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The Role of Indigent Defense for Defendants with Mental Health Disorders

Final Summary Overview

April 27, 2017

Project Title: The Role of Indigent Defense for Defendants with Mental Health Disorders
Award Number: 2012-R2-CX-0009

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Purpose of the Project

The incarceration of people with mental health disorders represents a significant public health crisis. People with mental health needs are over-represented in the justice system and in 2009 alone there were an estimated 2 million bookings of individuals with mental health disorders into our nations jails, equivalent to approximately 18 percent of all admissions (Steadman et al., 2009). Furthermore, people with mental health disorders experience worse outcomes when they come into contact with the justice system than those without psychiatric conditions; they are more likely to be held in pre-trial detention, spend longer periods in jails and prison, and experience higher rates of suicide and abuse in custody (Almquist & Dodd, 2009; Barr, 1999; Kim et al., 2015; Massaro, 2004; Watson et al., 2001)

Theorizing that untreated mental illness is at the root of criminal justice involvement for many people, courts are increasingly accounting for defendants mental health needs as part of sentencing and detention decisions (Redlich et al., 2006; Thompson et al., 2008). As defendants' primary advocates, indigent defense attorneys are an essential component of this treatment-led response. However, public defenders typically have no clinical training and limited supports to meet the extra-legal needs of their clients. Yet, they are routinely called upon to determine: if clients pose a risk to the safety of themselves or others; which of their clients would benefit from treatment; the extent to which defendants with mental health disorders are equipped to make decisions that are in their own best interests; competency-related issues; and the appropriate balance between individual autonomy and treatment needs.

While some indigent defense offices employ social workers or staff with clinical training to assess client needs and advise attorneys on defense strategies, there are far more public defenders that do not have access to these resources. While millions of people with mental illness are

arrested every year, there is very little information available on the challenges inherent in representing this population or the training and support needs of public defenders. This project addresses the dearth of social science research on this subject by examining the needs of defendants with mental health disorders and the specific challenges that attorneys face when representing these individuals. Specifically, the Vera Institute of Justice (Vera) and Policy Research Associates Inc. (PRA) used multiple methods to assess the dual perspective of defendants and defenders concerning: 1) the link between mental health and justice involvement; 2) perceptions of the attorney-client relationship and satisfaction with case outcomes; 3) the needs of defendants with mental health disorders; and 4) how a client’s mental health impacts defenders’ strategy.

Methods

Overview of Methods

Study sites. To answer these questions, Vera and PRA conducted a mixed-methods study in Monroe and Bronx Counties in New York. We chose these two geographically and demographically diverse areas, whose jurisdictions have a variety of public defense providers, in order to increase generalizability of the study findings. See Table 1 for a listing of county wide demographics and Table 2 for a list of the defender agencies that serve each jurisdiction.

Study activities. To understand the policies and practices related to clients with mental health disorders in both sites, the research team conducted interviews with managers and senior staff and a document review of materials such as intake/referral forms or job descriptions. To document the experience of defendants and their attorneys, Vera and PRA conducted semi-structured “parallel interviews;” researchers interviewed a sample of defendants with mental health needs and their attorneys at the beginning and end of their case. The initial plan was to

analyze administrative data from the courts and jails; however, this data request is still pending.

Participants

Policy review. We interviewed a total of eight informants as part of the policy review, including two senior lawyers and one social worker at New York City Legal Aid; one managing attorney, one senior attorney, and one senior social worker at Bronx Defenders; and two managing attorneys at the Monroe County Public Defender.

Parallel interviews. We conducted 639 interviews, including 200 baseline and 133 follow-ups with defendants, as well as 156 baseline and 150 follow-ups with lawyers. We interviewed 200 discrete defendants and 104 attorneys, as a number of public defenders had multiple clients participating in the study. See Tables 3 and 4 for participant demographics.

Human subjects protections

All research procedures were approved by Vera's and PRA's Institutional Review Boards. As part of the policy reviews, we took a number of steps to ensure that interviews were confidential. Researchers obtained informed consent from all of the defendants and attorneys and provided non-coercive monetary compensation to defendants. No participants in the study will be individually identified in any research reports. There have been no human subjects violations.

Procedure

Policy review procedure. We examined the policies, practices, and resources that each office employed to serve clients with behavioral health needs using a combination of interviews and reviews of agency documents.

