

Introduction: Mental Disorders and the Law

Terri A. deRoos-Cassini

Hon. Mary E. Triggiano

I. Mental Health and the General Population [§ 1.1]	1
II. Vulnerable Populations in the Legal System [§ 1.2]	2
III. The Role of Trauma in Mental Health and the Law [§ 1.3]	3

I. Mental Health and the General Population [§ 1.1]

In the United States (U.S.), mental health disorders are pervasive and affect every sector of society. Twenty percent of people in the U.S. are living with a mental health diagnosis, which can significantly range in severity. The severity of mental health disorders is defined by the level at which the mental health disorder interferes with the ability to function on a daily basis.

In a national study conducted in 2017, 46.6 million people in the U.S. were living with a mental health disorder currently or within the last year. Rates of mental health disorders vary based on gender, age, race, and ethnicity. For those living with any mental health disorder, women, individuals over the age of 50 years, and white Americans have the highest prevalence rates. When considering those who have the most severe mental health disorders, which are those having the greatest impairment in day-to-day functioning, females, people between the ages of 18 and 25 years, and individuals who identify with two or more races carry the largest burden of mental health disorder in society. Yet even more alarming is that 50% of adolescents in the U.S. have a lifetime prevalence of any mental health disorder. Kathleen R. Merikangas et al., *Lifetime Prevalence of Mental Disorders in U.S. Adolescents: Results from the National Comorbidity Survey Replication-Adolescent Supplement (NCS-A)*, *J. Am. Acad. Child Adolescent Psychiatry* 49(10): 980–89 (Oct. 2010), <https://pubmed.ncbi.nlm.nih.gov/20855043/>.

Mental disorders also constitute the greatest cause of disability in the U.S. and Canada. Ronald C. Kessler et al., *Lifetime Prevalence and Age-of-Onset Distributions of DSM-IV Disorders in the National Comorbidity Survey Replication*, *Archives of Gen. Psychiatry* 62(6): 593–602 (June 2005), <https://pubmed.ncbi.nlm.nih.gov/15939837/>; Substance Abuse & Mental Health Servs. Admin., *Key Substance Use and Mental Health Indicators in the United States: Results from the 2017 National Survey on Drug Use and Health*, HHS Pub. No. SMA 18-5068, NSUDH Series H-53 (Rockville, MD: Ctr. for Behavioral Health Statistics & Quality, 2018), <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHFFR2017/NSDUHFFR2017.pdf>.

The most common mental health disorders include those classified as mood disorders, which are characterized by serious and persistent difficulty maintaining an even mood state. Depression, a common mood disorder, affects approximately 15 million adults in the U.S., or about 7% of the

population, every year. Rates of anxiety-type disorders range anywhere from 1% to just over 7% of the population, and over 8% of the general population meets criteria for posttraumatic stress disorder (PTSD) following a traumatic event. Severe and persistent mental illness, such as schizophrenia and bipolar disorder, affect approximately 2.2 million and 1.8 million Americans, respectively. See William E. Narrow et al., *Revised Prevalence Estimates of Mental Disorders in the United States*, Archives of Gen. Psychiatry 59(2): 115–23 (2002); Ronald C. Kessler et al., *Twelve-Month and Lifetime Prevalence and Lifetime Morbid Risk of Anxiety and Mood Disorders in the United States*, Int'l J. Methods Psychiatric Rsch. 21(3): 16–84 (Sept. 2012).

And an even starker finding is that as of 2018, 5.8% of Americans had alcohol use disorder, a disorder that has significant health, financial, and societal implications. Nat'l Inst. on Alcohol Abuse & Alcoholism, *Alcohol Use Disorder*, <https://www.niaaa.nih.gov/alcohols-effects-health/alcohol-use-disorder> (last visited Mar. 16, 2021). Finally, when considering neurocognitive disorders that affect older adults, approximately 6.9% of Americans have dementia, and it is expected that by 2025, 7 million people over the age of 65 will be diagnosed with Alzheimer's disease. The reality is that mental health disorders are pervasive and varied in American society and having an understanding of mental health issues is paramount.

