



**1. My loved one has a mental illness and is in jail. How can I make sure they are getting their medication?**

**Your rights while in jail:**

The Eighth Amendment requires that jail officials provide inmates with adequate medical care, including mental health care. Inmates can only claim that they have received inadequate care if the jail staff has been proven to treat them with “deliberate indifference to serious medical needs.” “Deliberate indifference” in this context implies that the jail staff members knew of the individual’s medical risk and chose to ignore it. For example, jail staff can be held liable for ignoring obvious, physical signs of deterioration in the inmate’s health or an inmate’s requests for medical attention.<sup>1</sup> This [fact sheet](#) developed by the American Civil Liberties Union provides more information about your rights to dental, medical and mental health care within the criminal justice system.

**What you can do:**

If your loved one has been arrested and requires medication for his or her mental illness, he or she should inform the jail staff. Family members should also make an effort to inform the jail staff of their loved one’s medication needs. It is best to do this in writing in order to have a written record, and then follow up with a phone call. Usually, the best people to contact are the jail medical and/or mental health staff. Communicating with these staff members directly may increase the likelihood that your loved one’s condition is attended to appropriately. You should begin by finding out what agency is responsible for running the local jail (usually it is the sheriff’s department) and how to contact the jail’s medical staff. For smaller jails, particularly those in rural areas that may contract with a county mental health center, you may be able to contact the county mental health center and find out who is responsible for mental health services in the jail. If the person you are concerned about is in prison, you can find out about medical and mental health services by contacting the state department of corrections.

Another option would be to have your loved one’s psychiatrist contact the jail medical staff (if he or she is willing to do so), since this may enhance or expedite the process. Contrary to popular belief, federal privacy laws allow providers to release health information to law enforcement officials without the patient’s consent for treatment purposes. More information on the federal privacy laws can be found at the [U.S. Department of Health and Human Services website](#).

However, this federal rule only establishes a minimum and your state's laws may have more stringent requirements. For more information on your state's privacy laws you should contact your local protection and advocacy agency. These agencies are responsible for protecting, empowering and advocating on behalf of individuals with disabilities. A list of the protection and advocacy agencies in different states can be found on the [National Disability Rights Network website](#).

## **2. How can I get my loved one transferred from a jail to a hospital setting?**

The most likely way that your loved one could be placed in a hospital setting as opposed to a jail would be if they are transferred prior to receiving a sentence. This can be done in the following ways:

- ***Your loved one is judged to be incompetent to stand trial***

The Constitution prohibits a defendant from being tried or sentenced if, at the time of the trial, he is determined to be incapable of understanding the nature of the charges against him or cannot assist his lawyer in preparing his defense due to a mental illness or defect. Your loved one's defense attorney or the judge may request a competency examination by a mental health expert if he or she believes one is necessary. However, when someone is found incompetent to stand trial, he or she is not released. Rather, he or she is sent to a forensic psychiatric hospital for treatment and, if the treatment is effective, the individual will be declared competent to stand trial. The individual may then be sent back to jail to await trial.

- ***Pretrial services determine that he or she is in need of immediate mental health attention***

Pretrial services programs make risk assessments and provide information and recommendations to courts to assist them in making bail decisions. In cases where individuals have been charged with a misdemeanor or minor felony, pretrial services may suggest that individuals are eligible for pre-trial release with the condition that they follow court-ordered requirements such as periodically reporting in person or undergoing treatment.

These programs may be able to identify individuals who need mental health attention and thus, might be eligible for pre-trial release. If the court accepts this option, the individual usually must agree to comply with a treatment regimen while being monitored by pretrial services staff.<sup>2</sup> A pretrial services agency may also conclude that a person meets the criteria for involuntary civil commitment, where the person is viewed as a danger to him or herself and to others and can thus be forced to be hospitalized without his or her consent. However, it is ultimately up to the judge or the magistrate to decide.

- ***Your loved one’s defense attorney or other court official refers him or her to a mental health court or other diversion program***

Mental health courts exist in a number of states and communities across the country. The role of these courts is to divert individuals into treatment instead of incarceration. The court generally provides ongoing supervision for the duration of the period defined in the treatment plan. In a mental health court, if the judge determines that it would be appropriate for the individual to undergo treatment (with court supervision) in exchange for eliminating a jail or prison sentence, the individual may choose to do so (this process is explained in more detail in question 6).