Interview questionnaire. Researchers interviewed agency staff using a questionnaire that included a series of open-ended questions on many topics including: agency philosophy about representing clients with mental health disorders, the types of specialized training provided to

attorneys for working with clients with mental health disorders , procedures for screening for mental health needs, agency policies and practices related to raising concerns about a client's competency to stand trial, and the in-house resources available --such as social workers -- to assist with these cases.

Requested documents. We requested agency documents including intake forms, referral forms, training requirements for agency staff, and job descriptions.

Parallel interviews procedure. We elicited the experiences and perspectives of clients with mental health disorders as well as their lawyers through sets of semi-structured interviews.

Participant sampling and recruitment. To recruit pairs of defendants and defenders, we first approached defendants with criminal cases in the Bronx or Monroe County, who were identified by staff working in the jail as having a mental health need and who were represented by a public defender. Researchers conducted initial interviews in the jail and, therefore, only defendants who were detained after arraignment were included. Once a defendant agreed to participate and completed the baseline interview, researchers then approached his or her lawyer to participate.

Timing of interviews. We completed all baseline interviews with defendants while they were in jail between their first (the arraignment) and second court appearances. On the day of the second court appearance, or shortly thereafter, researchers approached the defendant's lawyer, and if they consented to participate, completed the defender baseline interview. We conducted follow-up interviews once the defendant's case concluded or at the end of the data collection period. We interviewed those defendants in the community, jail, and prison.

Interview guide. Vera and PRA conducted the parallel interviews using a semi-structured questionnaire that included both open-ended and closed questions. Defendant interviews had questions on a range of topics, including demographics, behavioral health needs, history of

criminal justice involvement, preference for autonomy when making case decisions, trust in lawyer, and perceived procedural justice. Example topics for the defender interviews included years of experience as a lawyer, the availability of resources for working with clients with mental health disorders, their strategy for working with clients with mental health needs, referrals to health or social services, and whether the attorney raised the client's mental health in court. See Table 5 for a list of select interview topics.

The research instruments incorporated several validated instruments, some of which required minor modifications. These included the Texas Christian University Drug Screen (Institute of Behavioral Research, 2007), the Colorado Symptom Inventory (modified; Boothroyd & Chen, 2008), the Attorney-Client Trust Scale (Boccaccini & Brodsky, 2002), and the Perceived Procedural Justice Scale (Poythress et al., 2002). As this is a nascent field of research, it was also necessary to design new questions to assess topics that have not been explored in the past.

Data Analysis and Results

In this section we describe select analyses and results many of which are presented, or will be presented, in publications. See the Scholarly Products section below for additional information. Although some of these results have already been published, others are preliminary analyses and therefore, the final results may differ somewhat from what is presented here.

Pathways to Justice Involvement

This analysis employs qualitative and quantitative interview data to explore how defendants and defenders articulate the relationship between behavioral health needs and justice involvement.

Data analysis. We conducted quantitative analysis in STATA and the Qualitative analysis in NVivo. There was between 0 and 10% missing data for all of the variables in these analyses. All

qualitative analysis was conducted using inductive, content analysis methods.

Results. Defendants self-reported their behavioral health history, including the age at which they were first diagnosed with a mental health condition and their most recent diagnosis. Overall, 71% of participants reported experiencing problems related to their substance use in the past year and 63% scored a three or higher on the Texas University Drug Screen, corresponding with a DSM-IV diagnosis of substance dependence in the past year (Table 6). Eighty-two percent of the sample reported that a medical provider told them that they had a mental health disorder at some point in their lifetime, while 48% reported that a doctor or medical provider told them that they had a substance use disorder (Table 7).

Over half (58%) of participants indicated that their mental health or substance use had contributed to their justice involvement and 42% reported that *both* their mental health and substance use was related to their justice involvement. Tables 8 and 9 display the most commonly reported themes in response to an open-ended question about the connection between behavioral health conditions and justice system involvement. See Figures 2 and 2 for a visual display of how these themes relate to one another other.

We also examined how participants described the necessity for behavioral health treatment as a tool for reducing their justice involvement. Using a 4-point Likert scale from strongly disagree to strongly agree, 67% of participants either agreed or strongly agreed with the statement: “I need to address my mental health to keep from being rearrested.” However, 69% of participants either agreed or strongly agreed with the statement, “I have other problems that I need to address more than my mental health to keep from being rearrested.” Similarly, when we asked defendants what would keep them from being rearrested, the most common responses were staying sober, changing or ending negative relationships, and finding employment. Accessing

mental health care or psychiatric medications was one of the responses given, but it ranked as the 11th most frequently mentioned response (Table 10).

