you are able to comply with your conditions of probation and your service plan. Your probation officer may also do home visits or program visits.

*Appear in Court as Scheduled*

You will be required to appear in front of the **Recovery with Justice Program** Judge in West Roxbury Court on a regular basis. Your Specialty Court Clinician and probation officer will give progress reports regarding your attendance and participation in services, and the other components of your service plan. The Judge, and members of the **Recovery with Justice Program**, will ask you about your progress and discuss any problems you may be having. Some of this will be discussed in open court.

*Follow my Service Plan*

Your service plan will include, but may not be limited to, some or all of the following components, depending on your treatment needs:

- Medications
- Regular appointments with a Specialty Court Clinician
- Participation in mental health treatment
- Participation in substance abuse treatment
- Peer Support
- No new arrests
- No alcohol or drugs (except with a valid prescription)
- Pay restitution if ordered by the court
- Remain away or have no contact with \_\_\_\_\_ another person or certain areas if ordered by the Court
- GPS Monitoring

Your service plan may change as your needs change.

*Medications*

**It is extremely important that you take the medications that your mental health provider prescribes for you.** For most participants, medications are essential for managing symptoms and living successfully in the community. If you have complaints about your medications, you must tell your Specialty Court Clinician. Refusal or repeated failure to take medication may result in sanctions being imposed by the Judge. Before any sanctions are imposed, you will have the opportunity to explain your reasons for not taking medications to the **Recovery with Justice Program** Team.

*Mental Health Treatment*

Your service plan will require that you participate in mental health services. Your

## APPENDIX 3 CON'T

treatment provider(s) will tell your Specialty Court Clinician and probation officer when you are attending, when you are absent, and how you are doing in your program. You must attend all scheduled treatment appointments and follow all the rules of your treatment program.

### *Alcohol and Other Substance Use*

You will be asked about your history of substance use, and you may be required to give urine samples on a random basis during your participation in the program. You may be required to attend drug or alcohol treatment as part of your individualized service plan. As with your mental health treatment, you must attend all scheduled substance abuse treatment programs and follow all the rules of your treatment program. Your substance abuse treatment provider(s) will tell your Specialty Court Clinician and probation officer how your attendance is and how well you are doing. You will not be allowed to use illegal substances, alcohol or prescription medication that has not been prescribed to you during your participation in the **Recovery with Justice Program**.

### *Case Management Services*

You will be assigned a Specialty Court Clinician who will assess your needs for services, develop your service plan and coordinate services with you in the community. You are required to cooperate with your Specialty Court Clinician, meet with him/her as recommended and sign all releases of information as requested. Your Specialty Court Clinician will provide information to the **Recovery with Justice Program** team and Judge concerning your progress. You may also be referred to additional community-based intensive and supportive case managers that will help you coordinate the services you need in the community. Your service plan may require you to accept the services of a community-based case manager, who will visit you in your home and at your treatment program and assist you with getting a variety of services.

### *F. What happens if I do not follow the rules of the Recovery with Justice Program ?*

All the rules and requirements of your participation in **Recovery with Justice Program** are conditions of your probation or conditions of release and there are consequences - both good and bad - for your conduct while you are a participant in the program. If you cooperate with your service plan, conditions of probation, and live a crime-free life in the community, you will be acknowledged and rewarded in a number of different ways. If you fail to comply with your service plan, conditions of probation, or commit any new offenses, you will be sanctioned. Ultimately, good participation and compliance with treatment will be rewarded, and non-compliance with terms of probation will result in sanctions, and possibly jail time.

### *Incentives*

Potential rewards for cooperation and progress include:

- Recognition of Progress in Court
- Reduced frequency of appearances before the Court
- Avoidance of Jail
- Certificate of Completion
- Potential waiver of probationary fees

## APPENDIX 3 CON'T

Dismissal of case

### *Infractions*

The following events will be treated as infractions:

- Missed treatment appointments
- Missed Court appearances without valid justification
- Failure/Refusal to take medications without valid rationale
- Refusal to give urine sample
- Positive urine sample
- Violation of rules of service program
- Threatening behavior, including verbal or non-verbal threat of violence
- Other non-compliance with your service plan
- Use of illegal drugs and/or alcohol
- Leaving treatment program or housing in contrast to expected participation
- Failure to abide by Restraining Orders
- New criminal offenses

### *Judicial Responses*

The **Recovery with Justice Program** Judge will respond to all infractions. The Judge may require you to increase your treatment-related activities and your service plan will change accordingly.

