

# Defense Counsel Obligations to Screen for Mental Illness

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# Defense Counsel: Obligations and Standards

## ▲ Gideon & Sixth Amendment:

- ▲ Defendant's right to have the Assistance of Counsel for his defense

## ▲ Rules of Professional Conduct:

- ▲ As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.
- ▲ In all professional functions a lawyer should be competent, prompt, and diligent.
- ▲ Ongoing fiduciary and client fidelity duties.



## Defense Counsel: Advocacy & Competence

- ▶ Mental illnesses are medical conditions that disrupt a person's thinking, feeling, mood, ability to relate to others and daily functioning.
- ▶ In the absence of training in mental health matters and knowledge of client's mental status, counsel are not competent and cannot properly advocate.
- ▶ Research: defense counsel identify mental illness in only 4.42% of clients



# Mental Illness in the US and Criminal Justice Populations

## ▲ US population

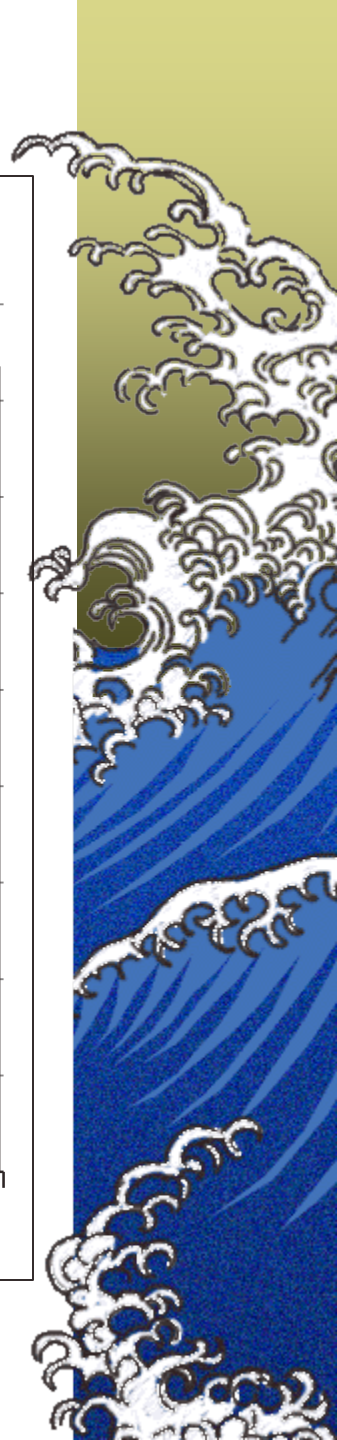
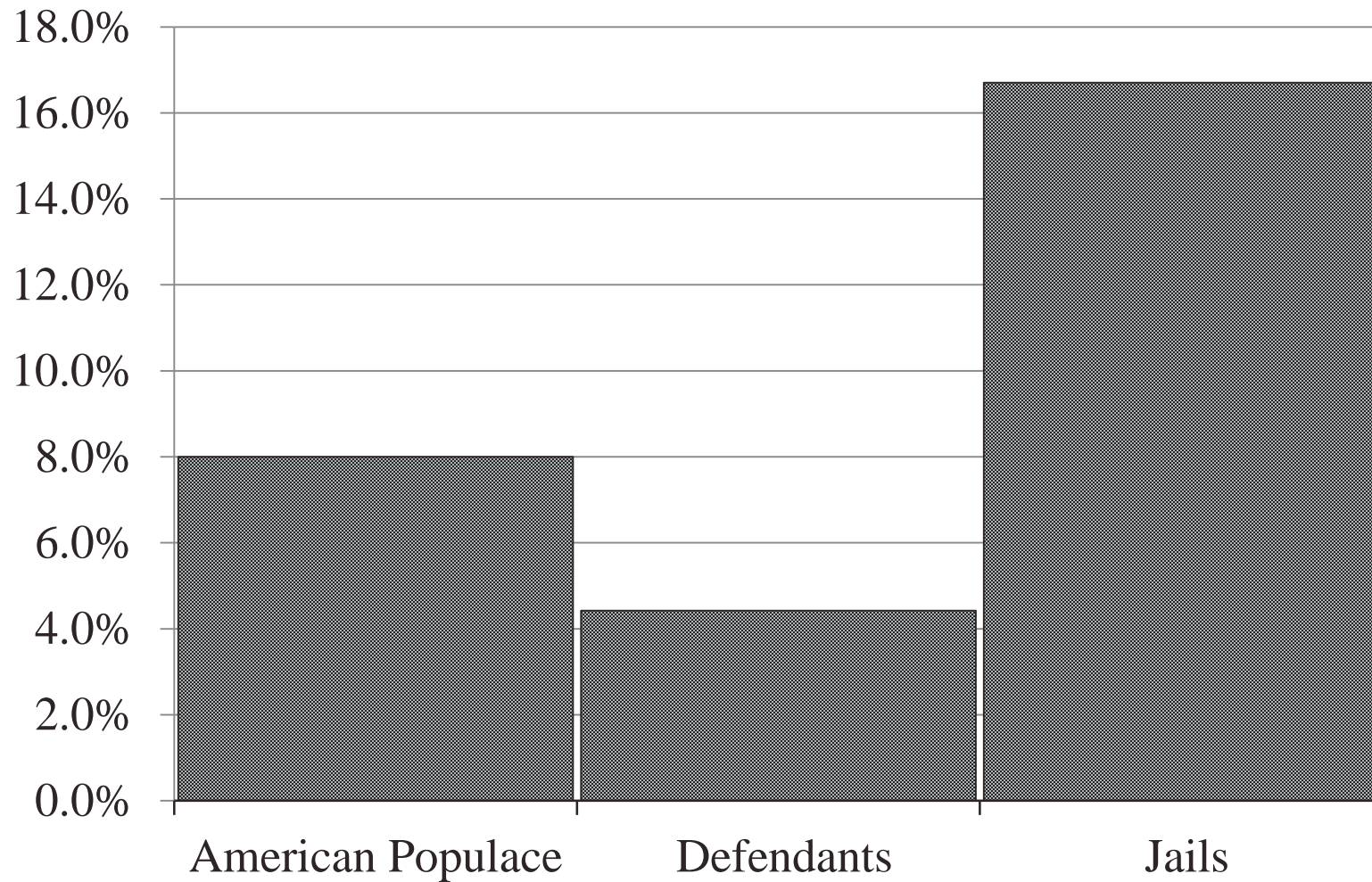
- ▲ SMI found in 8.3% of adult US population
- ▲ Impairment that interferes with limits one or more of the activities of daily living