Public defenders when they returned to the community. When asked to identify the top three reentry challenges, accessing mental health care was rarely mentioned by defendants while it was the 7th most commonly cited challenge by lawyers (Figure 3).

Procedural Justice

This analysis uses procedural justice theory as a framework for exploring relationships between the services provided by lawyers and satisfaction with case outcomes. The paper will assess whether defendants who 1) understood key features of their case, 2) viewed the process as procedurally just, and 3) felt that their lawyer took account of their views and perceptions were more likely to be satisfied with case outcomes.

Data analysis. The analysis uses quantitative data from the follow-up interviews conducted with defendants, including: The Perceived Procedural Justice Scale (a 5-item Likert scale with scores ranging from 5 to 35) (Poythress et al, 2002); four items assessing understanding of the legal process; and a 6-item index assessing defendant perceptions of their lawyer. Differences in these measures were assessed for defendants who were satisfied/dissatisfied with case outcomes using Independent Sample Students T-tests.

Results. The sample mean for the procedural justice scale was 4.8 out of 7; the sample mean for satisfaction with lawyer was 3.5 out of 5; 73 percent of defendants understood the charges against them; 68 percent understood the role of their lawyer, and 67% understood the role of other court actors. Sixty-nine percent understood the purpose of their court appearances. There was a high degree of correlation between procedural justice measures, satisfaction with attorney's strategy and satisfaction with case outcome (Tables 11 and 12). The severity of a

client's mental health disorder, measured by self-reported impact on daily functioning, was not significantly associated with procedural justice measures, but did have a weaker association with the procedural justice scale and understanding of court appearances (Table 13).

Case Strategy

This analysis uses interview data to understand how defenders and defendants make decisions that are related to the defendant's mental health needs, particularly in terms of raising mental health in court and advocating for treatment based alternatives to incarceration (ATI).

Data analysis. We used the same methods as described in the pathways to justice involvement paper, see above. Note that for qualitative questions in which we report the percent of responses that provided a given response, the percent may add up to greater than 100% as participants can give more than one response to a particular question.

Results. During the baseline interviews we asked defendants whether they would accept diversion to treatment as part of a guilty plea. Seventy-eight percent of defendants said yes; 19% said no, and 4% did not provide a response. Of those that would accept treatment, 48% of defendants thought they needed treatment or other services, and 35% thought treatment was always better than jail. Five percent of defendants said it depended on the kind of treatment or plea deal, and 3% said yes, but only if it was outpatient treatment. Of defendants who said that they would not accept treatment as part of a plea deal, 26% reported that they didn't need treatment, 23% said they were not guilty and wouldn't accept a plea, and 23% said treatment is more punitive or risky than jail. Thirteen percent of defendants cited a lack of effectiveness as the reason for not accepting treatment and 15% were in a program already.

For defenders we asked them open-ended questions about the most pertinent features of the case that influence whether they would seek an ATI. The most commonly cited factor, given in

52% of responses was the clients' willingness to be diverted. The next most common factor, noted in 50% of responses, was the strength of the case or the seriousness of a potential sentence. For example, some attorneys noted that if a client was facing only a short jail sentence then it might not make sense to pursue an ATI which would require lengthy treatment. Other factors that shaped defenders' decisions about whether to seek an ATI included whether the client's legal case was complicated by other pending cases or parole issues (28%), whether the client needed the treatment available through an ATI (22%), the client's chance of successfully completing an ATI (22%), client's eligibility for an ATI (20%), the presence of a co-occurring substance use disorder (17%), the availability of treatment in the community (9%), and the need to avoid jail time for their client (9%).

At the follow-up interview we asked attorneys whether their client had been eligible for an ATI and if so, if that client was diverted. In cases where the defendant was eligible for a treatment based ATI, 24% of attorneys sought this outcome for clients with misdemeanors, and 48% sought an ATI placement for clients with felonies. Of all eligible cases, 23% were diverted. In response to an open-ended question about why potentially eligible defendants were not diverted to treatment, 20% of attorneys responded that they did not seek out an ATI placement. Half of the attorneys whose clients were not diverted responded that they achieved a good outcome without advocating for mandated treatment. Sixteen percent said their clients were not eligible; 6% said their client did not want treatment.

Scholarly Products

Vera and PRA are publishing the results of this study in a mix of peer review journals, law review journal, and trade publications. This strategy is designed to maximize the number and type of professionals who will see our results. Several of our manuscripts have already been

accepted or published by journals. See Table 14 for more information.

