

# Defense Counsel Obligations to Screen for Mental Illness

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- ▲ Defense Attorney focusing on representation of mentally ill criminal defendants



# 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

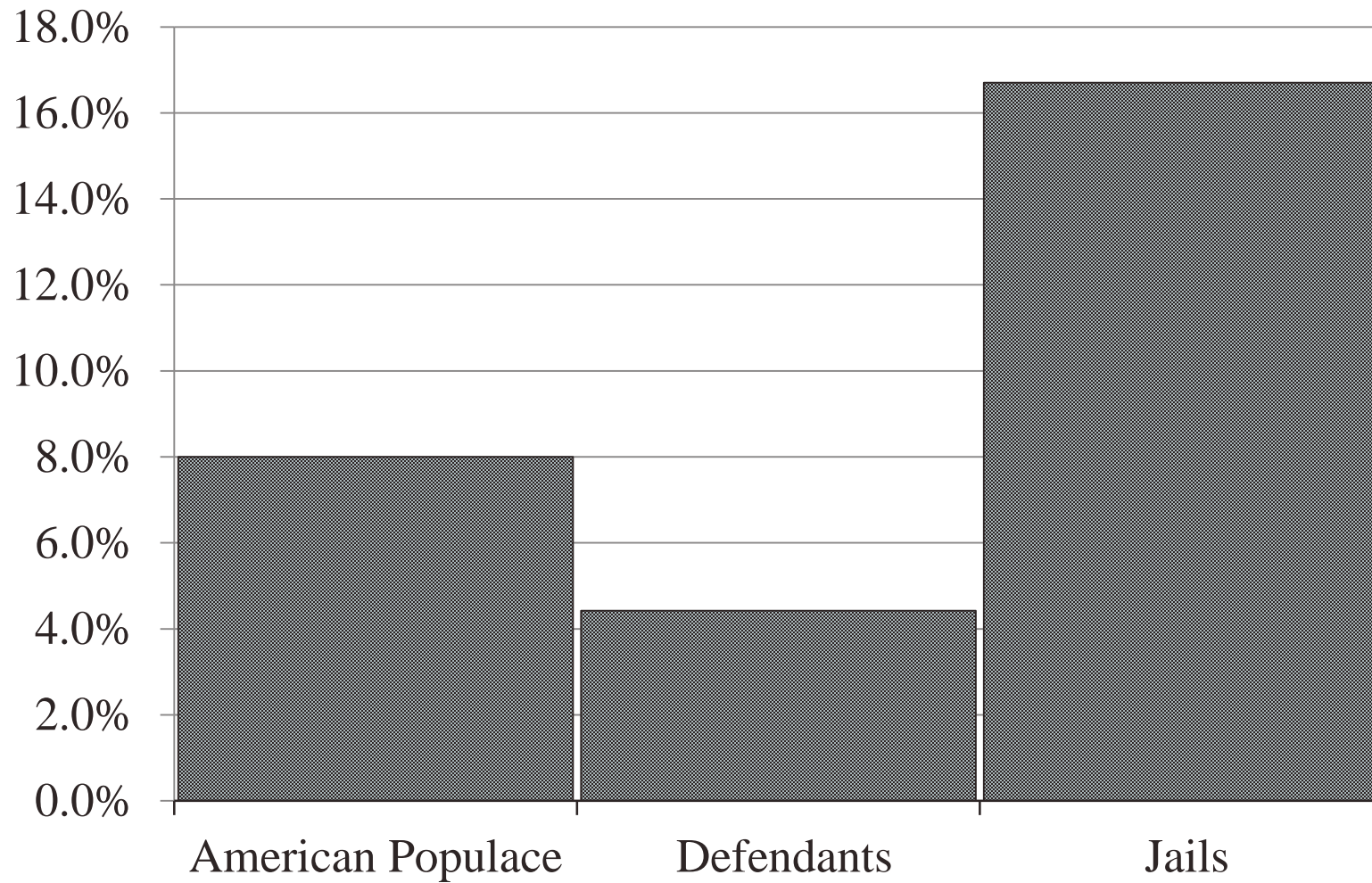
- ▲ SMI found in 8.3% of adult US population
- ▲ Impairment that interferes with limits one or more of the activities of daily living

## ▲ 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?	<input type="checkbox"/>	<input type="checkbox"/>	
2. Do you currently feel that other people know your thoughts and can read your mind?	<input type="checkbox"/>	<input type="checkbox"/>	
3. Have you currently lost or gained as much as two pounds a week for several weeks without even trying?	<input type="checkbox"/>	<input type="checkbox"/>	
4. Have you or your family or friends noticed that you are currently much more active than you usually are?	<input type="checkbox"/>	<input type="checkbox"/>	
5. Do you currently feel like you have to talk or move more slowly than you usually do?	<input type="checkbox"/>	<input type="checkbox"/>	
6. Have there currently been a few weeks when you felt like you were useless or sinful?	<input type="checkbox"/>	<input type="checkbox"/>	
7. Are you currently taking any medication prescribed for you by a physician for any emotional or mental health problems?	<input type="checkbox"/>	<input type="checkbox"/>	
8. Have you <u>ever</u> been in a hospital for emotional or mental health problems?	<input type="checkbox"/>	<input type="checkbox"/>	

**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

