



Representing the Mentally Ill Offender

**An Evaluation
of Advocacy Alternatives**

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**Texas Task Force on Indigent Defense
Office of Court Administration**

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EXECUTIVE SUMMARY

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CHAPTER 1: INTRODUCTION

In the fall of 2008, the Task Force on Indigent Defense (Task Force) initiated a two-year evaluation of the two most common models through which specialized attorneys advocate for mentally ill defendants in Texas: mental health public defenders (MHPDs) and mental health courts (MH courts). Both of these criminal justice interventions create means through which a contact with the justice system can be used to address therapeutic needs of people with mental illness. The more months of treatment mentally ill people receive during the six months following an initial offense, the less likely they are to recidivate (Figure 2). Both MH courts and MHPDs also offer new opportunities for defense counsel to take a leading role in advocating for clients' access to treatment-oriented dispositions. This document describes the study objectives, methods, and findings, and draws conclusions about emerging roles for the defense community in improving legal and therapeutic outcomes for people with mental illness.

CHAPTER 2: RESEARCH METHODOLOGY

Because of their experience as early adopters of mental health criminal justice programs, three Texas counties – Dallas, Tarrant and Travis – were selected as study sites. The programs evaluated included:

- Dallas County
 - Misdemeanor/Felony Mental Health Public Defender's Office (MHPD)
 - Misdemeanor Mental Health Court: Misdemeanor Mental Health Jail Diversion Program (MHJDP)
 - Felony Probation Mental Health Court: Achieving True Liberty and Success (ATLAS)
- Tarrant County
 - Misdemeanor/Low-Level Felony Mental Health Court: Tarrant County Mental Health Court
- Travis County
 - Misdemeanor Mental Health Public Defender
 - Misdemeanor Mental Health Docket

The research included process and outcome components. Descriptive data was collected through site visits and a survey of local private defense counsel. Quantitative jail and court records were used to assess measurable impacts of the evaluated programs.

The study culminated in strategic planning events involving six Texas counties considering new case processing approaches for defendants with mental illness. The strategic planning sessions helped encourage the translation of research models being studied into practice.

CHAPTER 3: OVERVIEW OF MAJOR CRIMINAL JUSTICE MENTAL HEALTH INITIATIVES

Each of the counties selected for the study has a different array of criminal justice programs and services for assisting individuals with mental illness.

Dallas County Initiatives

Dallas County is the largest study site and has the broadest and most comprehensive array of diversion-oriented programming both in and outside of the criminal justice system.

- Jail-Based Services
- NorthSTAR Behavioral Health Managed Care System
- Mental Health Jail Diversion Coordination
- Jail Diversion Mental Health Court Programs
- District Attorney's Office
- Public Defenders' Mental Health Division
- Competency Team
- Community Supervision and Corrections Department (i.e., Probation Dept.)

Tarrant County Initiatives

In Tarrant County, the MH court has created a forum to connect people with services available through the local mental health authority, MHMR of Tarrant County, as well as other public and private programs.

- Jail-Based Services
- Mental Health Court Jail Diversion Program
- Tarrant County Assertive Treatment Program (TCAT)
- Wellness Recovery Action Plan (WRAP)
- Outpatient Competency Restoration Program

Travis County Initiatives

Travis County's misdemeanor mental health public defender has raised the overall visibility of the mentally ill criminal population in that community and created new channels to link people with the mental health services they need.

- Jail-Based Services
- Mental Health Docket
- District Attorney's Office
- Mental Health Public Defender Unit
- Outpatient Competency Restoration Program

CHAPTER 4: PROCEDURES FOR IDENTIFYING INDIVIDUALS WITH MENTAL ILLNESS

All three counties have similar strategies for identifying individuals with mental illness. Intervention begins as soon as an arrestee is booked into jail. Cases are screened through a local assessment as well as through a match against statewide mental health records. The information is used to begin treatment in jail and to notify decision-makers to identify potential interventions appropriate to the criminal and therapeutic needs of the case. An initial objective is to identify individuals eligible for specialized legal defender or a mental health diversion programs before they bond out.

CHAPTER 5: PROGRAM PARTICIPANT CHARACTERISTICS

Data was available to describe the characteristics of program participants in Tarrant and Dallas Counties. Both are large jurisdictions processing between 36,000 and 53,000 combined felony and misdemeanor

cases respectively each year. Only a small percentage of criminal defendants with a mental health history have access to special programs like the mental health public defender (<5%) or a mental health court (<1%). The types of people served in mental health courts and by mental health public defenders differ in terms of mental health diagnosis, treatment history, criminal history, and current offense characteristics

Mental Health Diagnosis (Figure 3)

- The mental health courts in both Tarrant and Dallas County focus the greatest attention on people with bipolar disorder.
- The MHPD directs most of its effort toward the schizophrenic client population.

Mental Health Treatment History (Figure 4)

- Participants in the Tarrant County mental health court were by far the most likely to have been actively receiving mental health services during the year prior to arrest.
- The Dallas MHPD's pre-arrest treatment rates were also higher than for the general mental health case pool because the office represents people who re-offend after recently completing treatment in a mental health diversion court.
- The Dallas County mental health court enrolls participants that have about the same treatment history as the general mentally ill defendant population.

Criminal History (Figure 5)

- People served in the Tarrant and Dallas County MH courts (0.6 and 0.7 prior offenses respectively) have average rates of offending half that of otherwise identical people with mental illness (1.5 prior offenses).
- The mental health public defender, by contrast serves the highest-risk defendants with an average 2.3 prior offenses.

Current Offense Characteristics (Figure 6 and Figure 7)

- All cases referred to the Dallas County mental health court are non-violent misdemeanors.
- Most Tarrant County MH court cases are misdemeanors (56%). They also accept non-violent (35%) or violent felony cases (9%) such as assault of a family member if the offense was related to the mental illness.
- The mental health public defender represents all levels of cases. The office takes a disproportionately high number of violent felony cases (17%) compared to the general pool of mentally ill defendants (10%).

In general, mental health courts enroll offenders without a lengthy criminal history, while the MHPD takes cases involving violent felons with multiple prior offenses. Together they offer a continuum of resources capable of impacting the full range of people with mental illness with justice-system contact.

CHAPTER 6: MENTAL HEALTH COURT OPERATIONS

Three mental health courts were visited as part of this study. These include courts targeting misdemeanors and low-level felony offenders in Tarrant County, misdemeanors only in Dallas County, and felony probationers in Dallas County for whom a revocation motion has been filed.

Participant Selection

Participant selection and intake procedures are similar for all of the courts studied:

- Referral
 - Individuals referred to pretrial mental health courts are usually identified through mental health screenings conducted in the jail or from a match with the state mental health database during book-in. ATLAS felony probation court participants are usually referred by probation officers.
- Intake Decision
 - Defendants who want to enroll in the Tarrant County mental health court are required to make an appointment for an interview with the court coordinator before they will be considered.
 - In Dallas County, case managers on the court team visit defendants in jail within a day of book-in to determine their interest and eligibility for the MH court.
 - The ATLAS MH court team staffs potential cases with the probation department's Comprehensive Assessment and Treatment Services (CATS) assessor. If the defendant is found to be eligible, they are invited for an interview.
- Screening Criteria
 - Tarrant County mental health court enrollees must be without severe mental health symptoms or strong substance addiction. Evidence that defendants can meet the conditions of treatment is required. Nearly half of all participants (46%) receive treatment outside the public mental health system.
 - Dallas County's MH court and ATLAS programs accept defendants with severe and persistent mental illness as well as those with substance addiction requiring immediate treatment. The misdemeanor court accepts non-violent misdemeanor defendants, and ATLAS is open to felony probationers only. The mental health court teams must make a positive judgment that the individual can potentially succeed in the program.
 - All three courts exclude defendants who have committed certain offenses such as driving while intoxicated, family violence, weapons offenses, or deviant sexual offenses.
- Prosecutorial Review
 - All of the mental health courts evaluated require a review of cases by the prosecutor to confirm that the crime is related to a mental health issue, that the defendant is not a significant threat to society, and that the victim has been consulted and approved the option of diversion.
- Defendant Advisement and Consent
 - In Tarrant County, legal counsel regarding program enrollment is provided by the original referring attorney rather than the MH court team attorney.
 - Advisement to individuals eligible for the Dallas County misdemeanor and felony probation mental health courts is provided by the MHPD's office. This same counsel is sustained during mental health court participation.

Mental Health Court Operation

Mental health courts are similar in their history and operations:

- **Start-Up Year**
 - The three mental health courts evaluated are among the oldest and most mature such courts in the state. Both the Tarrant County and Dallas pretrial courts were established in 2003. The ATLAS felony probation court was established one year later in 2004.
- **Funding Sources**
 - The mental health courts rely primarily on state and federal grants. Funding sources include the U.S. Department of Justice, the Office of the Governor’s Criminal Justice Division, and the Texas Commission on Offenders with Medical and Mental Impairments.
- **Mental Health Court Team Members**
 - The following positions are represented on the Dallas and Tarrant County mental health courts:
 - Judge
 - Court coordinator (Tarrant County only)
 - Dedicated defense attorney
 - Dedicated prosecutor
 - Probation officer (to track clients and maintain related records)
 - Treatment providers or case managers
- **Mental Health Court Procedures**
 - Upon enrollment, mental health court participants are immediately connected to mental health care and other services which vary according to individual needs. Enrollees then report to court on a regular schedule to discuss their progress with the judge.
 - Before each court is held, the court team meets to inform the judge of each participant’s progress and discuss whether there may be a need for rewards or sanctions based on compliance with the program.
 - As the participant shows improvement, the number of court appearances and the amount of contact with service providers decrease. Once equipped to independently handle the mental illness at a “maintenance” level of services, the participant graduates from the program.
- **Caseload Size and Length of Participation**
 - The Tarrant County mental health court carries an active caseload of between 35 and 45 individuals. They remain in the program from 9 to 24 months, and average participation is about 12 months.
 - The Dallas County misdemeanor mental health court maintains 40 to 60 active participants. The court supervises participants for 6 months.
 - The felony probation mental health court in Dallas County has a capacity of 50 active participants, and the length of enrollment is one year.

- Program Completion
 - Successful terminations lead to charges being dismissed (or in the ATLAS court, regular probation being reinstated), while unsuccessful discharges result in the charges prosecuted (or in the ATLAS court, probation being revoked).

Travis County Mental Health Docket

Though not a central focus of the evaluation, the research team had the opportunity to observe a docket for misdemeanor mental health cases in Travis County. The docket is of interest in part because of the potential usefulness of this approach as a “first step” for jurisdictions considering programs targeting defendants with mental illness. A mental health docket does not give participants a long-term relationship involving close therapeutic oversight like a full mental health court. It does, however, capture some of the most basic benefits as the judge, prosecutor, defense counsel and other members of the team work together to identify cases appropriate for a therapeutic disposition.

CHAPTER 7: REPLICABLE ELEMENTS OF MENTAL HEALTH COURTS

In evaluating the three counties’ mental health diversion models, several replicable themes emerged. The mental health courts in Tarrant and Dallas Counties as well as the mental health docket in Travis County all have components of these elements.

- Strong judicial leadership
- Designated mental health defense attorneys
- Designated mental health prosecutors
- An individual responsible for maintaining client records (i.e., mental health coordinator or court probation officer)
- Structures and processes that promote system-wide collaboration and communication
- Prompt identification of individuals with mental illness
- Clear clinical and criminal justice eligibility criteria
- Sufficient treatment capacity

CHAPTER 8: MENTAL HEALTH COURT EVALUATION RESULTS

It was hypothesized that mental health courts would exert a positive impact on four major outcomes including pre-disposition jail days, mental health treatment engagement, case disposition and recidivism. Results are based on all individuals who enrolled in the program including both successful and unsuccessful terminations. This is the most objective measurement approach as it reflects outcomes for everyone intended to benefit from the program – not just those who actually achieved positive results.

Pre-Disposition Jail Days

Hypothesis: Because mental health courts seek to get clients out of jail and into treatment as quickly as possible, it was expected that participants would be detained fewer days prior to release on bond.

Finding: No statistically significant differences were observed (Figure 8 and Figure 9) in pre-trial jail days. Participants in each of the mental health courts evaluated are released from detention at approximately the same time as otherwise identical defendants who are not in the program.