Implications

Despite the fact that there is a significant overrepresentation of people with behavioral health disorders in the justice system, there is little empirical evidence on how a client's mental health influences their relationship with their defender and how lawyers understand and represent the particular needs of clients with mental health disorders. This, to our knowledge, is the first study of its kind to explore these issues. Our results will inform both the wider scientific and criminal justice community about the unique needs of defendants with mental health disorders, but will also help defender agencies better understand the needs of their staff and also help defenders provide improved services to their clients.

For instance, one important finding in our pathways paper challenges the widely held view that the most important steps that we can take to reduce the overrepresentation of defendants with mental health disorders in the justice system is to provide mental health care. Defendants reported that, while their mental health and lack of treatment plays a role in their justice involvement, it is not the most important driver. Our paper on attorney strategy raises questions about the effectiveness of ATIs as one of the primary mechanisms for connecting defendants to treatment when attorneys are primarily making decisions about seeking an ATI based on case strategy and not treatment need. Finally, we were able to demonstrate the importance of procedural justice as a frame for understanding client satisfaction with both case outcome and attorney strategy – an understudied topic that connects research on public defense with analogous studies of policing and the courts more generally.

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Tables and Figures

Table 1		
Demographics of Study Sites ^a		
	Bronx	Monroe
Population estimate	1,438,159 Residents	749, 857 Residents
Race/ethnicity		
White (not Hispanic or Latino) ^b	10.2%	71.5%
Black/African American ^b	43.5%	16.1%
Hispanic/Latino ^c	54.8%	8.1%
Asian ^b	4.4%	3.6%
Other ^b	3.3%	0.5%
Two or more races	3.3%	2.5%
Education ^d		
High school or higher	70.2%	89.9%
Bachelor's degree or higher	18.3%	35.9%
Economics		
In civilian labor force ^e	59.2%	64.3%
Median household income	\$34,284	\$52,501
Persons in poverty	31.5%	14.2%
^a Data on demographics is derived from the American Community Survey ^b These race categories are for individuals who reported only one race ^c Hispanic/Latino is considered an ethnicity and is therefore also be included in the all of the other race categories as applicable ^d Percent of the population age 25 or greater ^e Percent of the population age 16 or greater		

Table 2		
Public Defense Providers of Study Sites		
	Legal Aid	Oldest nationwide public defense provider
Bronx County	Bronx Defenders	Nonprofit public defense provider using a holistic defense model
	18 B (assigned counsel)	Court appointed private attorneys that are appointment primarily when both Legal Aid and Bronx Defenders are conflicted out of a case
Monroe County	Monroe County Public Defender	Local public defenders office
	Monroe County Conflict Defender	Represents clients when there is a conflict with the public defender
	Assigned Counsel Plan	Court appointed attorneys who represent clients when there is a conflict with the

		other two offices
Table 3		
Defendant Demographics		
	Bronx	Monroe
	(N = 100)	(N = 100)
Age mean (sd)	37 years (11)	34 years (11.3)
Age at first arrest	20 years (7.7)	18 years (6.9)
Age at first incarceration	23 years (8.4)	20 years (7)
Race/ethnicity		
Black	42%	60%
Latino	38%	14%
White	5%	17%
Asian	--	--
Other	15%	9%
Gender		
Male	61%	79%
Female	37%	21%
Transgender	2%	--
Had job immediately before arrest		
Yes	30%	38%
Non-English language spoken at home		
Yes	51%	21%
Charge		
Misdemeanor	52%	38%
Felony	48%	62%
Note: Percentages may not add to 100 because of rounding or missing data.		

Table 4		
Lawyer Demographics		
	Bronx	Monroe
	(N= 71)	(N = 33)
Age mean (sd)	38.6 years (10)	40.8 (10.6)
Race/ethnicity		
Black	16%	--
Latino	10%	3%
White	63%	91%
Asian	7%	--
Other	1%	3%
Gender		
Male	46%	48%
Female	52%	48%
Transgender	--	--
Years practicing mean (sd)	11 years (11)	13 years (10)
Note: Percentages may not add to 100 because of rounding or missing data.		