## ▲ Jails

- ▲ Screened / documented in population
- ▲ SMI in 16.9% of adults (m:14.5%, f:31.0%)



## Mental Illness by Population





# Direct & Societal Problems of SMI Defendants Aggravated by Ineffective Counsel

## ▲ After arrest

- ▲ mentally ill defendants spent greater periods of time in custody

## ▲ Dispositions

- ▲ most resolved with plea / default
- ▲ greater incidence of incarceration upon plea

## ▲ Post-disposition

- ▲ frequent recidivism, rearrest, technical and substantive violations of probation
- ▲ higher likelihood of detention / incarceration



# From a range of solutions ...

## Screening Tool

- ▶ Brief Jail Mental Health Screen
- ▶ Developed by SAMHSA / GAINS Center
- ▶ High detection for low training
- ▶ 3 minutes, 8 questions
- ▶ Triggers referral
- ▶ Does not diagnose

### BRIEF JAIL MENTAL HEALTH SCREEN

**Section 1**

Name: _____ <small>First MI Last</small>	Detainee #: _____	Date: ___/___/_____	Time: _____ AM PM
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**Section 2**

Questions	No	Yes	General Comments
1. Do you currently believe that someone can control your mind by putting thoughts into your head or taking thoughts out of your head?			
2. Do you currently feel that other people know your thoughts and can read your mind?			
3. Have you currently lost or gained as much as two pounds a week for several weeks without even trying?			
4. Have you or your family or friends noticed that you are currently much more active than you usually are?			
5. Do you currently feel like you have to talk or move more slowly than you usually do?			
6. Have there currently been a few weeks when you felt like you were useless or sinful?			
7. Are you currently taking any medication prescribed for you by a physician for any emotional or mental health problems?			
8. Have you <u>ever</u> been in a hospital for emotional or mental health problems?			

**Section 3 (Optional)**

Officer's Comments/Impressions (check all that apply):		
Language barrier	Under the influence of drugs/alcohol	Non-cooperative
Difficulty understanding questions	Other, specify: _____	

Referral Instructions: This detainee should be referred for further mental health evaluation if he/she answered:  
 YES to item 7; OR  
 YES to item 8; OR  
 YES to at least 2 of items 1 through 6; OR  
 If you feel it is necessary for any other reason

Not Referred

Referred on \_\_\_/\_\_\_/\_\_\_\_\_ to \_\_\_\_\_

Person completing screen \_\_\_\_\_

INSTRUCTIONS ON REVERSE

## After Effective Screening

- ▶ Rapid referral to clinician
- ▶ Informed counsel – appropriate advocacy
- ▶ Detention includes treatment
- ▶ Trials & Dispositions include consideration of mental health issues, fewer commitments
- ▶ Unchanged
  - ▶ frequent recidivism, rearrest, technical and substantive violations of probation
  - ▶ higher likelihood of detention / incarceration