Mental Health Treatment Engagement

Hypothesis: Mental health courts link participants to mental health care and other services, then supervise their involvement in treatment for the duration of their enrollment. It was therefore expected that participants would show long-term benefits of increased treatment engagement after leaving the program.

Finding: Significant increases in long-term treatment engagement were measured for all diagnoses (Figure 10 and Figure 11). Mental health court participants in both Dallas and Tarrant Counties are more likely to receive mental health services during the six months after their case is disposed.

Case Disposition

Hypothesis: Because MH courts focus is on treating the symptoms of mental illness and avoiding criminal prosecution, it was expected participants would be less likely to receive a guilty verdict.

Finding: Large statistically significant reductions in the chance of a guilty verdict were observed for participants in both Dallas and Tarrant County mental health courts (Figure 12 and Figure 13).

Recidivism

Hypothesis: By helping criminally-involved individuals become engaged in mental health treatment, MH courts were expected to reduce the probability of repeat offending.

Finding: The Tarrant County mental health court achieved statistically significant reductions in recidivism up to 18 months after case disposition (Figure 14 and Figure 15). The Dallas County misdemeanor mental health court achieved significant reductions in recidivism for people with schizophrenia as much as six months after program completion. By eighteen months these gains were diminished (Figure 16 and Figure 17).

CHAPTER 9: MENTAL HEALTH PUBLIC DEFENDER'S OFFICE OPERATIONS

Unlike most private practice defense attorneys, MHPDs specialize in advocating for the mentally ill and have an institutional infrastructure designed to support that objective. MHPD's observed at the two study sites advance the interests of their clients in a number of ways including the following:

- MHPD case workers help clients connect with community services for treatment, employment, education, health care, and housing. This service not only benefits clients therapeutically, but also improves the probability of a positive case outcome in court.
- Because social workers are available on the defense team, MH public defenders can assure the court they will supervise clients' compliance with court-ordered treatment.
- MHPDs are familiar with local treatment alternatives for their clients and are prepared to present them in court for consideration in determining the disposition.

- MH public defenders make sure appropriate cases are brought to the attention of mental health prosecutors who are generally more willing to consider the role of mental impairment in the criminal case.
- In Dallas County, the MH public defender commonly advocates to have clients accepted into the mental health court where there is a high likelihood the case will be dismissed.

MHPD's also elevate the overall capacity of the criminal justice system to respond to the needs of people with mental illness. The office is widely viewed as a positive partner working with the jail, the courts, the probation department and other partners to find solutions to the special demands people with mental illness place on the criminal justice system.

- Judges, defense attorneys, and other stakeholders view the MHPD as a resource when they encounter individuals they believe need specialized expertise to help them face their charges.
- Dallas County MH public defenders provide legal representation to participants in three problem-solving courts as a member of the court team. The Travis County MHPD is a member of the mental health docket team and provides specialized counsel to people in that court.
- The Travis County MH public defender's office offers regular training benefitting the entire community. Events are offered every six weeks for judges, prosecutors, law enforcement, the defense bar, jail personnel, advocates, and other stakeholders including participants from surrounding counties.
- The Travis County MHPD supports 25 private practice attorneys currently on a special mental health rotation wheel.
 - These private attorneys are qualified with a minimum of 3 hours of continuing legal education (CLE) in mental health case handling each year above the 15-hour State Bar CLE requirement. The training organized by the MH public defender helps these attorneys both maintain their qualifying credentials and improve their defense skills.
 - The services of the caseworker and social workers are also available upon request to attorneys approved for the mental health rotation wheel. The use of the MHPD caseworker and social workers varies across MH wheel attorneys and many reserve requests for this assistance for the most serious cases.

Participant Selection

The Dallas and Travis County MH public defenders acquire cases in similar ways.

- Referral
 - Individuals referred to mental health public defenders are usually identified through mental health screenings conducted in the jail or from a match with the state mental health database during book-in.
 - Court coordinators responsible for assigning indigent counsel assign appropriate cases to the MHPD within 24 hours of arrest.

- Screening Criteria
 - Cases qualifying for mental health public defenders must be indigent, have a qualifying mental health diagnosis, and have qualifying offense characteristics .
 - Travis County MHPD represents a maximum of 400 violent and non-violent misdemeanor defendants each year.
 - Dallas County MHPD represents all levels of offenses.
 - MH public defenders intentionally accept the most challenging cases. Routine low-complexity cases are referred to the regular public defender in Dallas County, or to trained rotation wheel attorneys in Travis County.

Mental Health Public Defender Operations

Legal advocacy, case management, and treatment engagement are core features of the MH public defenders studied.

- Start-Up Year
 - The Dallas County MH public defender was established in 2006 and the Travis County office followed one year later in 2007.
- Funding Sources
 - Both offices received start-up assistance through a grant from the Task Force on Indigent Defense. As the annual allocation declines over a five-year grant period, operational expenses for both the Dallas and Travis County offices are being assumed locally.
- Mental Health Public Defender Staffing
 - The Travis County MHPD’s office is currently staffed by two attorneys, two social workers, two case workers, an administrative assistant, and an office specialist.
 - The Dallas County public defender employs one MHPD and two caseworkers to represent cases assigned to that office. A separate position provides counsel to defendants in the misdemeanor jail diversion mental health court, the ATLAS felony probation court, and the dual diagnosis re-entry court. Two additional positions have recently been added for a public defender specializing in competency cases and another focusing on civil commitment cases.
- Mental Health Public Defender Procedures
 - MHPDs represent the interests of their clients in a traditional adversarial court context. They provide specialized knowledge of the law related to mental illness and a high level of familiarity with the local treatment system.
 - Case management services are provided to all individuals represented by the MHPD. Social workers on the defense team help stabilize the client’s condition during the pre-trial phase and help him or her comply with any treatment conditions set by the court.
 - In Travis County, the MHPD’s social worker services are also available to clients of attorneys on the mental health rotation wheel upon request.

- Available Treatment Resources
 - The Dallas County MHPD links clients to a comprehensive array of local treatment options provided through the NorthSTAR Medicaid managed care system.
 - Travis County does not have treatment specifically available for pre-trial defendants. Rather, MHPD social workers help their clients seek community-based treatment and other services such as employment, health care, housing, and education.

- Long-term Monitoring
 - In Dallas County, MHPD social workers continue to monitor their clients to ensure they continue to receive mental health treatment for a period of 90 to 180 days after their case has been resolved in court.

CHAPTER 10: SURVEY OF DEFENSE COUNSEL REPRESENTING MENTALLY ILL DEFENDANTS

In order to gain some insights into ways mental health public defenders differ from regular public defenders or from private assigned counsel, a survey of attorneys was conducted in each of the three counties studied. This type of comparison is important because the overwhelming majority of defendants with mental illness are represented by rotation wheel attorneys who generally lack specialized expertise, and may be less aware of strategies for integrating the illness into the defense.

The survey was administered via email. Respondents were identified from the approved list of indigent defense attorneys in Dallas, Travis, and Tarrant Counties, as well as from the membership of county chapters of the Criminal Defense Lawyer’s Association. Overall, 11% of those surveyed responded.

The survey finds distinct differences in knowledge and attitudes between mental health public defenders, regular public defenders, and rotation wheel attorneys. Specifically MHPDs are:

- more likely to view helping people access mental health treatment as a legitimate aspect of the defense function;
- more likely to utilize social workers in the delivery of defense services;
- more likely to be knowledgeable about local programs and services for clients with mental illness;
- more likely to have received advanced training on mental illness in the past two years; and
- more likely to find it easy to access clients’ mental health records, and to be able to acquire them directly from the relevant agencies.

In general, findings depict a difference in professional methods, resources, and philosophy between mental health public defenders and those without a mental health specialization. They further suggest that MH public defenders evaluated fill an important void in the local justice system by providing skilled representation for mentally ill individuals who would not otherwise have their illness considered in the defense.

CHAPTER 11: MENTAL HEALTH PUBLIC DEFENDER EVALUATION RESULTS

Just as mental health courts were expected to benefit defendants with mental illness, it was hypothesized at the outset of this study that mental health public defenders would yield many of the same advantages while serving more difficult cases involving defendants with more prior offenses and more serious current charges (see Chapter 5). Data was available for Dallas County only.

Pre-Disposition Jail Days

Hypothesis: Because mental health public defenders begin working toward the release of eligible defendants within 24 hours of appointment, and because MHPDs possess specialized knowledge to advocate more effectively for the release of mentally ill individuals, it was expected that MHPD clients would experience fewer pre-trial jail days.

Finding: Contrary to the hypothesis, individuals represented by the MH public defender are detained significantly longer than similar people with other types of counsel (Figure 31). Dallas County MHPD staff explain that it is common for a case involving a mentally ill defendant to be randomly assigned to an attorney on the rotation wheel who either does not recognize the mental illness or lacks the ability to properly respond. The data confirms that 42% of all MH public defender cases were originally assigned to a different attorney – nearly twice as many as mentally ill defendants with assigned private counsel (Figure 32). As a result, the person will remain in jail for several weeks or months before the original assigned attorney finally turns to the MHPD for help.

Mental Health Treatment Engagement

Hypothesis: The MHPD social worker helps people access mental health treatment needed to prepare for court, then helps them comply with any post-disposition treatment conditions set by the judge. It was expected that this support would increase defendants' long-term participation in treatment services.

Finding: People represented by the MH public defender have significantly more mental health treatment contact than their otherwise identical peers during the six months after the case is disposed (Figure 33).

Case Disposition

Hypothesis: MHPDs have extensive skills and knowledge required to convince an adversarial court that clients' mental illness should be considered in determining the case disposition. It was therefore hypothesized that indigent defendants assigned a mental health public defender would be less likely to receive a guilty verdict, more likely to receive probation, and less likely to receive the worst possible outcome, conviction with jail time. The three relationships modeled are illustrated in Figure 34.

Finding: Chance of a Guilty Verdict. Statistically identical people have about a 93% to 94% chance of being convicted of their charges either with or without a mental illness (Figure 35). However, MHPD clients are 3 to 5 percentage points less likely to be found guilty and face punishment compared to otherwise identical peers.

Finding: Chance of a Guilty Verdict with Probation. Among clients who are found guilty, the chance of probation instead of jail time for people represented by the MHPD is approximately twice that of similar people with other forms of counsel (Figure 36). This is a particularly meaningful outcome given that detention can worsen the condition of people with mental impairments. Under community supervision

these individuals can be held accountable for their criminal behavior while avoiding the stresses of confinement and reducing the risk of decompensation.

Finding: Chance of a Guilty Verdict with No Probation. The worst possible outcome for any criminal defendant is that they are both found guilty and receive a sentence involving jail time. Figure 37 shows MHPD clients with schizophrenia are 17% less likely to face a jail sentence, while those with other diagnoses are 36% less likely compared to people with other forms of counsel.

Recidivism

Hypothesis: By helping defendants to become engaged in mental health treatment, mental health public defenders were expected to reduce the probability of repeat offending.

Finding: Six months after case disposition, people represented by the mental health public defender experience significantly lower rates of recidivism than otherwise identical people who are not in the program (Figure 38). Recidivism continues to be suppressed up to 18 months after case disposition for people with schizophrenia (Figure 39).

Taken together these findings are a strong endorsement for the MHPD model. While mental health courts create a special venue where case dismissal is virtually certain if the defendant can comply with treatment, mental health public defenders are achieving dispositions that consider the illness for more challenging cases within the mainstream court system.

CHAPTER 12: CONCLUSIONS REGARDING ADVOCACY ALTERNATIVES FOR MENTALLY ILL DEFENDANTS

Mental health courts and mental health public defenders both seek to take advantage of criminal justice system contact as an opportunity to facilitate mentally impaired individuals' access to treatment and reduce repeat offending. These programs use different methods designed for different types of people. Ultimately, however, they offer mutually complementary ways to improve outcomes for individual defendants and the criminal justice system as a whole. This study has sought to document the impacts of MH courts and MHPDs. The following paragraphs review the major conclusions.

Finding 1: Both mental health courts and mental health public defenders are increasing access to mental health treatment and increasing non-criminal case outcomes for defendants with mental illness.

Datasets providing quantitative mental health and criminal case records were available for the Tarrant County mental health court, the Dallas County Misdemeanor Jail Diversion Program, and the Dallas County mental health public defender's office. Using these records, it was possible to measure the impacts of each of these programs on four categories of outcomes: pre-trial jail days, engagement in the mental health system during the six-month period following case disposition, chance of a guilty verdict, and chance of recidivism.