Table 5				
Select Interview Topics				
	Defendant		Attorney	
	Baseline	Follow-up	Baseline	Follow-up
Defendant mental health	X		X	
Defendant substance use	X			
Defendant psychiatric treatment needs	X		X	
Defendant challenges upon release	X		X	
Defendant criminal justice history	X			
Perception of attorney-client relationship	X	X	X	X
Preference for client autonomy	X	X		X
Connecting defendant to non-legal services	X	X		X
Available resources and trainings			X	
Mental health and case strategy		X	X	X
Was mental health raised in court		X		X
Perceived coercion		X		
Preferred case outcomes	X	X		
Perception of how attorney handled the case	X	X		X
Satisfaction with case outcomes			X	X

Table 6	
Self-Reported Behavioral Health Needs	
Age first diagnosed with mental health disorder	19.7 years (10.8)
Percent of sample reporting mental health diagnosis ^a	
Bipolar	42%
Depressive disorder	41%
Anxiety or panic disorder	25%
Schizophrenia	18%
PTSD	10%
ADHD	5%
Unknown disorder	4%
Disorders endorsed by $\leq 4\%$ of participants ^b	
Texas Christian University Drug Screen ≥ 3	63%
Problematic substance use in past year	71%
Most commonly reported problematic substances	
Alcohol	24%
Cocaine	20%
Heroin	15%
Other	9%
^a This category sums to greater than 100% because defendants could provide more than one response.	
^b This includes disorder such as sleep disorders, personality disorders, learning disorders, and more	

Table 7	
Self-Reported History of Behavioral Health Treatment	
Lifetime medical provider gave mental health diagnosis	82%
Lifetime counseling for mental health	75%
Lifetime prescribed psychiatric medication	77%
Of those ever prescribed a psychiatric medication:	
Taking prescribed psychiatric medication days before arrest	46%
Taking psychiatric medication in jail at baseline	37%
Lifetime medical provider gave substance use disorder diagnosis	48%
Ever been to drug or alcohol treatment (including self-help)	72%

Table 8			
How is Mental Health Related to Criminal Justice Involvement			
Theme	Percent of Responses	Direct Pathway	Indirect Pathway
Difficulty controlling emotions	31%	X	X
Difficulty controlling behavior	26%	X	
Increased substance use	23%	X	X
Increased police contact	20%	X	X
Not taking psychiatric medication	16%		X
Relationship stress	8%		X
Other	8%		X
Trauma	5%		X
Hearing voices	5%	X	X
Adverse medication side-effects	2%		X
Note: Individual responses may encompass multiple themes which is why these answers do not add up to 100%			
Note: Please see following figure for graphical representation of direct and indirect pathways.			

Figure 1. Pathways Defendants Identified Between Mental Health and Justice Involvement