II. Vulnerable Populations in the Legal System [§ 1.2]

While mental health disorders are prevalent in the general U.S. population, they are even more prevalent in people who are part of the criminal justice population. According to Bureau of Justice Statistics, more than one-half of individuals involved in the criminal justice system suffer from a mental health disorder. U.S. Dep't of Just., *Bureau of Justice Statistics Special Report: Mental Problems of Prison and Jail Inmates* (Sept. 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>. Although mental illness is not a strong predictor of criminal behavior, two million arrests each year in the U.S. involve persons with serious mental illness. These individuals often end up in the justice system instead of receiving the care they need to support their diagnosis and recovery. Dr. Altha Stewart, associate professor, Dep't of Psychiatry, and director, Ctr. for Health in Justice-Involved Youth, Univ. of Tenn. Health Sci. Ctr., Presider, Keynote Address at the National Stepping Up Summit, Washington, D.C. (Apr. 18, 2016).

In addition, of those individuals with serious mental health disorders, approximately 75% also have a co-occurring substance use disorder. Ram Subramanian et al., *Incarceration's Front Door: The Misuse of Jail in America* 12 (New York, NY: Vera Inst. of Just., 2015). As a result, these individuals are more likely to not make bail, to receive longer sentences, to not become eligible for early release from incarceration, to cycle through the system, and to be victimized. *Id.* at 11–13.

Mental health disorders in the juvenile justice system also are widespread. Approximately 50–75% of the 2 million youth subject to proceedings in the juvenile justice system meet criteria for a mental health disorder, which can lead to long-term involvement in the criminal justice system if left untreated. Johanna Wald & Daniel Losen, *Defining and Redirecting a School-to-Prison Pipeline*, New Dir. Youth Dev. 9–15 (2003), <https://doi.org/10.1002/yd.51>. Of those youth incarcerated, approximately 40–80% have at least one diagnosable mental health disorder. Linda A. Teplin et al., *Psychiatric Disorders in Youth in Juvenile Detention*, Archives of Gen. Psychiatry 59(12): 1133–43 (2002), <https://jamanetwork.com/journals/jama-psychiatry/fullarticle/206941>.

These are the adults and youth who pass through courtrooms in the U.S. every day. With the rates and varied presentations of mental illness in the U.S., it is imperative that the legal system develop a deeper understanding of mental health and, in turn, work more effectively and compassionately to address the needs of justice-involved persons.

III. The Role of Trauma in Mental Health and the Law [§ 1.3]

It is worth noting that there has been much focus in recent years on the effects of trauma on justice-involved individuals and the importance of trauma-informed approaches. Like mental health disorders, trauma is widespread and particularly pervasive in the justice system. *Trauma* is defined as “actual or threatened death, serious injury, or sexual violence” that is experienced or witnessed by an individual or that happened to a loved one. Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)* 271–72 (5th ed. 2013).

This can include single events, such as gun violence, or sustained events, such as ongoing abuse or neglect.

Traumatic life experiences are common among justice-involved individuals with serious mental health disorders, substance use disorders, or both. Studies of people in the juvenile and criminal justice system reveal high rates of mental and substance use disorders and personal histories of trauma. Julian D. Ford & Charles Wilson, SAMHSA’s Trauma and Trauma-Informed Care Experts Meeting (2012); Julian D. Ford, *Treatment of Complex Trauma: A Sequenced, Relationship-Based Approach* (New York, NY, Guilford Press, 2013). Children and families in the child welfare system similarly experience high rates of trauma and associated behavioral health problems. Katie A. McLaughlin et al., *Childhood Adversity and Adult Psychiatric Disorder in the US National Comorbidity Survey*, *Psych. Med.* 40(4): 847–59 (2009).