For more information on navigating the criminal justice system, please read [NAMI’s Guide to Mental Illness and the Criminal Justice System](#).

### **3. My loved one who has a mental illness is being abused in jail. What can I do about this?**

#### **Your rights in jail:**

The Eighth Amendment to the United States Constitution protects individuals in jails and prisons from being subject to cruel and unusual punishment. The Amendment prohibits some punishments completely, regardless of the crime, and prohibits other punishments that are excessive when compared with the severity of the crime or the competence of the perpetrator. However, people living with serious mental illness who are incarcerated in jails and prisons are disproportionately subjected to special housing units, administrative segregation or other forms of solitary confinement because they have difficulty functioning within general jail and prison settings, particularly when symptomatic. Solitary confinement for long periods of time can be very detrimental to the wellbeing of individuals with pre-existing psychiatric symptoms.

#### **What you can do:**

If you suspect that your loved one is being abused in jail, you should contact local advocacy agencies that are specialized in this area. You could start by contacting your [state protection and advocacy agency](#), which is responsible for protecting the rights of individuals with disabilities. Locate your state’s protection and advocacy.

Additional agencies focused on advocacy on behalf of prisoners exist in a number of states. To find out what additional agencies are available in your state, you should contact your local American Civil Liberties Union (ACLU) affiliate. The ACLU is an organization that works to defend and protect the rights and liberties granted to citizens through the constitution and US laws. In 2012, the organization started the ACLU Prison Project, which engages in litigation, advocacy and public education with the objective of ending “cruel, inhuman, and degrading

conditions of confinement, as well as increase public accountability and transparency of jails, prisons, and other places of detention.” Visit the [ACLU website](#) for more information about the ACLU Prison Project and to find your local ACLU affiliate.

#### **4. Why won't my public defender use my loved one's mental illness as part of his or her defense? What can I do about this?**

##### **Reasons why public defenders do not use mental illness:**

There are several reasons why public defenders may be reluctant to use their client's mental illness in their defense, including:

- a lack of awareness or training on how to deal with individuals with mental illnesses
- the belief that it may be detrimental to their client's case, or
- a lack of time to investigate how the mental illness may be affecting their client's behavior.

Research has shown that many court officials do not have the appropriate training on how to work with people living with mental illnesses and have preconceived misconceptions about these individuals that reflect the misconceptions held by the general public. Often, court personnel are only concerned about their client's competency to stand trial. However, competency is a low standard, so even if the individual is proven to be competent, the mental illness may still affect legal proceedings or the individual's ability to participate in his or her own defense. For example, the individual's mental illness may affect his or her memory, reasoning, volition, judgment and emotions during the trial, which may interfere with his ability to effectively defend himself.<sup>3</sup>

From a strategic point of view, even if public defenders are aware of the effects of their client's mental illness they may still refuse to use it because they may believe that it will not help, and may even hurt, their case. For instance, some jurors refuse to accept mental illness as an adequate explanation for criminal behavior, and may suggest that community-based treatment or probation is not enough to keep the individual out of trouble. This argument is especially likely if the individual was already receiving some kind of treatment for his or her mental illness to begin with. As a result, without sufficient evidence or expert help, many public attorneys may not see the benefit of using the mental illness argument in the defense.<sup>4</sup>

Furthermore, even if the public defender is aware of their client's mental illness, their typically enormous case load may prevent them from delving deeper into the client's history and investigating how the illness may have affected his or her behavior during the alleged crime.<sup>5</sup>

**What you can do:**

If you suspect that your loved one's public defender is unfamiliar with working with and representing individuals living with mental illnesses in court, you should try to provide him or her with basic information on your loved one's mental illness and how it may affect one's behavior. Fact sheets and other resources on specific mental illnesses can be found on the [NAMI website](#). In addition to this, make sure to provide your defender with a succinct, written summary of your loved one's diagnosis, symptoms and treatment history.

Texas Appleseed and Texas Tech University School of Law created a [handbook](#) for attorneys who are representing persons living with mental illnesses. You can print out a copy of this handbook and give it to your public defender as a reference.

Note: Given the typically large caseloads of public defenders and the little amount of time they have to devote to each individual case, it is important that you are persistent, but remain *polite and concerned* with your requests.