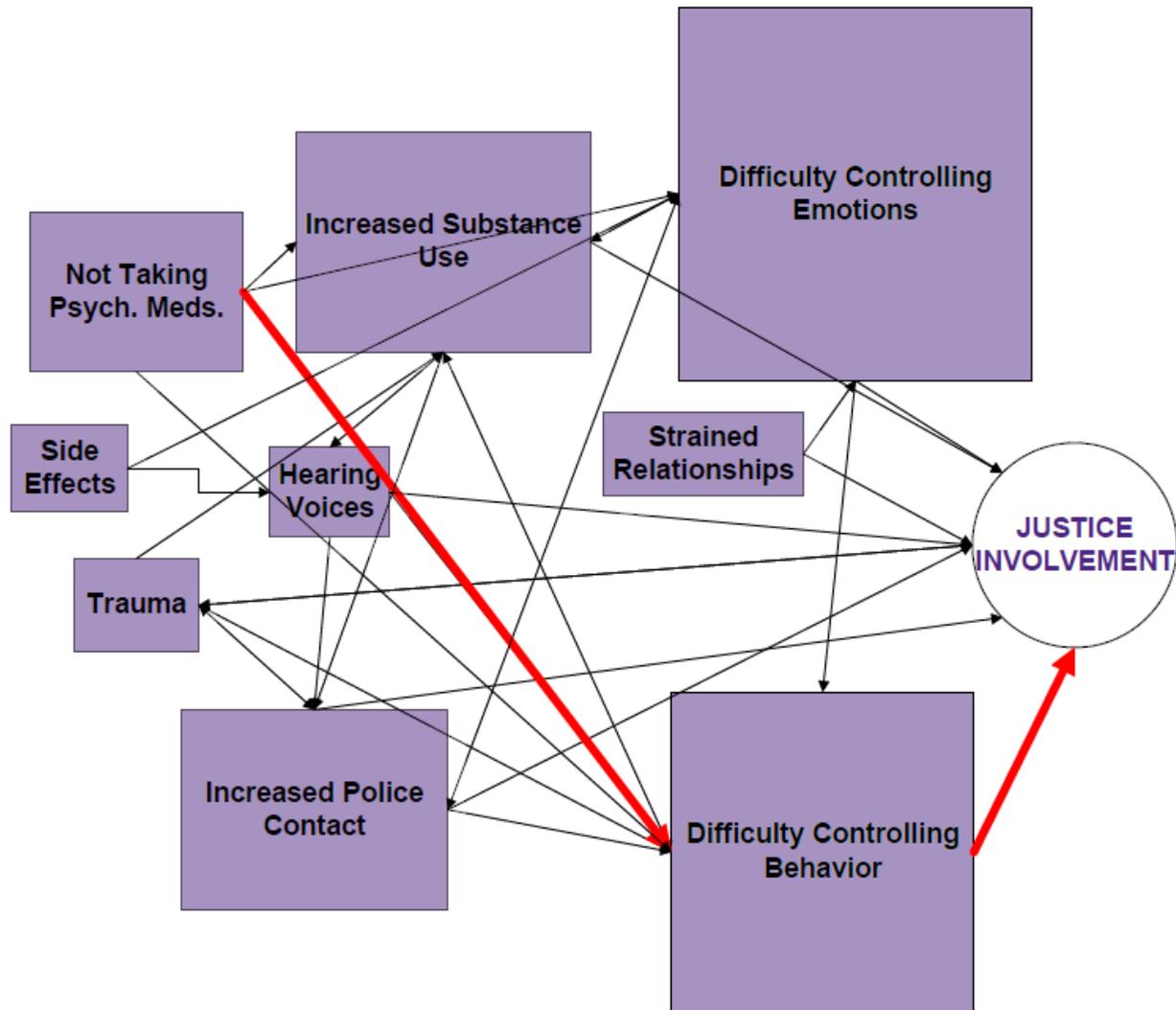


Figure 1. The size of the boxes corresponds to the number of times that that particular theme was mentioned in defendant responses. The highlighted pathway is an example pathway articulated by defendants. As one participant notes “I start doing things I usually wouldn’t do if I was on medication...like steal...just a lot of things I wouldn’t do if I was on medication, I don’t know how to explain it.”

Table 9			
How is Substance Use Related to Criminal Justice Involvement			
Theme	Percent of Responses	Direct Pathway	Indirect Pathway
On substance when committed other offense	41%	X	
Committed drug offense (e.g. selling illicit substance)	21%	X	
Engaged in illegal activity to support drug use	20%	X	
Increased police contact	10%	X	X
Drove while under the influence of a substance	4%	X	
Trauma	4%		X
self-medicating with substances	3%		
Exacerbated mental health symptoms	2%		X
Note: Individual responses may encompass multiple themes which is why these answers do not add up to 100%			
Note: Please see following figure for graphical representation of direct and indirect pathways.			

Figure 2. Pathways Defendants Identified Between Substance Use and Justice Involvement