### *Sanctions*

If you commit an infraction while on pre-trial probation or terms of release, your case may be returned to the trial list and it will proceed in the regular trial session.

If your case has been resolved and my participation in the **Recovery with Justice Program** is a condition of probation, the Judge may impose a sanction, including, but not limited to:

- Increased frequency of appearances before the Court
- Increased treatment intensity (e.g., residential/inpatient treatment)
- Imposition or increase in frequency of urine testing
- Ordered to attend and observe the violation of probation session
- Increased probationary period
- Extend my length of stay in the program
- Jail
- Discharge from the program

**A Court-appointed attorney will be available to you at all times.**

### ***G. Where is the Recovery with Justice Program session held?***

The **Recovery with Justice Program**, like other court sessions, is held in open court. Your case will be discussed in front of other defendants and any members of the public who may be in attendance.

## APPENDIX 4

### Overview

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#### What is the Recovery with Justice Program? (RWJ)

The Recovery with Justice Program (RWJ) is a specialized court session that helps defendants maintain stability, achieve recovery and avoid incarceration by providing intensive social services and mental health treatment.

#### When and where is the Program held?

The court session is held every Tuesday morning at 11:00 a.m. in the second session of the West Roxbury Court.

#### HOW CAN I GET MORE INFORMATION?

Janelle Hickey  
janelle.hickey@bmc.org  
617-414-4758

Probation Officer Maribel Ortiz  
maribel.ortiz@jud.state.ma.us  
617-971-1112

First Justice Kathleen Coffey

**Boston Municipal Court  
West Roxbury Division**  
445 Arborway  
Jamaica Plain, MA 02130  
Hours: 8:30 a.m. – 4:30 p.m.  
Monday – Friday  
Public Transit: MBTA Bus or Orange Line  
to Forest Hills

## Recovery with Justice Program

### Mental Health Session

### West Roxbury Division of the Boston Municipal Court



## APPENDIX 4 PART 2

### RECOVERY WITH JUSTICE: MENTAL HEALTH SESSIONS IN THE MASSACHUSETTS TRIAL COURT

#### Who is eligible to participate in the Program?

Participants must suffer from a major mental illness.

A defendant must agree to participate after consulting with their attorney.

If pre-trial probation is recommended, the District Attorney must approve.

A defendant's prior convictions and pending violent felonies will not be an automatic bar for participation, but will be considered for eligibility.

#### What are the procedures to enter the Program?

During pending criminal cases, any interested party may request that a criminal case be transferred to the Program.

A referral request form needs to be filled out and submitted to a judge sitting in any session.

A judge, working with probation, assigns the case to a Monday or Tuesday morning for an intake or assessment with Ms. Janelle Hickey, the mental health social worker from BEST at Boston Medical Center.

The defendant will be given an appointment

card and must report to the probation department to meet with Ms. Hickey on the assigned date.

The court will continue the case to a Tuesday morning for review in the RWJ session.

If eligible, the case will be reviewed in the RWJ session and all parties will be heard regarding terms and final acceptance.

The defendant will sign a written contract and receive a handbook to assist in understanding and compliance.

The Trial Court also has helpful information online: visit [www.mass.gov/courts](http://www.mass.gov/courts)

## *Program Goals*

1. Identify individuals with serious mental health and co-occurring disorders who are involved with the criminal justice system and will benefit from additional support and monitoring.
2. Identify each individual's service needs and link individuals to community-based services as an alternative to incarceration.
3. Provide ongoing contact with providers to verify and encourage participants to uphold meaningful involvement in mental health and substance abuse treatment.
4. Continued coordination of services among treatment providers, courts, attorneys, probation officers and houses of correction to ensure participants are accessing needed services within the community to sustain public safety.