In general, MH courts and MHPDs were found to generate statistically significant improvements in 3 of the 4 measures assessed (see Table 1). Results offer evidence that both mental health courts and MH public defenders are helping to increase access to treatment and reduce criminal outcomes for people with mental illness.

Finding 2: Mental health public defenders and mental health courts are contributing to a change of culture regarding the criminal case processing of individuals with mental illness.

Mental health public defenders and mental health courts are cultivating separate and complementary centers of awareness related to defendants with mental illness in local criminal justice systems. As these programs create a means to address the mental health aspects of criminality, they are also creating pressures, incentives, and assistance for other components of the justice system to respond in kind. Prosecutors, the private defense bar, community treatment providers, and judges are showing increased interest in developing enhanced capacity to respond to criminal defendants with mental health needs.

Finding 3: Mental health public defenders and mental health courts benefit different populations of defendants with mental illness.

Mental health public defenders and MH courts vary considerably in the criminal risk attributes of their client populations. The MH courts generally choose first-time offenders without a lengthy criminal history, while the MHPD takes on more challenging cases involving violent misdemeanors or felonies and multiple prior offenses. Together they offer a continuum of resources capable of impacting the full range of mental health cases.

Finding 4: Where MH courts are highly selective, some positive outcomes could be explained by selection bias.

Because mental health courts choose which individuals can participate, some study findings may be impacted by selection bias. In a mental health court, participants first volunteer, and then are subject to approval by team members including prosecutors, treatment providers, and the judge. People who clear these hurdles may have important but unmeasurable attributes that make them more likely to succeed than their peers who did not meet intake standards. The more weight unmeasured personal traits carry in program selection, the more likely it is that people who enter MH courts will possess internal strengths needed to achieve positive outcomes irrespective of the court's intervention. Selection bias is less of a concern for the mental health public defender because the office accepts all referred cases without a screening process aimed at choosing cases most likely to succeed.

Finding 5: The mental health public defender model is more compatible with the defense attorney's ethical obligation to represent the interests of their clients.

The role of defense counsel is significantly different in a collegial problem-solving court versus in a traditional adversarial court. As a member of the MH court team, defense attorneys participate in determining rewards or sanctions based on clients' compliance success. Ultimately, these sanctions can potentially involve a decision whether to terminate the defendant and revert to full prosecution of the criminal charges. At this point, defense counsel may experience conflict between their dual role as a member of the court team and as a defense attorney with ethical obligations to zealously defend their clients. This type of dilemma is less likely to emerge when the defender is in a traditional adversarial role. In that scenario, potentially harmful information about the defendant's personal successes and challenges remains protected by attorney-client privilege.

Finding 6: Mental health public defenders offer an institutionalized base of expertise capable of supporting mental health courts and the overall criminal justice system.

Because mental health courts are largely founded on the efforts of individual judicial leaders, they may be vulnerable to change or dissolution as a result of turnover. A mental health public defender's office can offer a complementary and more permanent institutional platform to support the needs of defendants, MH courts, traditional courts, private defense attorneys, and a broad array of other stakeholders who encounter people with mental illness in the jurisdiction.

Conclusion

In mental health courts, defenders represent the interests of their client in coordination with other members of the problem-solving court team. In cases assigned to MHPDs outside of the problem-solving courts, they promote therapeutic dispositions in a traditional adversarial court context. Where MH public defenders and mental health courts are both available, they can be complementary and mutually supportive. In the counties studied, these programs are raising awareness and spearheading creative approaches regarding new possibilities for achieving the dual objectives of treatment and accountability.

**CHAPTER 1:
INTRODUCTION**

CHAPTER 1: INTRODUCTION

In 2001, the Fair Defense Act (FDA) set new standards for the provision of indigent defense in Texas. Under that legislation, the Task Force on Indigent Defense (Task Force)¹ was established as the entity charged with setting policies and standards, monitoring compliance, and administering grants to counties. In FY 2009, the Task Force awarded more than \$28 million to counties for indigent defense system improvements.

In recent years, the Task Force has prioritized funding to strengthen legal defense systems for people with mental illness. In addition to enhancing two of the state's longstanding public defender offices with specialized mental health defense programs², the Task Force has also supported two free-standing mental health public defender (MHPD) offices.³ Rural mental health defense services are being piloted in three counties, and the Lubbock County Special Needs Defenders' Office, unique in Texas, provides specially trained private mental health defense counsel through the infrastructure of a non-profit organization.

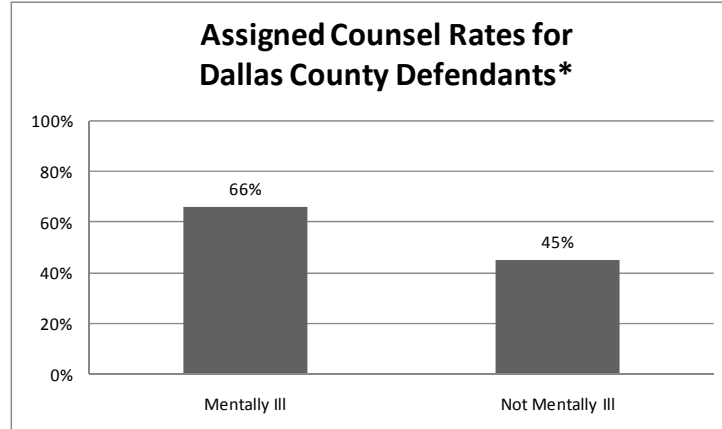
In the fall of 2008, the Task Force began a two-year evaluation of the two most common models through which specialized attorneys advocate for mentally ill defendants in Texas: mental health public defenders and mental health courts. This document describes the study objectives, methods, and findings, and draws conclusions about emerging roles for the defense community in improving legal and therapeutic outcomes for people with mental illness.

Need for the Study

The Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) reports that 30% of Texas prison and state jail inmates are represented in the state mental health database, with about 10% having a "priority population" diagnosis⁴ qualifying for state-funded treatment.⁵ Twenty-five to forty percent of all Americans with mental illness eventually have some form of criminal contact.⁶ The costs of detention are higher for the mentally ill, they are prone to repeated justice system contact, and they experience longer incarceration during each episode.⁷ More than half of all mentally ill state prisoners and jail inmates nationally have three or more prior sentences, and more than ten percent have eleven or more prior sentences.⁸

Yet, incarceration may be a counterproductive response for some people with mental impairments. Increasingly, criminal justice systems at all levels are seeking ways to interrupt the costly cycle of recidivism by treating defendants' underlying symptoms. Early identification systems have improved dramatically in recent years. Since 2005, Texas counties have been able to check the state's mental health service database, known as the Client Assignment and Registration (CARE) System, for evidence of a treatment history within seventy-two hours of arrest. In the near future, CARE will become part of the criminal history data routinely checked at jail book-in. In addition, TCOOMMI provides funding for community-based wrap-around services during contact with the justice system and continuity of care to support the transition back into the community. As both information and treatment options have increased, local justice officials are considering ways to respond to people with special needs in a more compassionate and efficient manner.

Figure 1



* = $p < .05$ (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
~ = Not significant (i.e., the observed difference is not statistically meaningful).

Figure 1 documents why indigent defense attorneys can benefit from special skills to better represent mentally ill clients. Fully two-thirds of defendants with mental illness in Dallas County⁹ require assigned counsel, compared to fewer than half of those who are without documented illness. As a result, this study seeks to strengthen the infrastructure supporting skilled representation in Texas courts, enhance the role of defense counsel in advocating for appropriate placements, and raise the visibility of effective practices among criminal justice planners throughout the state.

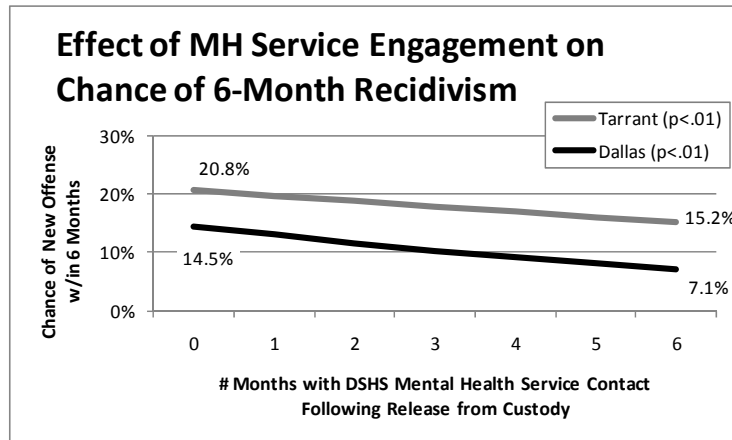
Justice Intervention Models Evaluated

The interventions evaluated are intended to help decriminalize mental illness. “Decriminalization” implies that, to the extent a criminal act results from diminished mental capacity rather than intent to do harm, the justice response should consider the defendant’s illness in determining consequences. Both mental health courts and mental health public defenders create means through which a contact with the justice system can be used to address therapeutic needs of people with mental illness. Both also offer new opportunities for defense counsel to advocate for clients’ access to these treatment-oriented dispositions. When criminal and therapeutic objectives can be pursued jointly, benefits accrue to the defendant, victims, the court, jail, probation, and other systems responsible for criminal case management, as well as to the greater principles of justice.

An initial focus of the research was to validate the notion that linking criminally accused individuals with treatment can in fact reduce the probability of future justice contact. Figure 2 shows that the more months of treatment mentally ill people receive during the six months following an initial offense, the less likely they are to recidivate.¹⁰ In Tarrant County, people who received monthly mental health treatment after committing an offense have a 27% lower risk of recidivating compared to those who did not get treatment for their illness. In Dallas County, risk is cut by 51%.

In light of this evidence that service engagement is an important factor in reducing repeat offending, it is reasonable that jurisdictions would differentiate mentally ill defendants to receive treatment as a component of the disposition. Mental health public defenders and mental health courts represent different but complementary approaches for achieving this objective.

Figure 2



Mental Health Public Defenders. Unlike public defenders or defense counsel appointed from a randomized wheel, mental health public defenders (MHPDs) concentrate on advocacy for people with mental illness full-time. MHPDs are more familiar with relevant Texas law than most private practice attorneys both because of their special training and because they deal with criminal issues related to mental illness on a daily basis.

Forensic social work services are also a key feature of MHPD assistance. Working as a member of the defense team, a social worker can identify aspects of the mental illness pertinent to the defense strategy, link defendants to social services, and monitor compliance throughout the pre-trial period. Because the MHPD can often show the court that the defendant is medically stable and no longer likely to break the law, faster release on bond may also be possible.

Judges may be more likely to order “conditional case dismissals” pending participation in treatment because MHPDs are positioned to monitor defendants’ compliance and report their success back to the court. Unlike individual rotation wheel attorneys, the public defender’s office has the administrative infrastructure needed to follow-up with service providers and verify to the court when diversion requirements are met. Because of these extra services and supports provided to both defendants and courts, the study finds individuals represented by MHPDs are more likely to receive non-criminal dispositions and to have greater access to treatment compared to external assigned counsel handling statistically identical cases.

Mental Health Courts. Mental health courts (MHCs) are another increasingly prevalent model of therapeutic justice. A judicially-led team – including at least a prosecutor, defense attorney, and treatment providers – offers court-based case management and close supervision in order to divert defendants away from jail and into long-term community mental health treatment. While the specific structure and procedures of mental health courts vary widely, they generally share a few common features including standardized criteria for enrollment, a specialized court docket, judicially supervised community-based treatment plans, regular status hearings, rewards and sanctions, and criteria defining participants’ completion of the program.

The “problem-solving” orientation of these courts redefines the traditional adversarial role of defense counsel. On the one hand, the US Supreme Court has established that defense attorneys best represent

the public interest by exclusively advancing the interests of their clients rather than by working in concert with the state.¹¹ On the other hand, defense counsel on MH court teams may find themselves siding with the state to support the imposition of penalties against their clients. John D. King of Washington and Lee School of Law argues that an extreme focus on client-centered representation for a mentally impaired client can ultimately “devolve into an abdication of responsibility on the part of the defense lawyer.”¹² This may occur, for instance, when people who are competent to stand trial are still unable to fully assist in their own defense. In mental health courts, attorneys are called upon to balance the competing values of zealous advocacy and the protection of defendant rights in the context of a court-based therapeutic team.