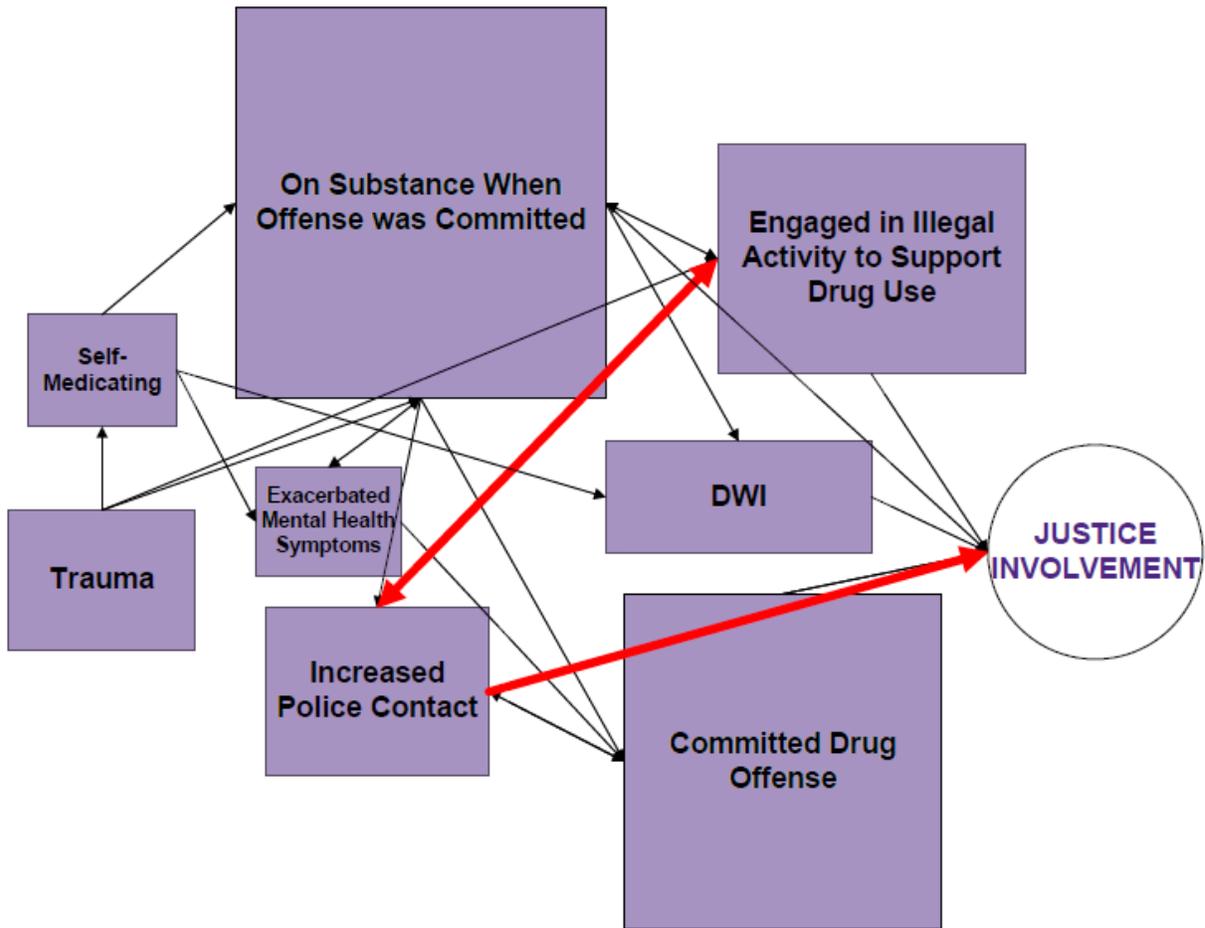


Figure 2. The size of the boxes corresponds to the number of times that that particular theme was mentioned in defendant responses. The highlighted pathway is an example pathway articulated by defendants. As one participant notes: *"Seeking the drugs and doing illegal things to get the money to buy drugs gets me involved with the police."*

Table 10	
What Would Prevent you from being Rearrested?	
Theme	Percent of Responses
Sobriety	25%
Changing friends or partner	18%
Employment	16%
More supportive environment or community	16%
Not engaging in illegal activities	11%
Other	10%
Housing	9%
Maintaining positive family relationships	9%
Controlling anger, emotions, or behavior	9%
Less police contact	7%
Mental health care or psychiatric medication	7%
Education	5%
Keeping Busy	5%
Staying away from toxic or harmful family members	4%

Note: Individual responses may encompass multiple themes which is why these answers do not add up to 100%

Figure 3. Defendant and defender report of the top three most reentry challenges for defendant.