Trauma histories of justice-involved individuals, especially those already suffering from mental illness, can contribute to the events leading to their appearance in the courtroom and shape their behavior once there. Understanding and practicing trauma-informed care when interacting with justice-involved individuals can lead to better outcomes. See SAMHSA’s *Concept of Trauma and Guidance for a Trauma-Informed Approach* (July 2014) (Rockville, MD: Substance Abuse & Mental Health Servs. Admin.), https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf.

Judges and attorneys, whether they are practicing in treatment courts or in traditional court settings, should engage people with histories of trauma by recognizing the presence of trauma symptoms and acknowledging the role that trauma has played in their lives. See *id.*

This is not to say that mental health diagnoses should excuse behavior, but understanding how mental health and mental illnesses can affect an individual can lead to a better understanding of how to move forward. It is important to consider that mental illnesses often manifest as dysregulation of emotions, behaviors, and thoughts. This triad of dysregulation leads to habits that can be difficult to break, and often these thoughts, behaviors, and emotions lead to further impairment in one’s life. For example, someone who is suffering from the consequences of trauma can be depressed and will likely have an associated behavior, such as withdrawal or isolation, that downstream may lead to impairment in everyday functioning, such as absenteeism at work or withdrawal from important relationships. Behaving depressed then can lead to an individual feeling more depressed, and the illness continues. Similarly, when someone is feeling depressed, thoughts tend to be more depressive in nature, such as having a hopeless outlook, which can limit cognitive flexibility. From the outside, someone behaving and thinking this way might be viewed as having a lack of motivation, not being positive or engaged in life, and possibly not willing to take responsibility for themselves. This view can perpetuate the stigma associated with mental illness and continue a perspective that individuals with mental health diagnoses are to blame for their condition.

Trauma-informed care is often used as a supportive framework within treatment courts but can and should be applied throughout the justice system. Addressing trauma, as well as social determinants of health, such as housing and food security, is part of an integrated, whole-person approach to individuals participating in mental health courts.

Like trauma, stigma plays a significant role in a person's ability to seek help and live a meaningful and productive life. Stigma is a degrading and debasing attitude of society that discredits a person's dignity, marginalizes affected individuals, violates basic human rights, markedly diminishes the chances of a stigmatized person of achieving full potential, and seriously hampers the pursuit of happiness and contentment. Fraser W. Steel et al., *Combatting the Stigma of Mental Disorders—A Position Paper from the EFPSA Social Impact Initiative 3* (Aug. 2015).

Additionally, stigma creates barriers to employment, safe housing, family engagement, connection to one's community, higher education, and so on. Understanding the effects of stigma is not merely an issue of societal compassion; it is a fundamental issue of equity and justice. Mental health disorders are chronic brain disorders affecting millions of individuals. Yet there are gaps in care and treatment services in every community, warranting collaboration now more than ever.

Readers of this book will learn about the laws affecting individuals with mental health disorders and the legal duties and responsibilities of lawyers and mental health professionals. But just as important, readers also will learn about how discrimination affects persons with mental illnesses or cognitive disabilities and thereby results in dire consequences. Finally, readers will learn about problem-solving courts, especially those addressing individuals with mental health disorders, including their use of trauma-informed care and procedural justice to better understand human behavior and provide better outcomes for people with mental health disorders.

More specifically, chapters 2 and 3 address the definitions, procedures, and issues surrounding mental health and sex offender commitments in Wisconsin under Wis. Stat. chs. 51 and 980. Chapter 4 covers guardianships of the person and estate, focusing primarily on adult guardianships, while chapter 5 addresses the special issues that arise when representing minors with mental health concerns. In chapter 6, the author explores the intersection of mental health issues and criminal law. Chapter 7 is devoted to discussing the legal duties and responsibilities of mental health professionals. Discrimination against persons with mental illnesses and other cognitive disabilities is the focus of chapter 8, and chapter 9 addresses benefits available for those individuals. The final chapter of the book is devoted to discussing treatment courts.