**More information:**

For more information on the issue of mental illness in the criminal justice system and what you can do please refer to the following resources:

- [The Criminal Justice/Mental Health Consensus Project advocacy handbook](#)
- [The Texas Appleseed Justice For Defendants with Mental Impairments Project website](#)

**5. What are jail diversion programs and when can they be used? Do most public defenders know about them?**

Jail diversion programs aim to eliminate or dramatically reduce the time individuals with mental illnesses spend in jail. Individuals can be diverted before arrest (pre-booking) or while in jail (post-booking). Pre-booking programs are generally police-based, and include programs such as crisis intervention teams (CIT) and mobile crisis teams. Post-booking programs are court-based or jail-based and may consist of mental health courts (see question 6), drug courts or co-occurring courts, or other programs where jail staff identify the inmates with mental illnesses and work with them to reduce their time in jail. In communities where jail diversion programs exist, police or public defenders will most likely know about them. The Substance Abuse and Mental Health Services Administration's GAINS Center provides general information on [jail diversion programs](#).

**CIT programs** train police officers to handle crisis situations involving individuals with mental illnesses. Officers are taught to recognize when a person is suicidal or having hallucinations or paranoia and how to verbally de-escalate a crisis situation. These police officers also coordinate with mental health providers to transfer individuals to mental health services rather than jail. For more information on CIT programs please refer to the [NAMI CIT Advocacy Toolkit](#).

Similarly, **Mobile Crisis Teams** are teams comprised of mental health professionals and law enforcement officers who respond to a mental health crisis situation, and transfer the individual into appropriate mental health services. For more information on mobile crisis teams, please refer to the following page on the [New York City Department of Health and Mental Hygiene's website](#).

**Mental health courts** and other specialty courts attempt to reduce recidivism and save money by diverting individuals with mental illnesses away from incarceration and to community-based treatment and other support services (for more detail on mental health courts, please refer to the next question). Examples of these community-based services include Forensic Assertive Community Treatment (FACT) and housing first programs:

- **FACT** is a variation of the evidence-based practice known as [assertive community treatment](#) (ACT), which provides around the clock, comprehensive services such as mental health and substance abuse treatment, education support, and housing assistance to individuals living with mental illnesses in their homes and communities. FACT differs from ACT in that it coordinates with the criminal justice system to be used as an alternative to jail or as a condition of parole. [Read more about FACT](#).
- **Housing First** programs are based on a recovery model that favors giving individuals with mental illness and substance abuse disorders access to housing, and then working with them to link to treatment and rehabilitation services. This model does not make participation in treatment a condition of receiving housing, but the programs are very successful in engaging individuals in treatment. Studies have shown that this model has also kept these individuals off the streets and reduced encounters with police. [Read more about Housing First](#). For an example of a housing first program, visit the [Pathways to Housing website](#).

**What you can do:**

If your loved one is in a crisis situation and you need assistance you should inform the 911 dispatcher about your loved one's mental illness. In some communities, Emergency Medical Technicians or paramedics will be sent to respond, but in many communities, the police will be the first responders. If your community has an active CIT or mobile crisis team program, ask if a CIT officer or mobile crisis team can be sent to assist you. If your loved one has already been

arrested and will be required to stand trial, you should ask his or her public defender if he or she is eligible for referral to a mental health court or other jail diversion program.

**6. What are mental health courts? Which states have them and when can they be used? What kinds of cases can be heard at mental health courts, what sentences are given and do they reduce recidivism?**

Mental health courts are special court dockets which aim to reduce recidivism and court-related costs as well as improve the quality of life of people living with mental illnesses. The courts provide an alternative to incarceration by allowing individuals with mental illnesses to participate in court-supervised, community-based treatment programs. There are currently approximately 250 mental health courts operating in the U.S.,<sup>6</sup> and this number is growing. The courts also vary in the type of cases they accept. Some courts only accept individuals charged with misdemeanor crimes, while others accept only felony charges or both.