Conclusion

Since the Fair Defense Act was passed in 2001, the Task Force on Indigent Defense has worked to improve the statewide infrastructure for the provision of legal defense services to people with mental illness. Data from Dallas County shows these special needs defendants are significantly more likely to require indigent counsel than people without mental impairments.

The Task Force provided leadership for the current research study designed to evaluate the impacts of mental health public defenders and mental health courts. Both of these therapeutic justice initiatives use contact with the criminal justice system as an opportunity to link people with mental health treatment and break the cycle of repeat offending. However, MHPDs and MH courts cast defense attorneys in different roles representing the interests of their clients. The intent of the study is to document and better understand these differences, and to raise the visibility of practices that can improve defendant outcomes.

**CHAPTER 2:
RESEARCH METHODOLOGY**

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RESEARCH METHODOLOGY**

Because of their experience as early adopters of mental health criminal justice programs, three Texas counties – Dallas, Tarrant and Travis – were selected as study sites. In Travis County an innovative hybrid mental health docket was also observed.¹³ Table 1 provides an overview of mental health initiatives across the study sites.

Table 1. Overview of Interventions by County

| | Mental Health Public Defender | Mental Health Court | Mental Health Docket |
|----------------|-------------------------------|---|----------------------|
| Dallas County | Misdemeanor/ Felony | Misdemeanor MH Court Felony Probation MH Court | |
| Tarrant County | | Tarrant County MH Court (Misd./Low-Level Felonies) | |
| Travis County | Misdemeanor Only | | Misdemeanor Only |

Mental health public defenders specialize in advocating for the mentally ill and have an institutional infrastructure, including case management, designed to support that objective. Likewise, mental health courts apply judicial leadership and a team approach to reward or sanction participants for compliance with their treatment plan. The research methods described below measure the extent to which these different yet complementary interventions achieve the following outcomes:

- Fewer pre-trial jail days;
- More successful engagement in mental health treatment and support services;
- More non-criminal diversion resulting in fewer guilty pleas;
- More probation dispositions as opposed to serving time in jail; and
- Lower recidivism rates.

The research included process and outcome components. Descriptive data was collected through site visits and a survey of local private defense counsel. Quantitative jail and court records were used to assess measurable impacts of the evaluated programs.

Data Limitations

It is important to note two limitations of the study. First, quantitative mental health and criminal justice data provided by Dallas and Tarrant Counties were unavailable for Travis County. This was partly due to a major database system transition and upgrade underway during the study period which consumed much of the time and attention of programmers. Second, data for participants in Dallas County’s ATLAS probation MH court became available too late to include in the analyses. As a result, only qualitative evaluation results are presented describing the Travis County MHPD and the Dallas County ATLAS felony probation revocation court. Quantitative findings are not available for these programs.

Site Visits

During the spring of 2009, the research team conducted two- to three-day site visits to learn more about the functioning of mental health courts and public defender offices. At every site, interviews were conducted with a diverse cross-section of stakeholders including judges, prosecuting attorneys, defense attorneys (mental health public defenders and rotation wheel attorneys from the private bar), mental health court coordinators and other diversion program staff, jail personnel, criminal justice planners, treatment providers, and participants and former participants in the programs. Mental health court or docket proceedings were also observed in each of the counties.

Through observation and interviews, the research team answered questions in each county related to:

- Initial identification of people with mental illness
- Dissemination of information among relevant stakeholders
- Caseflow of people with mental illness
- Structure and operation of mental health programs
- County and community infrastructure within which these programs operate
- Role of defense counsel in representing defendants with mental illness

This phase of the study helped establish what attributes of the programs studied might account for defendant outcomes observed in the data analysis.

Defense Attorney Survey

By far the majority of indigent individuals with mental illness are represented by members of the private bar on the rotation wheel. In addition to documenting caseflow within the special programs being studied, the research team also felt it was important to understand differences in the experiences and protocols of different types of attorneys. Respondents were selected from the approved list of indigent defense attorneys in each county including rotation attorneys, public defenders, and mental health public defenders, as well as from the membership of county chapters of the Criminal Defense Lawyer's Association.¹⁴

Survey questions assessed training levels, awareness of criminal justice and community programs for the mentally ill, and common advocacy practices for special needs populations. The findings were used to assess differences in knowledge and practices among attorneys in a specialized MHPD practice setting compared to traditional public defenders or rotation wheel attorneys in the private bar.

Criminal Justice and Mental Health Data Analysis

To measure the impacts of participation in the therapeutic justice interventions being studied, a dataset was assembled unlike anything previously available. Individual-level criminal justice records were downloaded from the Dallas and Tarrant County information systems.¹⁵ These records covered about a 6-year period from January 2003 through early 2009. Defendant data was matched against mental health treatment records maintained by the Texas Department of State Health Services (DSHS). To protect consumer confidentiality, records were de-identified before being shared with the research team.

The resulting record set combined each individual defendant's lifetime treatment history with his or her county criminal justice experience. Using this powerful dataset, the research team applied multivariate statistical methods to compare outcomes for individuals who were served in mental health courts or by public defenders against outcomes for individuals who did not enroll in those programs but were statistically identical in terms of available measures. Specifically, outcomes for MH court and MHPD participants were compared against those for defendants who were statistically identical in terms of:

- Sex
- Race/ethnicity
- Marital status (Tarrant County only)
- Citizenship (Tarrant County only)
- Assigned counsel (Dallas County only)
- Offense history
- Severity of the current offense
- Mental health diagnosis from public treatment system
- Substance abuse diagnosis from public treatment system
- Public mental health treatment history

The base of evidence for program effectiveness developed in this study is among the most robust currently available. It is important to be aware, however, that some key defendant attributes such as family supports or motivation to succeed could not be measured. As noted above, data needed to measure quantitative defendant outcomes was not available from Travis County or from the Dallas County ATLAS felony probation mental health court in time for inclusion in the study.

Dissemination and Strategic Planning Component

Upon completion of the research, strategic planning events were held in three venues. First, in October, 2009 study findings were presented at the Task Force's Annual Indigent Defense Workshop. This annual two-day conference is designed to support counties' efforts to improve local legal defense practices. In conjunction with that meeting, a special planning clinic was held to discuss specific system improvements in four Texas counties including Bell, Burnet, Taylor, and Williamson Counties.

Two additional strategic planning events were also held in Montgomery County (February 16-17, 2010) and Hidalgo County (February 18, 2010). Each session was attended by a multidisciplinary group including judges, court managers, prosecutors, defense counsel, community mental health providers, correctional representatives, and representatives of the county government. As local stakeholders identified system improvements to strengthen case processing of mentally ill defendants, TFID staff was present to provide information about potential funding alternatives. The strategic planning sessions helped facilitate the translation of research models studied here into practice in a way that responds directly to the challenges, needs, and institutional configurations of each individual community.

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**CHAPTER 3:
OVERVIEW OF MAJOR CRIMINAL JUSTICE
MENTAL HEALTH INITIATIVES**

CHAPTER 3: OVERVIEW OF MAJOR CRIMINAL JUSTICE MENTAL HEALTH INITIATIVES

Each of the counties selected for the study has a different array of programs and services for assisting individuals with mental illness. The following overview helps place the court- and defense-based programs in context and show the overall continuum of services. The interventions described complement and support the activities of the MHCs and the MHPDs evaluated.

Dallas County

The broadest and most comprehensive array of diversion-oriented programming was evidenced in the largest study site, Dallas County. Defendants with mental illness receive treatment through three mental health diversion courts or through the mental health public defender's office.

Jail-Based Services:

- Parkland County Hospital System provides psychiatric and medical care at the jail.

NorthSTAR Behavioral Health Managed Care System:

- Through a Medicaid managed care pilot program unique in Texas, a network of private providers delivers treatment options for indigent citizens qualifying for state mental health services. ValueOptions manages the provider network with supplemental funding for the delivery of case management and treatment to criminal defendants.
- People in a mental health diversion court or on the public defender's mental health caseload are assigned a NorthSTAR case manager for at least the duration of their enrollment to help them meet their program conditions. These may include inpatient or outpatient substance abuse intervention or mental health crisis care, assistance attending doctor appointments, staying on medication, or attending classes. Case managers may also assist with housing and employment supports.

Mental Health Jail Diversion Coordination:

- Individuals with a mental health treatment history are identified as they are booked into jail. Information about these cases is transferred within one day to the mental health jail diversion program coordinator using the Jail Diversion Instant Messaging System (JDIM) BOT¹⁶ so that eligible persons can be directed to available programs.

Jail Diversion Mental Health Court Programs:

- Misdemeanor Mental Health Jail Diversion Program (MHJDP) serving non-violent misdemeanor cases
- Felony Jail Diversion (ATLAS) serving felony probationers at imminent risk of revocation
- Dual Diagnosis Re-Entry Courts serving felony probationers with co-occurring mental health and substance abuse problems.

District Attorney's Office:

- Dedicated mental health prosecutor assigned to competency cases and to mental health diversion courts.

Public Defenders' Mental Health Division:

- A mental health public defender represents mentally impaired defendants in misdemeanor and felony courts. Two caseworkers assist clients with accessing and staying engaged in mental health services.
- The mental health public defender provides legal counsel to defendants in the mental health diversion courts and is a member of the court teams. These defendants receive case management from the court rather than from the defense team.
- A competency public defender represents persons believed to be incompetent in all of the county and district courts.
- A civil commitment public defender represents clients in the probate court.

Competency Team:

- The competency public defender, assistant district attorney, and a NorthSTAR case manager track defendants who have been identified as incompetent to stand trial. With few exceptions, cases are assigned to a single court/judge, and outpatient competency restoration services are provided in coordination with service providers in the community.
- The goal is to stabilize the individual and maintain competency so that they can stand trial or potentially enter a mental health court diversion program.

Community Supervision and Corrections Department (i.e., Probation Dept.):

- A probation officer is assigned to all three mental health jail diversion courts to assist with case supervision, though only defendants in the ATLAS felony probationer caseload are formally on probation.
- Comprehensive Assessment and Treatment Services (CATS) evaluations are provided for defendants on probation to determine appropriate programs and treatment.

Tarrant County

The mental health court is the only major criminal justice diversion initiative for mentally ill defendants in Tarrant County. The program works closely with a large and comprehensive wrap-around program known as Tarrant County Assertive Treatment (TCAT) operated by Mental Health Mental Retardation (MHMR) of Tarrant County.

Jail-Based Services:

- MHMR of Tarrant County is under contract to provide therapists, case workers, and a continuity of care coordinator to the county jail.

Mental Health Court Jail Diversion Program:

- Tarrant County mental health court serving misdemeanors and low-level felony cases.
- MH court participants receive supportive outpatient mental health treatment services provided by MHMR of Tarrant County or private providers, and funded through Medicaid, TCOOMMI, private insurance, or a grant from the Office of the Governor. Participants may also attend inpatient drug treatment and outpatient drug education groups.

Tarrant County Assertive Treatment Program (TCAT):

- Provides intensive pre-trial and post-disposition case management services to non-violent felony offenders with a qualifying diagnosis who are under pre-trial supervision, in mental health court, on probation, or at significant risk of violating parole.
- TCAT ensures that eligible MH court clients are connected to needed services including life skills, housing, and employment, and that they comply with the treatment program.
- The MH court coordinator receives weekly updates about participants' progress in the program. TCAT staff inform the MHC judge of participants' compliance at every court appearance.
- TCAT is funded by TCOOMMI and implemented by MHMR of Tarrant County.

Wellness Recovery Action Plan (WRAP):

- Run by the Mental Health Association of Tarrant County and funded by TCOOMMI, WRAP is an evidence-based relapse-prevention group designed to empower individuals to learn about and manage their illness. The group is run by peers, and meets twice a week for 3 ½ hours. It is open to anyone with a mental health or drug issue.
- Participation for MHC enrollees is voluntary, but the program is recommended to everyone by the MHC coordinator. WRAP communicates with the MHC coordinator about who is in the program and whether they attend the classes.

Outpatient Competency Restoration Program:

- A comprehensive mental health service for individuals who have been found incompetent to stand trial pursuant to a competency hearing. The goal is to stabilize the individual and maintain competency so that they can face their charges. Many individuals that achieve psychiatric stability through this program later enroll in the Tarrant County MH court.
- Outpatient competency restoration is funded through the Department of State Health Services and implemented by MHMR of Tarrant County.