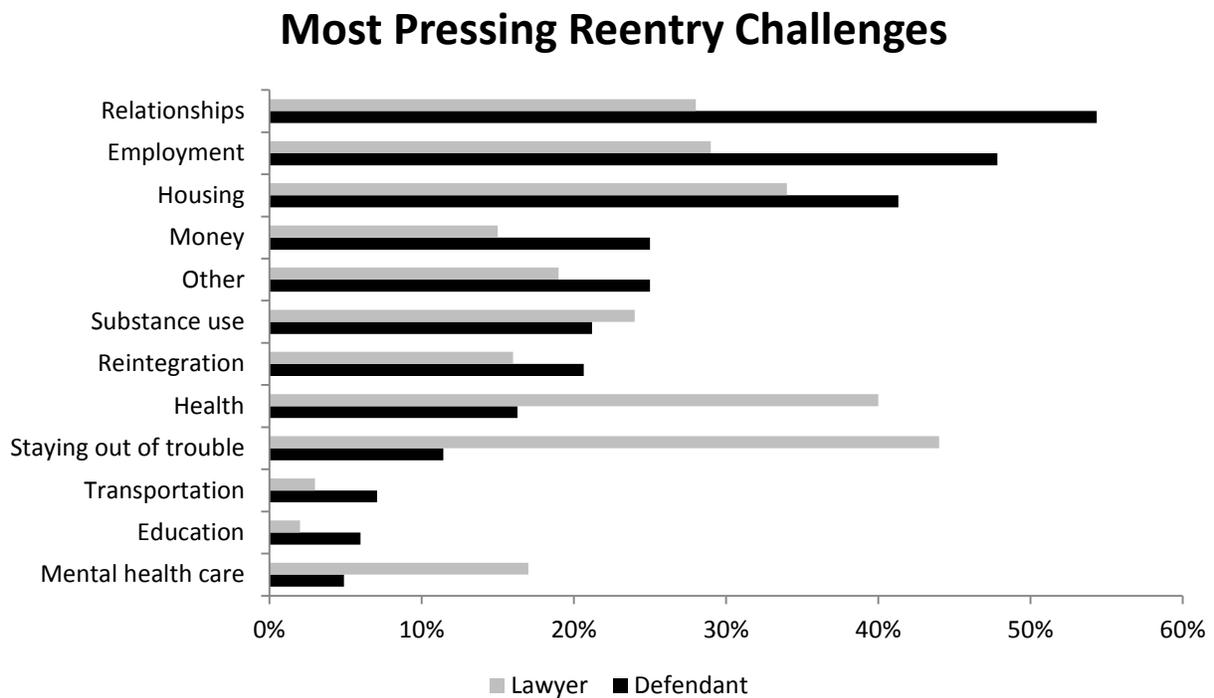


Table 11			
Procedural Justice and Satisfaction with Case Outcome			
	Sample Mean	Dissatisfied with case outcome	Satisfied with case outcome
Understood charges	0.73	.65 (.48)	.81 (.39)
Understood role of lawyer	0.68	.5 (.51)	.80 (.40)**
Understood role of others in court	0.67	.55 (.50)	.74 (.44)*
Understood role of court appearances	0.69	.56 (.50)	.77 (.42)*
Procedural Justice Scale	4.8	3.2 (1.4)	5.7 (1.4)***
Satisfaction with lawyer strategy	3.5	2.9 (.9)	3.8 (.7)***
*p<.05; **p<.01; ***p<.001			

Table 12			
Procedural Justice and Relationship with lawyer			
	Sample mean	My lawyer and I worked together' (never/rarely)	My lawyer and I worked together' (sometimes/most of the time/always)
Understood Charge against you	0.73	.63 (.49)	.79 (.41)
Understood role of lawyer	0.68	.5 (.51)	.79 (.41)**
Understood role of others in court	0.68	.54 (.5)	.76 (.43)*
Understood purpose of court hearings	0.68	.5 (.5)	.78 (.5)**
Procedural justice scale	4.8	3.1 (1.4)	5.8 (1.2)***
Satisfaction with lawyer strategy	3.5	2.8 (.9)	3.8 (.7)***
*p<.05; **p<.01; ***p<.001			

Table 13			
Procedural Justice and Functional Impact of Mental Health			
	Sample mean	Low MH impact on daily functioning	High MH impact on daily functioning
Understood Charge against you	0.73	0.72 (.45)	0.73 (.45)
Understood role of lawyer	0.67	0.68 (.47)	0.65 (.48)
Understood role of others in court	0.68	0.66 (.48)	0.69 (.47)
Understood purpose of court hearings	0.69	0.72 (.45)	0.65 (.48)
Procedural justice scale	4.8	5 (1.8)	4.5 (1.8)
Satisfaction with lawyer strategy	3.5	3.6 (.79)	3.4 (1)

Table 14				
Planned Scholarly Products				
Topic	Manuscript Description	Journal	Journal Description	Status
Defendant perspective	This paper utilized primarily qualitative data to explore how defendants develop a trusting or non-trusting relationship with their defender.	Invited feature article for The Champion	The journal of the National Association of Criminal Defense Lawyers	Published
Lawyer Strategy	This article described how public defenders' strategy is affected by having a client with a mental health disorder, particularly lawyer's decision making about a range of issues such as when to bring up a client's mental health in court or when to seek a treatment-based ATI.	Accepted to be part of a special issue of the Ohio State Criminal Journal of Law	Law review journal	Published
Defendant Satisfaction	In this paper, we use a qualitative and quantitative data to explore how defendants articulate their satisfaction with their attorneys, satisfaction with their case outcome, and ways they think they could have been better supported throughout their case.	Journal of Psychiatry and Law	Peer review social science journal	Submitted
Defendant Pathways	We examine how participants describe the connection between defendant behavioral health and justice involvement.	TBD	Peer review social science journal	Planned
Procedural Justice	This paper will describe defendant's perceptions of procedural justice, the individual and	TBD	Peer review social science journal	Planned

	case factors predicting procedural justice, and how procedural justice is associated with case outcomes.			
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