## *Program Information*

The Honorable Roanne Sragow  
Presiding Justice

Marie Mathieu, LICSW  
Clinical Coordinator  
339.368.0837

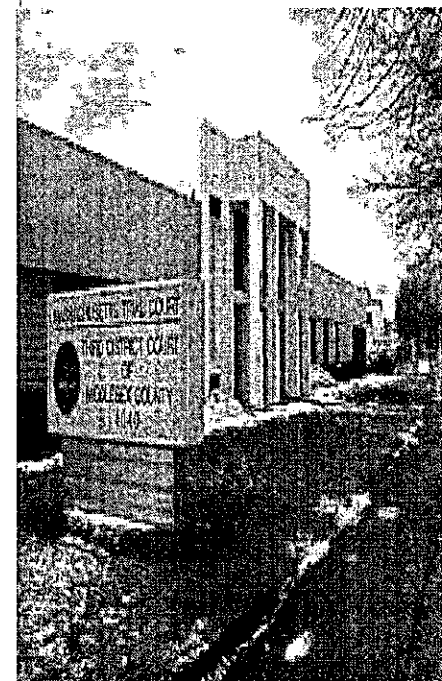
Robert McWatters  
Probation Officer  
781.306.2770

Ronald Layne  
Assistant Chief  
Probation Officer  
781.306.2768

### **Cambridge District Court**

4040 Mystic Valley Parkway  
Medford, MA 02155

## *The Recovery Sessions at Cambridge District Court*



*Where justice and recovery meet*

*A collaboration between the  
Cambridge District Court and the  
Department of Mental Health*



## APPENDIX 5 PART 2

### *Mission Statement*

The Recovery Sessions (TRS) at Cambridge District Court seeks to improve outcomes for individuals with primary mental health disorders while improving public safety. Using a treatment-focused model, TRS aims to do this by:

- ◇ Promoting mental health and substance abuse recovery and personal responsibility among all participants.
- ◇ Harnessing local and community-based resources through inter-agency collaborations.
- ◇ Improving participants' access to services within the community via TRS Clinical Coordinator and using a wraparound service model.
- ◇ Working to engage peers, family, community support networks with the participant, clinical coordinator and probation officer to ensure attendance and participation in TRS, and successful completion of TRS and probationary period.
- ◇ Reducing incarceration while also maintaining public safety.

### *Eligibility Criteria*

#### **Mental Health Criteria:**

- ◇ Potential participants must have a current mental health diagnosis or must be screened to determine appropriateness for participation in TRS.
- ◇ Potential participants must be capable and willing to allow communication between TRS staff and treatment providers to verify diagnosis and support ongoing contact for continuity of care for the duration of involvement with TRS.

#### **Legal Criteria:**

- ◇ Potential participants must be at least 18 years of age and must be competent and capable of voluntarily agreeing to the terms of TRS disposition plans.
- ◇ Charges must be in or probation must be out of Cambridge District Court.
- ◇ Criminal charges must qualify for a post adjudication disposition to TRS.

### *Referral and Program Process Overview*

1. Referral form to TRS is completed by Defense Attorney, Prosecuting Attorney or Probation Officer. All referrals must be signed off by a Judge.
2. Referral packet is returned to TRS Clinical Coordinator with signed Referral form and Participant Agreement form. All packets must include police report and record. (To expedite the process, include signed TRS Release of Information forms.)
3. Screening is scheduled before client's next court date (whenever possible) to determine clinical appropriateness for participation in TRS.
4. If found appropriate, Judge will order participant into TRS during sentencing or violation of probation hearing.
5. Participants meet with Clinical Coordinator and Probation Officer regularly to develop and review service plan.
6. Participant appears before TRS Judge at least twice per month initially.
7. Participant graduates from TRS after a sustained period of engaging in all treatment and demonstrating compliance to service plan and conditions of probation. Duration of involvement in TRS will be dependent upon a participant's individualized treatment needs and progress.