Travis County

The nation's first stand-alone mental health public defender program is the centerpiece of mental health criminal justice programming in Travis County.

Jail-Based Services:

- Mental health assessment is conducted by county social work clinicians in the county jail.

Mental Health Docket:

- A special docket of mentally impaired misdemeanor defendants. The judge receives input from a team including a prosecutor, defense counsel (MHPD and trained mental health rotation attorneys), jail mental health personnel, and specialized mental health probation officers. Team members provide information and input to help determine an appropriate disposition.

District Attorney's Office:

- A designated mental health prosecutor is assigned to the Mental Health Docket, though he does not handle mental health cases exclusively.

Mental Health Public Defender Unit:

- Two attorneys, two social workers, two case workers, an administrative assistant, and an office specialist provide specialized legal defense expertise and case management to clients. Social work support is also available to clients of private attorneys upon request.
- The MHPD offers regular training opportunities through which members of the private bar can qualify for the specialized mental health assignment wheel. Training is also open to other criminal justice stakeholders in Travis and neighboring counties.

Outpatient Competency Restoration Program:

- Outpatient competency restoration is funded through the Department of State Health Services and implemented by Austin Travis County Integral Care local mental health authority.

Conclusion

The specific configuration of mental health services available in and outside of the justice system differs across the three study sites. As the largest community, Dallas County has by far the most extensive array of interventions for people with mental illness both in and outside of the criminal justice system.

In Tarrant County, the mental health court has created a forum to connect people with services through the community mental health authority, MHMR of Tarrant County, as well as other public and private programs.

Travis County's misdemeanor mental health public defender has raised the overall visibility of the mentally ill criminal population in that community and created new channels to link people with the mental health services they need. Each of the study sites has evolved a unique adaptive response reflective of their local needs and capacity to help people with mental illness reduce long-term justice system contact.

**CHAPTER 4:
PROCEDURES FOR IDENTIFYING
INDIVIDUALS WITH MENTAL ILLNESS**

**CHAPTER 4:
PROCEDURES FOR IDENTIFYING INDIVIDUALS WITH MENTAL ILLNESS**

Similar approaches are used at each of the study sites to identify people with mental illness and refer them to available supports in the local criminal justice system. For all of the programs evaluated except the Tarrant County Mental Health Court, eligible individuals must have a “priority population” diagnosis as defined by the Department of State Health Services. Those include bipolar disorder, major depression with a Global Assessment of Functioning (GAF) score equal to or less than 50, schizophrenia and schizoaffective disorder. Table 2 describes a 5 step process beginning at book-in for identifying individuals with mental illness and matching them to appropriate programs.

Table 2. Procedures for Identifying and Referring People with Mental Illness

| | Travis County | Tarrant County | Dallas County |
|---|--|--|--|
| Initial Screening for Mental Illness | Arrestees are interviewed to obtain background information regarding their family history, medical history, mental health history, and criminal background. A state required oral screening is usually followed by a written evaluation. These initial screenings are conducted by the intake officer who is not a mental health specialist; however, if the evaluations indicate a possible mental health issue, the individual is referred to a mental health specialist for further assessment. | | |
| Mental Health History Check Against Public Mental Health System Records | In addition to the jail intake officer’s screening, all Texas counties are required to check the state’s Client Assignment and Registration System (CARE) mental health services database to determine if the individual has had previous contact with the public mental health system. CARE will not register a match for individuals who have been served by a private mental health care provider. | | The Dallas County mental health coordinator receives information every 15 minutes about jail book-ins through the jail’s JDIM BOT instant messaging system. Arrestees are matched against the NorthSTAR provider database. The system will not register a match if the individual received treatment outside the NorthSTAR service area. |
| Jail Mental Health Assessment for Identified Cases | If there is a match with CARE or the evaluations in step one indicate that further assessment is needed, the individual is referred to a mental health specialist for further assessment to determine the level of care and type of housing in jail. | | |
| | Social workers in the jail perform a mental health assessment. The assessment determines eligibility for state mental health services. | MHMR of Tarrant County staff in the jail perform a mental health assessment to determine if the individual is eligible for state mental health services. | NorthSTAR staff in the jail perform a mental health assessment to determine if the individual is eligible for state mental health services. |

| | Travis County | Tarrant County | Dallas County |
|------------------------------|---|--|--|
| Jail Mental Health Treatment | <p>Treatment begins in the jail under the supervision of the jail psychiatrist. MHMR staff are not present in the jail.</p> <p>Individuals in crisis may be transferred to a Psychiatric Emergency Center for immediate intervention.</p> | <p>Treatment begins in the jail under the supervision of a psychiatrist. MHMR (Tarrant County) or NorthSTAR (Dallas County) mental health staff are on duty in the jail seven days a week.</p> <p>Individuals in crisis are relocated to the medical ward to receive immediate intervention.</p> | |
| Dissemination of Information | <p>The case file for individuals who are diagnosed by jail staff as mentally ill is given a "PSY" code.</p> <p>This code flags the case for the criminal court administrator to assign indigent defendants either a MHPD (more complex cases) or a trained mental health wheel attorney.</p> <p>The criminal court administrator also uses the PSY code to assign cases to the mental health docket, though people may also be referred by a prosecutor, defense attorney, or a judge.</p> <p>Because the CARE match results are not available to jail staff for a day or longer, some individuals bond out before they can be assigned to the MH docket.</p> | <p>Information about mental health status is not systematically disseminated outside the jail.</p> <p>Defense attorneys are the primary source of referrals to the MH court. Other possible sources include MHMR staff located in the jail, probation officers, judges, and family members.</p> <p>The MH court coordinator determines whether the individual meets the standards for entering the court. The MH court is selective and all participants are chosen based on their expected likelihood of success.</p> | <p>Information about individuals with a NorthSTAR match or assessed mental health issues is disseminated by the mental health coordinator to key stakeholders including the prosecutor, public defender, pretrial release, probation department, and MH court judge.</p> <p>The information is used to assign counsel and to refer qualifying cases to diversion programs.</p> <p>Because the names for the NorthSTAR match are reviewed daily and results are immediately forwarded to the prosecutor, the number of individuals missed because they bonded out is low.</p> |

Conclusion

Each of the study sites begins intervention for mentally ill defendants as soon as an arrestee is booked into jail. An initial objective is to identify individuals eligible for a specialized legal defender or a mental health diversion program before they bond out. All three counties have effective strategies for identifying individuals with mental illness. Generally, cases are screened through a local assessment as well as through a match against statewide mental health records. The information is used not only to begin treatment in jail, but also to notify decision-makers in the justice system and help identify potential interventions appropriate to the criminal and therapeutic needs of the case.

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**CHAPTER 5:
PROGRAM PARTICIPANT CHARACTERISTICS**

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PROGRAM PARTICIPANT CHARACTERISTICS**

In addition to conducting site visits to describe the programs being evaluated, the research team also asked the study sites to provide local criminal justice data records. Data was acquired in Dallas and Tarrant Counties¹⁷ for cases over about a 6-year period from January 2003 through early 2009. The records were matched against the state’s mental health database resulting in a comprehensive dataset linking criminal justice involvement with mental health diagnosis and history of public treatment participation.

Cases Involving People with Mental Illness

Table 3 shows both Tarrant and Dallas Counties are large jurisdictions processing between 36,000 and 53,000 combined felony and misdemeanor cases respectively each year. Dallas handled about 100,000 more criminal cases than Tarrant County during the six-year analysis period. The percentage of defendants with a state mental health record was approximately 14% at both study sites.

Table 3. Overview of Criminal Justice Cases with Mental Illness

| | Tarrant County 1/1/03 – 1/30/09 | Dallas County 1/1/03 – 5/11/09 |
|---|--|---|
| Number of Criminal Justice Cases | 214,675 (approx. 36,000/yr.) | 319,744 (approx. 53,000/yr.) |
| Number of Cases Where Defendant Had State Mental Health System Contact | 29,013 | 46,897 |
| Percent of Cases Where Defendant Had State Mental Health System Contact | 13% | 15% |
| Percent of Cases Enrolled in MH Programs Mental Health Public Defender Mental Health Courts | .05% | 4% .05% |

Only a small percentage of criminal defendants with a mental health history have had opportunities to participate in special programs or services (Table 3). Fewer than 5% of all mentally ill criminal defendants in Dallas County have been represented by a mental health public defender and less than 1% have participated in either of the two mental health court diversion programs studied.

Table 4. Cases with Mental Illness Assigned to Special Programs

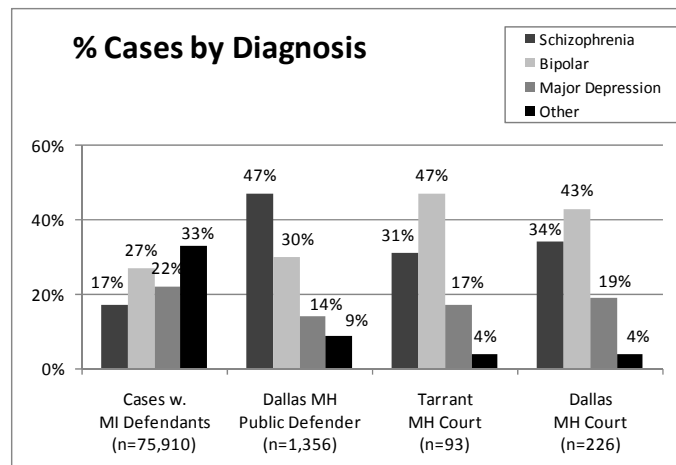
| | Tarrant County 1/1/03 – 1/30/09 | Dallas County 1/1/03 – 5/11/09 |
|---|--|---|
| Dallas County MH Public Defender <i>% cases with matched state mental health records</i> | ----- | 1,922 70% |
| Dallas County Misdemeanor Jail Diversion MHC <i>% cases with matched state mental health records</i> | ----- | 266 85% |
| Tarrant County MHC <i>% cases with matched state mental health records</i> | 171 54% | ----- |

Mental Health Diagnosis and Treatment History

The following paragraphs consider the ways in which the cases represented in the main programs evaluated compare to each other and to the general mentally ill population.¹⁸ Diagnostic information was unavailable for nearly half (46 percent) of the individuals in the Tarrant County MH court who were represented in the state mental health services database.

Mental Health Diagnosis. There are clear differences in the composition of cases appearing in mental health courts compared to the MH public defender’s office (Figure 3). Though about only 17% of all mental health cases involve schizophrenia, a larger number (about one-third) of cases in the Tarrant and Dallas MH courts have this diagnosis. Still, an even larger proportion of Dallas MHPD cases (nearly half) target individuals with schizophrenia. The MHPD therefore distinguishes itself from the MH courts by directing most of its effort toward clients with a diagnosis of schizophrenia.

Figure 3



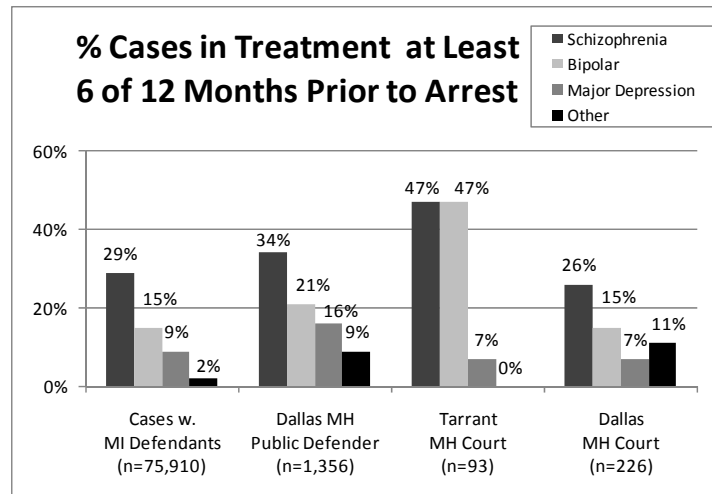
In contrast, both the Tarrant and Dallas MH courts devote most of their effort toward people with bipolar disorder. While 27% of general mental health cases involve this diagnosis, about 45% of cases in diversion courts are associated with bipolar disorder. Both the MHPD and the MH Courts somewhat under-serve cases involving major depression relative to their appearance in the general mental health population.

