

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/new-study-examines-indigent-defense-for-people-with-mental-health-disorders>

Public Facing Advocacy Writing

In 1963, the U.S. Supreme Court ruled in *Gideon v. Wainwright* that the states are required to provide counsel in criminal cases for defendants who cannot afford to pay for a private attorney. In the 50 years since the *Gideon* ruling, there have been far-reaching improvements to representation for indigent defendants. Increased state, local, and private funding for public defense has led to increased access to public defender services and researchers, legal scholars, and practicing attorneys have sought to improve the quality of those services through the use of interdisciplinary and client-focused models of defense and the implementation of standards and empirically-informed guidelines.

Nevertheless, in a speech made on the 50th anniversary of the *Gideon* decision, Attorney General Holder described the United States indigent defense system as exist[ing] in a state of crisis, reflecting the ongoing inadequacies in the nations provision of indigent defense, including very limited funding, a shortage of lawyers working as public defenders, overly burdensome caseloads, and insufficient resources such as social workers and investigators. Similarly, legal scholars and practitioners have marked the 50th anniversary of *Gideon*, commonly known as the unfunded mandate, by appealing for adequate support to cover the costs of lawyers and the resources that enable them to provide effective representation for their clients.

Despite all the discourse around the inadequacies of the indigent defense system, there has been little discussion of the challenges that indigent defenders (IDAs) face when representing clients with mental health disorders (MHD). This is a particularly troubling oversight, given the disproportionate involvement of people with serious mental illnesses in court proceedings. In 2009, for example, an estimated 2.2 million people with MHD nationwide came in contact with the criminal justice system.

Attorneys defending people with MHD face a variety of thorny legal and ethical issues, and, while they often have no clinical expertise or training to work with mental health disorders, they must weigh concerns about clients treatment needs with the goal of achieving the least restrictive and punitive case outcome. Despite the complex needs of indigent defendants with MHD and the numerous challenges their IDAs confront, there is a dearth of research and empirically informed training materials or best-practice guidelines in this area. For example, to date there has been very little research on the factors that IDAs weigh when deciding whether they should argue that their client is incompetent to stand trial, or to advise that they enter a treatment diversion program, given that these options may ultimately prolong contact with the criminal justice system. Compounded by the general lack of funding and inadequate resources to support public defender offices, this lack of information severely limits the ability of IDAs to provide effective counsel to clients with MHD.

In order to address this gap in the research, on January 1, 2013, the Vera Institute of Justice's [Substance Use and Mental Health Program](#) and [Policy Research Associates](#) launched a [study](#) the first of its kind to examine the nature of interactions between IDAs and their clients with MHD and assess outcomes related to different types of representation for this population. With support from the National Institute of Justice, this two-year study, conducted in Bronx County and a county in upstate New York, will explore: 1) the relationship between type of representation and case outcomes for people with MHD; 2) the extent to which IDAs understand and represent the needs and priorities of their clients with MHD; 3) levels of satisfaction with ID representation and perceptions of case outcomes for defendants with MHD; and 4) the costs associated with different models of ID for defendants with MHD.

Researchers will use a mixed-methods approach, including interviews with 250 defendants identified as having MHD during jail intake screenings and their defenders at two points early in the case and then again following case resolution; analysis of criminal justice administrative records describing charges, criminal histories and case outcomes; and an analysis of the costs connected with different ID models.

Findings from the study will inform a series of recommendations for improving the effectiveness of public defense services for this population and provide an evidence base for building ID services that adequately serve people with MHD, offer sufficient resources such as social workers and investigators to assist IDAs to represent their clients, and maximize the use of tax dollars that are budgeted to the provision of indigent defense services.

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