Participants in community-based treatment programs prescribed by the mental health courts are usually required to undergo court-supervised treatment for a period ranging from six months to two years. When individuals do not follow their treatment plan, the court can adjust the treatment plan, increase the frequency of court appearances, impose jail time and in some extreme cases, expel the individual from the program. Mental health courts reduce criminal recidivism rates, help some individuals engage in treatment, and save money.<sup>7</sup>

For more detailed information on how mental health courts work please refer to the following [Council of State Governments Justice Center](#) publications:

- [Mental Health Courts: A Guide to Research-Informed Policy and Practice](#) by Lauren Almquist and Elizabeth Dodd
- [Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court](#) by Michael Thompson, Fred C. Osher, and Denise Tomasisni-Joshi

**What you can do:**

Defense attorneys are usually responsible for referring a client to a mental health court, but referrals may also come from judges, jail staff, or family members. In order to find out if a mental health court is available in your community, you can search the [Criminal Justice/Mental Health Consensus Project Database](#). If there is a mental health court available in your community, ask the public defender if your loved one can participate in it.

If your loved one is a veteran, you can also ask if he or she can participate in a veterans court. Similar to mental health courts, veterans courts link veterans with a history of substance abuse or mental illness to community treatment services while reducing time in jail. For more information and to find out whether a veterans court is available in your community, you can check the [National Center for State Courts webpage](#) or contact [Justice for Vets](#) for a list of veterans courts in your area.

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<sup>1</sup> American Civil Liberties Union. (2011). "Know Your Rights: Medical, Dental and Mental Health Care." ACLU National Prison Project. Accessed at: [http://www.aclu.org/files/assets/kyr\\_med\\_mh\\_updated\\_apr09.pdf](http://www.aclu.org/files/assets/kyr_med_mh_updated_apr09.pdf)

<sup>2</sup> Massaro, J. (2005). "Overview of the Mental Health Service System for Criminal Justice Professionals." Substance Abuse and Mental Health Services Administration: Center for Mental Health Services. Accessed at: [http://gainscenter.samhsa.gov/pdfs/jail\\_diversion/Massaroll.pdf](http://gainscenter.samhsa.gov/pdfs/jail_diversion/Massaroll.pdf)

<sup>3</sup> Spangenberg, R., Beeman, M., Beardall, B., Schaeffer, C., daSilva, R., King, B.,...Smith, R. (December 2000). "The Fair Defense Report: Findings and Recommendations on Indigent Defense Practices in Texas." Texas Appleseed Fair Defense Project. Accessed at: [http://www.texasappleseed.net/index.php?option=com\\_content&view=article&id=34&Itemid=138](http://www.texasappleseed.net/index.php?option=com_content&view=article&id=34&Itemid=138)

<sup>4</sup> Gill, R., Siegfried, C., LoVoi, A., Fowler, D., Wilensky, M., Shannon, B. D., Thornton, C., Benson, D. H., & Dix, G. E. (2005). "Mental illness, your client and the criminal law: a handbook for attorneys who represent persons with mental illness." A collaboration of Texas Appleseed, Texas Tech School of Law, Houston Endowment and Hogg Foundation for Mental Health. Accessed at: [http://www.texasappleseed.net/pdf/hbook\\_MH\\_attorney\\_MentalIllness.pdf](http://www.texasappleseed.net/pdf/hbook_MH_attorney_MentalIllness.pdf)

<sup>5</sup> Council of State Governments Justice Center. (2006). "The Advocacy Handbook: A Guide to Implementing Recommendations of the Criminal Justice/Mental Health Consensus Project." Accessed at: [http://consensusproject.org/jc\\_publications/the-advocacy-handbook-a-guide-to-implementing-recommendations-of-the-criminal-justice-slash-mental-health-consensus-project](http://consensusproject.org/jc_publications/the-advocacy-handbook-a-guide-to-implementing-recommendations-of-the-criminal-justice-slash-mental-health-consensus-project)

<sup>6</sup> Rossman, S. B., Willison, J.B., Mallik-Kane, K., Kim, K., Debus-Sherrill, S., Downey, P. M., (2012) "Criminal Justice Interventions for Offenders with Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn, New York, Executive Summary." The Urban Institute. Accessed at: <https://www.ncjrs.gov/app/topics/Topic.aspx?topicid=37>

<sup>7</sup> Almquist, L. and Dodd, E. (2009). "Mental Health Courts: A Guide to Research Informed Policy and Practice." Council of State Governments Justice Center Publication. Accessed at: [http://consensusproject.org/jc\\_publications/mental-health-courts-a-guide-to-research-informed-policy-and-practice](http://consensusproject.org/jc_publications/mental-health-courts-a-guide-to-research-informed-policy-and-practice)

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