It is worth noting that the number of “other” diagnoses is much higher in the general mental health case pool than in any of the special mental health program caseloads. These cases generally reflect individuals in the state mental health database who do not have a severe mental illness, but rather entered the treatment system through an incidental contact (e.g., a screening or a temporary crisis event). They are therefore less likely to appear in programs targeting the severely mentally ill. About 9% of people on the MHPD caseload have an “other” diagnosis such as a traumatic brain injury or mental retardation. These individuals were not a focus of the study.

Mental Health Treatment History. Figure 4 compares the programs in terms of participants’ recent treatment history. During the year prior to arrest, participants in the Tarrant County MH court were far more likely to have been receiving mental health services than either the general mentally ill population or participants in the other programs. This reflects the Tarrant court’s participant selection process. Because there is an emphasis on enrolling individuals with a demonstrated ability to respond positively

to treatment, those who can show a recent history of service engagement appear to be more likely to be chosen for the program.

Figure 4



The Dallas MHPD’s pre-arrest treatment rates are also higher than for the general mental health case pool because of the office’s close ties to the mental health diversion courts. Once participants complete these courts, they are not eligible to return. Therefore, those who are charged with a new offense after graduation are commonly assigned to the MHPD. Due to their recent affiliation with the MH court, these diversion program participants are more likely to register recent pre-arrest service contact than are mentally ill defendants in general.

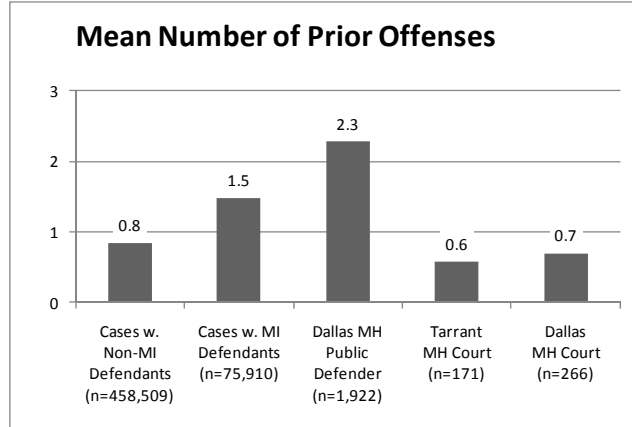
Pre-arrest treatment rates for the Dallas County MH court were approximately on par with those of the general mental health defendant population. This suggests that, in contrast to the Tarrant County court, the Dallas County MH court selects participants that are roughly representative of most defendants with mental illness in terms of treatment experience. Dallas County MH court clients may therefore have fewer advantages at intake that could favorably impact their chances of success in the program.

Criminal Case Characteristics

In addition to the differences in diagnostic profiles described above, there are also meaningful differences in the severity of offenses committed by mentally ill individuals on the special mental health caseloads. Figure 5 first establishes that in general “cases with mentally ill defendants” have a larger average number of prior offenses (1.5) than do cases involving people without mental illness (0.8). This data quantifies the pattern of repeat offending commonly associated with mental illness.

Offense History. Within this higher-risk mentally ill population, the MH public defender represents those cases involving the most severe offense histories. With an average 2.3 prior offenses, most MHPD clients would be disqualified from consideration for mental health courts. The mental health courts, by contrast, elect to serve individuals who have average rates of offending (about 0.6 priors) half that of statistically identical peers (1.5 priors), and on par with non-mentally ill defendants (0.8 priors). Because MHPDs represent higher-risk offenders and MHCs generally try to select lower-risk individuals with a good likelihood of success, together these programs combine to meet the needs of a cross-section of the mental health population.

Figure 5



Offense Severity. A larger proportion of cases involving people with a mental illness are felonies (45%) compared to the general defendant population (38% felony). Figures 6 and 7 again confirm that the MHPD takes a disproportionately high number of violent felony cases compared to the general pool of mentally ill defendants. Although only 10% of cases committed by people with mental impairments are violent felonies, 17% of the MHPD caseload involves violent felony charges. The Tarrant County MH court accepts some low-level felony cases when the offense was related to the mental illness. The Dallas County MH court only accepts only non-violent misdemeanors.

Figure 6

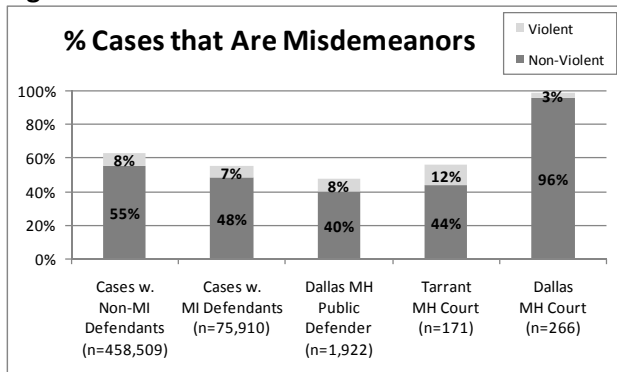
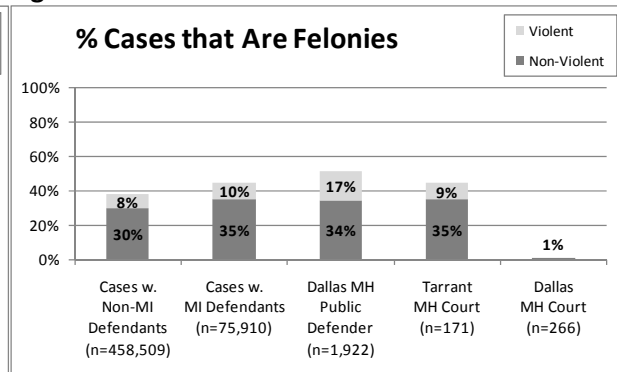


Figure 7



Conclusion

In terms of diagnosis, the mental health public defender tends to represent a disproportionate number of cases involving schizophrenia, and mental health courts tend to serve a larger proportion of cases involving bipolar disorder. Cases involving major depression are the least likely to be selected for participation in these programs. It is difficult to precisely define the diagnostic characteristics of individuals in the Tarrant County MH court because nearly half of participants are not represented in the state mental health service database.

Looking at treatment history, the Tarrant County MH court enrolls the largest percentage of cases in which defendants were already actively engaged in treatment at the time of arrest. A recent history of prior treatment engagement improves the likelihood that these individuals will succeed in the program

(Figure 4). MHPD clients are also more likely to have been in treatment prior to arrest because many of their cases have recently received services through the MH courts.

Mental health public defenders and MH courts vary considerably in the criminal risk attributes of their client populations. The courts generally choose first-time offenders without a lengthy criminal history, while the MHPD takes on more challenging cases involving violent felons with multiple prior offenses. Together they offer a continuum of resources capable of impacting the full range of mental health cases.

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**CHAPTER 6:
MENTAL HEALTH COURT OPERATIONS**

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Three mental health courts were visited as part of this study. These include courts targeting misdemeanors and low-level felony offenders in Tarrant County, misdemeanors only in Dallas County, and felony probationers in Dallas County for whom a revocation motion has been or is about to be filed. Quantitative defendant outcome data was only available for two of these courts, but descriptive information about court operations was collected for all three programs.

Participant Selection

Table 5 illustrates the processes used by Dallas and Tarrant Counties to identify individuals who may benefit from participation in the mental health court. Despite some differences, fundamental processes for identifying and disseminating information are similar. Both counties begin with an evaluation of mental health status and history during jail intake, but they have different procedures and standards for selecting participants. The Tarrant County MH court is the only such court evaluated that will accept individuals who are not indigent and who do not necessarily have a priority population diagnosis. Criteria are very narrowly defined and selection is highly subjective. In Dallas County, by contrast, both the misdemeanor and probation MHCs are more broadly inclusive.

Table 5. Overview of Mental Health Court Participant Selection Procedures

| | Tarrant County Mental Health Court | Dallas Misdemeanor Jail Diversion Program (MHJDP) | Dallas Felony Probation Mental Health Court (ATLAS) |
|------------------|--|--|---|
| Referral Sources | Most referrals come from defense attorneys. Referrals are also accepted from jail staff, judges, prosecutors, pretrial services, probation, or family members. | For cases with a NorthSTAR match indicating mental health history, the mental health coordinator reviews diagnosis and current charges to determine appropriateness for MHJDP referral. Most participants are in jail at the time of referral. The first program objective is to get them out of detention and into services. Individuals out on bond may still be referred by other courts, public defenders or defense counsel. | Most referrals are felony offenders on a special MI/MR probation caseload in jail for a violation or new offense. Most referrals come from the probation officer, though names can be submitted from other sources. If a prior CATS (probation) evaluation has not been conducted, assessors interview the client and/or do testing if needed to make a recommendation about clinical eligibility for ATLAS. |

| | Tarrant County Mental Health Court | Dallas Misdemeanor Jail Diversion Program (MHJDP) | Dallas Felony Probation Mental Health Court (ATLAS) |
|------------------------------------|---|---|---|
| | | | When the mental health coordinator reviews the matches from the JDIM BOT system for the misdemeanor court, she also checks for possible ATLAS matches. |
| Responsibility for Intake Decision | <p>After referral, the defendant must make an appointment to be interviewed by the MH court coordinator. This constitutes the first wave of dropouts because at least 50 percent of those referred do not contact the court for an interview.</p> | <p>The assistant district attorney conducts criminal background checks (NCIC/TCIC) on all referred participants and submits approved names to the mental health coordinator. These names are forwarded to the MHJDP court coordinator, public defender, and MH court probation officer.</p> <p>A NorthSTAR service provider sees approved clients the same day in the jail holdover to get baseline case information, determine needs and start a treatment plan.</p> <p>If the client expresses interest in the MH court, the MHPD conducts an interview to explain risks and benefits, signs them up for the program and arranges personal recognizance bond so they can enter services as soon as possible.</p> <p>Those out on bond are given a date to visit court for screening by the MH court team including the assistant district attorney.</p> | <p>If the probationer is clinically eligible for ATLAS, the case is staffed by the team including the CATS assessor, ATLAS team probation officers, public defender, and probation supervisor.</p> <p>If all agree the case is appropriate for the program, case managers conduct an interview to make sure they can help the individual.</p> |

| | Tarrant County Mental Health Court | Dallas Misdemeanor Jail Diversion Program (MHJDP) | Dallas Felony Probation Mental Health Court (ATLAS) |
|----------------------|---|---|---|
| Screening Criteria | <p>Documented mental impairment but not necessarily severe enough to qualify for state mental health treatment. No severe symptoms at time of admission. Mentally competent.</p> <p>No substance abuse problem that would potentially distract from the treatment of the mental illness.</p> <p>Indigence is not required. Some participants are privately insured.</p> <p>Current offense is non-violent misdemeanor or low level felony. No violent, aggravated, sexual assault, weapons or driving while intoxicated (DWI) offenses.</p> <p>Family violence cases other than spousal abuse are considered on a case-by-case basis.</p> <p>Evidence of ability to meet treatment conditions. Judgment that the individual can be successful in the program.</p> | <p>Documented severe and persistent mental illness. Defendant meets criteria for state mental health treatment.</p> <p>May have co-occurring substance abuse problem. Indigent; eligible for assigned counsel.</p> <p>Current offense is a misdemeanor. No probation violations, DWI, sex offense, or traffic ticket. Indecent exposure and misdemeanor family violence (with input from the victim) are considered on a case-by-case basis.</p> <p>Criminal history does not include parole violations, assaultive offenses, weapons offenses, repeat family violence offenses, or a long history of criminal activity without breaks. (Some exceptions if mental illness is a mitigating factor).</p> <p>Judgment that the individual can be successful in the program.</p> | <p>Documented severe and persistent mental illness. Defendant meets criteria for state mental health treatment.</p> <p>May have co-occurring substance abuse problem.</p> <p>Indigent; eligible for assigned counsel. Must be on felony probation with violations alleged.</p> <p>No prior offenses of a deviant sexual nature or involving the death of another person.</p> <p>Live in Dallas County.</p> <p>Unsuccessful on regular or mental health probation caseloads.</p> <p>Judgment that the individual can be successful in the program.</p> |
| Prosecutorial Review | An assistant district attorney reviews the offense report and criminal history, confers with the victim, and considers | An assistant district attorney reviews the offense report and criminal history, and confers with the victim. | The prosecutor ensures that all outstanding charges against the probationer are resolved before entry |

| | Tarrant County Mental Health Court | Dallas Misdemeanor Jail Diversion Program (MHJDP) | Dallas Felony Probation Mental Health Court (ATLAS) |
|----------------------------------|---|--|---|
| Prosecutorial Review (cont'd.) | <p>background material about the defendant submitted by the MH court coordinator.</p> <p>Referrals may be rejected if the crime is not related to a mental health issue; it involves a DWI or violent offense; or the individual has a history of violence (non-spousal family violence cases are accepted on a case by case basis).</p> | <p>Eligible individuals are interviewed by the MH court prosecutor before final approval.</p> | <p>into the ATLAS program.</p> |
| Defendant Advisement and Consent | <p>Individuals determined to be eligible for the MH court receive information about program requirements from the court coordinator.</p> <p>Legal counsel regarding program enrollment is provided by the original referring attorney rather than the attorney assigned to the MH court team.</p> <p>Those opting to participate sign a contract to ensure they understand the required obligations and commitments to succeed.</p> | <p>An initial interview explaining the program occurs with a NorthSTAR case manager.</p> <p>The mental health public defender assigned to the MH court discusses program conditions with eligible individuals and advises on the advantages and disadvantages of enrollment.</p> <p>Those opting to participate sign a contract to ensure they understand the required obligations and commitments to succeed.</p> | <p>An initial interview explaining the program occurs with the probation officer and a NorthSTAR case manager.</p> <p>The mental health public defender assigned to the ATLAS court discusses program conditions with eligible individuals and advises on the advantages and disadvantages of enrollment.</p> <p>Those opting to participate sign a contract to ensure they understand the required obligations and commitments to succeed.</p> |

Mental Health Court Program Components

All three mental health courts in Tarrant and Dallas Counties closely adhere to the traditional problem-solving court model. There is a selection process wherein potential clients must meet minimum qualifying criteria. Upon enrollment, participants are immediately connected to mental health care and other services which vary according to the needs of the participant. Before each court is held, the MH court team meets to inform the judge of each participant's progress and discuss whether there may be a need for rewards or sanctions based on compliance with the

program. Enrollees then report to court on a regular schedule to discuss their progress with the judge. As the participant shows improvement, the number of court appearances and the amount of contact with service providers decrease. Once the participant is equipped to independently handle the mental illness at a “maintenance” level of services, s/he graduates from the program. The details of the model used in each county are described in Table 6.

Table 6. Mental Health Court Models in Tarrant County and Dallas County

| | Tarrant County Mental Health Court | Dallas Misdemeanor Jail Diversion Program (MHJDP) | Dallas Felony Probation Mental Health Court (ATLAS) |
|-----------------------|--|---|---|
| Start-up Year | 2003 | 2003 | 2004 |
| Funding Sources | U.S. Dept. of Justice; Office of the Governor, Criminal Justice Division | Texas Commission on Offenders with Medical and Mental Impairments | Texas Commission on Offenders with Medical and Mental Impairments |
| MH Court Team Members | Judge Mental Health Court Coordinator Dedicated Volunteer Defense Attorney Dedicated Prosecutor Probation Officer (performs case management function) Treatment Providers | Judge Mental Health Public Defender Mental Health Prosecutor Probation Officer (performs case management function) NorthSTAR Case Managers | Judge Mental Health Public Defender CATS Assessor Probation Officers (2) (perform case management function) NorthSTAR Case Managers |
| MHC Operation | <p>MHC participants attend monthly compliance hearings. To prepare, MHC team members hold a pre-court conference to review the status of each case and discuss any problems.</p> <p>Participants receive different combinations of services depending on their needs and personal resources. MHMR provides wrap-around support through the TCAT program and other community-based treatment (described below). Individuals with insurance receive private-pay mental health and substance abuse treatment.</p> | <p>MHJDP participants attend compliance hearings 1 to 4 times per month, depending on how well they are doing in the program. MHC team members staff each case before court.</p> <p>Participants are provided with comprehensive services including temporary crisis housing, intensive case management, psychiatric and substance abuse treatment, medication management, and rehabilitation. The client helps determine the programs that are appropriate for them.</p> | <p>Team staffings and court hearings are held once every week.</p> <p>Participants are provided with comprehensive services including temporary crisis housing, intensive case management, psychiatric and substance abuse treatment, medication management, and rehabilitation. The client helps determine the programs that are appropriate for them.</p> <p>Clients progress through three stages of the program including Stabilization</p> |

| | Tarrant County Mental Health Court | Dallas Misdemeanor Jail Diversion Program (MHJDP) | Dallas Felony Probation Mental Health Court (ATLAS) |
|----------------------------|--|---|--|
| MHC Operation (cont'd) | <p>The program includes three 3-month phases with a gradual reduction in intensity of supervision.</p> <p>Everyone is recognized every month and acknowledged for their accomplishments. Sanctions (e.g., for treatment non-compliance, positive drug screen, re-arrest) include essay writing, jail time, lectures to help motivate clients and failure to advance to the next phase.</p> | <p>Though MHC participants are not on probation, a dedicated probation officer is assigned exclusively to this caseload to track clients and handle paperwork related to case monitoring.</p> <p>Successful participants are recognized by the judge and advance to lower levels of supervision over time. Sanctions are commonly some form of community service, though it is often a challenge to find community agencies willing to work with mentally ill defendants.</p> | <p>(45 to 60 days), Engagement in Treatment (3-9 months) and Graduation Phase (9 – 12 months).</p> <p>Sanctions for noncompliance include increased random urine assays, community service hours, and/or more frequent court appearances. Jail time is only used as a last resort, in part because of the need to maintain clients on medication</p> |
| MHC Caseload Size | The average active caseload is 35 to 45 participants. | The MHJDP has a capacity for 40 to 60 participants at any one time. | The capacity of the program is 50 active participants. Caseload for the case managers is capped at 25 clients each. |
| Length of Participation | Participation is for a minimum of 9 months and maximum of 24 months. Program staff estimate the average length of participation is 12 months. | The program length is 6 months and participants appear in court 1-4 times per month depending on the stage in the process. | The program length is about one year. |
| Program Completion | <p>Upon successful completion, all charges are dismissed. The charge can be expunged from the record after the statute of limitations has expired.</p> <p>If the client is unsuccessful and the agreement is terminated, the case is remanded to the court of origin for disposition.</p> | <p>Discharge from the program results in prosecution of the original charges. Successful graduates have their case dismissed.</p> <p>As of June 2009, the program had graduated over 200 participants.</p> | Discharge from the program results in a revocation of probation. Successful graduates have their case returned to the regular MI/MR probation caseload until the original term expires. |

Travis County Mental Health Docket

Though not a central focus of the evaluation, the research team had the opportunity to observe a pilot docket for misdemeanor mental health cases being implemented in Travis County. Initially established in 2006, the docket is a simplified adaptation of a full mental health court. It is of interest in part because of the potential usefulness of this approach as a “first step” for jurisdictions considering initiating programs targeting defendants with mental illness. Some of the key features of this program are described in the following paragraphs.

Participant Selection. Defendants are assigned to the mental health docket by the criminal court administrator based on the PSY code entered into the system at the jail. The PSY code is assigned at book-in to individuals who appear suicidal, have an existing diagnosis for major Axis I mental illness (schizophrenia, bipolar disorder, schizo-affective disorder, or major depression), or are currently on medication for a mental health disorder. While the majority of cases for the mental health docket are identified through this process, cases may also be referred by judges, attorneys, pre-trial service officers, mental health care providers, or occasionally family members.

According to respondents, it generally takes two to three days from assignment to appearance on the docket. Some cases that are assigned to the docket may prove to be inappropriate. For example, an individual who may have appeared suicidal at the time s/he was booked into the jail may actually not be. Likewise, not all individuals on medication for a mental health disorder require special handling. These cases are sent back to the criminal court administrator for reassignment. Defendants requesting a trial will also be reassigned by the court administrator.

The paralegal assistant to the prosecutor reviews MH docket cases. If the offense involved a victim, the assistant will contact the victim to explain the mental health issues, why special handling of the case is recommended, and determine if the victim objects. The assistant also contacts the jail to obtain current information regarding the defendant’s physical and mental condition.

Case Processing. The mental health docket is held twice each week with more than 100 cases processed every month. Case conferences led by the judge include a dedicated prosecutor, defense counsel, local mental health authority representative (MHMR), social worker from jail, MHPD social worker, pre-trial services, and criminal court coordinator. The team arrives at a plan for the defendant that, depending on circumstances and needs, may involve jail days, treatment, and ancillary services such as help with obtaining stable housing. The team’s MHMR representative is able to check the local MHMR database to identify the defendant’s previous contact with the public treatment system, and arrangements are made for future services. The MHMR representative also screens individuals in jail for the outpatient competency restoration program.

According to respondents, primary objectives of the court are to decriminalize the mental illness and to reduce the use of jail days for this population. These goals are typically achieved by pursuing non-criminal dispositions such as a case dismissal or deferred prosecution. At the same time, people are linked directly to treatment providers at the time of the disposition, though only deferred prosecution cases are formally monitored for compliance. In this event the prosecutor makes a contract that the individual will comply with treatment-related and other conditions and if they fail to do so for a specified period of time the case is re-filed.

A small number of defendants on the docket are supervised on a specialized probation caseload. Information provided by the court indicated that only 47 defendants had been placed on probation from May 2008 to the time of the site visit in February 2009. These defendants were described as high-functioning individuals and may be required to return to court in 30 days for a status review. In general, however, defendants do not routinely return to court at all unless the court needs to take action on the case. For example, if the court is alerted that an individual with an active case has experienced a trauma that could lead to a relapse, the case will be reviewed during the team conference to determine if further court intervention would potentially be useful.

Programs and Support Systems. Travis County does not have any specific programs for individuals assigned to the mental health docket, though MHMR schedules appointments to promote continuity from the docket into community treatment. MHPD social workers affiliated the MH public defender's office help their clients get appointments with MHMR, then follow up to see that the appointments were kept, that clients take their medications, and that they comply with any conditions the court may have imposed. Defense counsel appointed from the mental health rotation wheel can also take advantage of these services for their clients, but if the attorney does not request assistance then additional support for the individual is not available through the court.

The Travis County misdemeanor mental health docket represents an innovative approach to addressing the mental health issues of defendants. A docket does not give participants a long-term relationship with close therapeutic oversight like a full mental health court. It does, however, capture some of the core benefits as the judge, prosecutor, defense counsel and other members of the team work together to identify and resolve cases appropriate for a therapeutic disposition.

By foregoing routine status hearings and other procedures of a mental health court, a docket is a less costly alternative for low complexity cases and does not require additional staff. The presiding judge handles the special docket in addition to his regular docket, and the specialized prosecutor, defense counsel, and other team members work with the docket as part of their regular responsibilities. A mental health docket of this type may be a way for a jurisdiction to introduce the concept of a mental health court or be a first step toward the implementation of the full model.

Conclusion

Process evaluation results were compiled based on site visits to the Tarrant County mental health court, the Dallas County Misdemeanor Jail Diversion Program, and the Dallas County felony probation mental health court known as ATLAS. The mental health courts observed differ in the selectiveness with which participants are screened for enrollment. From an evaluation perspective, the more program acceptance is influenced by unmeasurable attributes such as external family supports or motivation to succeed, the more difficult it is to clearly determine to what extent success is due to the program or the participants' own strengths. All courts at a minimum consider program volunteers' mental health status, current charges, and offense history in deciding who is eligible.

Each of the judicially-led MH courts is supported by members of a team including representatives from the prosecutor's office, defense, probation department, and treatment providers. Following the standard mental health court model, participants progress through a series of phases during which they receive rewards and sanctions based on treatment compliance. Successful terminations lead to charges being dismissed (or in the ATLAS court, regular probation being reinstated), while unsuccessful discharges result in the charges prosecuted (or in the ATLAS court, probation being revoked).

**CHAPTER 7:
REPLICABLE ELEMENTS OF MENTAL HEALTH COURTS**

CHAPTER 7: REPLICABLE ELEMENTS OF MENTAL HEALTH COURTS

In evaluating the three counties' mental health diversion models, several replicable themes emerged. The mental health courts in Tarrant and Dallas Counties as well as the mental health docket in Travis County all have components of these elements.

Strong Judicial Leadership. All three mental health court programs reviewed in Tarrant and Dallas Counties were supported by judges who volunteered to handle the mental health docket in addition to their regular dockets and court calendars. While these judges are committed to the development of strong, effective mental health courts in their jurisdictions, there are also examples in the study sites of judges who have chosen to focus on achieving therapeutic and diversionary outcomes for different populations. These include drug courts, felony DWI courts, dual diagnosis courts, prostitution courts, homeless courts, veterans courts, and family violence courts, as examples. While the commitment of a strong judicial leader is a defining component of problem-solving courts as they are currently configured, because the court is so strongly based in the motivation and personality of a single judge, it may be difficult in some cases to sustain the programs in the case of judicial turnover.

In accordance with the diversion court framework, the lead judge defines the target population of defendants they are most interested in working with. The judge surrounds him or herself with a court team including members who are knowledgeable about the special needs and treatment alternatives available for the client population they have chosen. Mental health court teams in both Dallas and Tarrant Counties collaborated effectively with criminal justice partners and with community service providers to ensure participants are properly selected for the program and comply with the treatment conditions ordered.

Mental health courts are highly personalized. It is important that mental health court judges have the proper temperament and know when and what type of rewards and sanctions are appropriate. When the judge conveys that s/he wants to see participants succeed and avoid further contact with the criminal justice system, each individual is expected to be inspired to do well. Because rewarding good behavior and successful completion of tasks is a key component of the court, it is also important the judge have excellent motivational skills.

Designated Mental Health Defense Attorneys. The mental health courts in this study used defense counsel in different ways. While the Tarrant County MH court has a defender on the team, advisement regarding the advantages and risks of enrollment is done by the referring attorney who may not know a great deal about the court and its operation.

Dallas County offers the best example of a strong defense role on the MH court. There a single MH public defender offers independent advisement of participants at the enrollment decision and serves as a regular and ongoing defender of participant interests as an active member of the court team.

Because Travis County has a mental health docket rather than a MH court, clients do not formally enroll in a program of court treatment oversight. As a result, specialized MHPD or trained wheel attorneys have no role in advising clients assigned to the docket. They do, however, interact with the court and other team members in seeking therapeutic dispositions while protecting the interests of their clients.

Designated Mental Health Prosecutors. At all three study sites a dedicated mental health prosecutor is assigned to review cases involving defendants with mental illness and be present at court sessions. When making decisions related to these cases, specialized prosecutors are aware of and sensitive to the distinction between symptoms of criminality as opposed to symptoms of mental impairment. While victims' concerns are always factored into case decision-making, specialized prosecutors are willing to consider input from treatment specialists and consider non-traditional, therapeutically-oriented recommendations.

Mental Health Coordinator. In Dallas County courts, the role of mental health coordinator is performed by a court-assigned probation officer. The Tarrant County program has both a court coordinator and a probation officer who functions as a case manager. The role of the coordinator/case manager is to screen defendants for enrollment and ensure that the judge, prosecutor, and defense attorney have the information needed to reach an appropriate disposition. The coordinator then makes sure that clients are connected with the appropriate service providers and receives reports from the provider about whether the client is cooperating with the plan put forth by the court. The mental health coordinator is an important link between treatment providers and the MH court team, and is therefore key to ensuring that all the stakeholders have the necessary information to provide a positive outcome for the client.

Structures and Processes that Promote System-Wide Collaboration and Communication.

Underpinning the strong court team are structures and processes that promote collaboration and communication among stakeholders and provide a forum for addressing policy issues and planning. Tarrant and Dallas Counties have large supporting committees outside of the MH court team composed of representatives from all the community service providers, advocacy groups, and stakeholders in the judicial system. Meetings may include representatives from probation, parole, jail, the sheriff's office, police, judges (probate and criminal), prosecutors, defenders, local treatment providers, mental health treatment providers, advocates, and other stakeholders. These groups convene regularly in order to promote and influence informed public policy and practices affecting persons with mental impairments who are at risk of entering or have entered the criminal justice system.

Prompt Identification of Individuals with Mental Illness. The effectiveness of a MH court or docket is due in large measure to how quickly individuals with mental illnesses are identified, screened for intake, and linked to services. As in all Texas counties, identification begins in the jail with an initial assessment by an intake officer and then a search of a public health database to determine if the individual has a prior history of contact with a mental health provider. All three counties reinforce this process with a social worker or mental health worker in the jail to help with the identification of individuals requiring more comprehensive screening. Quick identification is important because people who bond out of jail before being identified are usually not available for screening and referral to the MH court program.

Clear Clinical and Criminal Justice Eligibility Criteria. The three courts reviewed each have limited space with enrollment controlled in part by clear eligibility criteria. Each case requires a determination from the prosecutor that the individual is a sufficiently low risk to society to divert from the criminal justice system. The MHC team must also agree the defendant is someone who can be helped by the court. MH court selection criteria include subjective elements, based on the assumption that not every individual who meets the objective criteria is well suited to the rigors of a mental health program. For example, courts must decide whether to accept individuals with an overwhelming substance abuse problem that has to be treated before the underlying mental illness can be addressed. Other individuals may be judged too ill to actively participate in the program. The courts studied have attempted to set criteria to

bring in the largest number of participants that their programs can manage and also to ensure that the selected individuals have the capacity to benefit from the services provided.

While the Dallas County MHJDP and ATLAS courts accept relatively high-need clients (e.g., severe mental illness, co-occurring substance use, indigent), Tarrant County is more selective. Applicants are interviewed by the mental health coordinator to determine if the person has the requisite family supports, motivation, and evidence of potential to succeed in treatment. In general, participants in Tarrant County have other advantages that increase their likelihood of success irrespective of MH court enrollment.

Sufficient Treatment Capacity. MH court participants who are connected to treatment services immediately after enrollment have a higher likelihood of success than those that have to wait for services. Access to treatment providers and other services is much more readily available to participants in Dallas County than in either Travis or Tarrant County. In Dallas County, clients are immediately assigned to a service provider case manager so service planning begins literally at the time of enrollment and treatment begins immediately upon release from jail.

In Tarrant County, after referred individuals have applied and completed the screening interview, and after their case has been reviewed by the prosecutor and they have been accepted into the court, the mental health coordinator connects clients with service providers and tracks their progress. Treatment providers in Dallas and Tarrant Counties are in constant communication with the court to let the judge know which clients are on track and which clients need extra incentives or perhaps sanctions.

In Travis County, by contrast, individuals referred to treatment on the mental health docket may have to wait up to 14 days for an appointment with the MHMR provider. The odds of success are increased if the participant receives assistance from the MH public defender's social workers as they can provide encouragement and ensure that clients stay on their medication while waiting for the appointment.

Conclusion

During the site visits, several themes emerged which may be useful to other jurisdictions contemplating the implementation of mental health courts. These include strong judicial leadership, designated mental health defense attorneys and prosecutors, a mental health court coordinator, structures for system-wide collaboration, prompt participant screening, clear eligibility criteria, and immediate access to treatment.

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**CHAPTER 8:
MENTAL HEALTH COURT EVALUATION RESULTS**

CHAPTER 8: MENTAL HEALTH COURT EVALUATION RESULTS

At the outset of this study, it was hypothesized that mental health courts would exert a positive impact on four major outcomes. These included the number of days spent in jail prior to case disposition, engagement in mental health treatment services, guilty verdicts, and recidivism. Multivariate statistical methods were used to test whether these outcomes are better for MH court participants compared to statistically identical individuals (see Chapter 2, “Research Methodology”) who did not have access to special mental health programming.¹⁹

Results are based on all individuals who enrolled in the program including both successful and unsuccessful terminations. This is the most objective measurement approach as it reflects outcomes for everyone intended to benefit from the program – not just those who actually achieved positive results. Graphics showing findings for the subset of Dallas County MH court participants who completed that program successfully (58% of all enrollees) are presented in Appendix A. This data is not provided for Tarrant County because the overwhelming majority of individuals who enroll in that program (89%) have a successful termination.

Pre-Disposition Jail Days

The first priority of the mental health court team is typically to get their program enrollees out of detention and into a community-based treatment context where they can begin addressing the aspects of the illness that may have contributed to the offense. Because of this clear focus on prompt release from incarceration, it was anticipated that mental health court participants would spend fewer days in jail prior to release on bond.

Figure 8

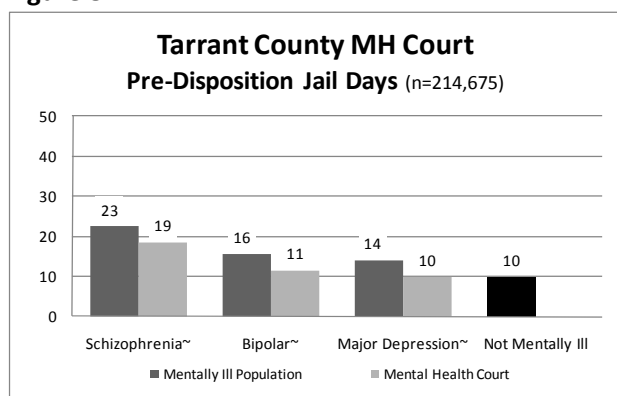
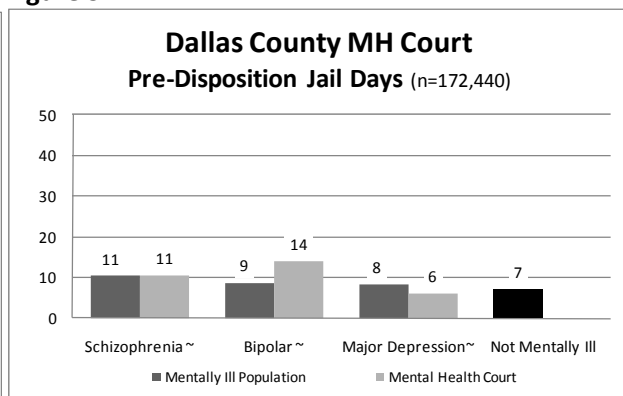


Figure 9



* = $p < .05$ (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
 ~ = Not significant (i.e., the observed difference is not statistically meaningful).

Findings are presented in Figures 8 and 9. None of the observed differences are large enough to be statistically significant at the .05 level. Although the data suggests Tarrant County mental health court participants are released from detention about 4 days earlier than their peers with each diagnosis, there is greater than a 5% likelihood that the observed differences occurred by chance. It is therefore not possible to say with certainty that the court achieves reductions in pre-disposition jail days.

Participants in the Dallas County mental health court are released from detention at approximately the same time as statistically identical defendants who are not in the program. Oddly, program enrollees with bi-polar disorder spend almost twice as many days in detention compared to similar defendants not in the program. This unexpected finding approaches, but does not achieve statistical significance ($p < .051$).

It is also noteworthy that in Tarrant and Dallas Counties, mentally ill people on the whole spend significantly more time awaiting pre-trial release than do similar defendants who are not mentally impaired. This finding may reflect the added complexity of cases involving mental health issues and/or their greater risk for getting “lost in the system.” More initiatives focused on prompt release for the mental health population could be needed.

Mental Health Treatment Engagement

Each of the programs studied is expected to help defendants avoid criminality by better controlling their illness through regular treatment. Individuals participating in MH courts are significantly more likely to be engaged in public mental health services during the six months after their case is disposed compared to a statistically identical control group.²⁰ This finding holds for all diagnoses in both Dallas and Tarrant Counties.

Figure 10

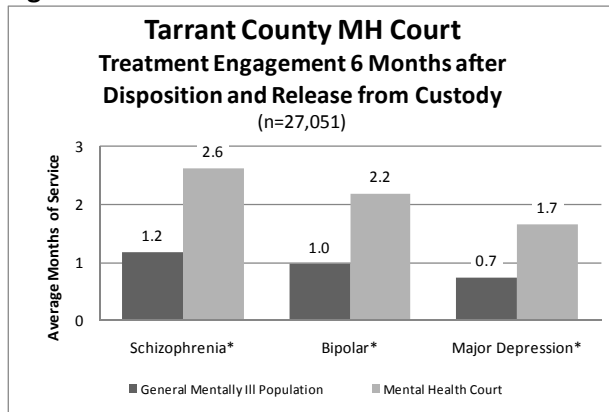
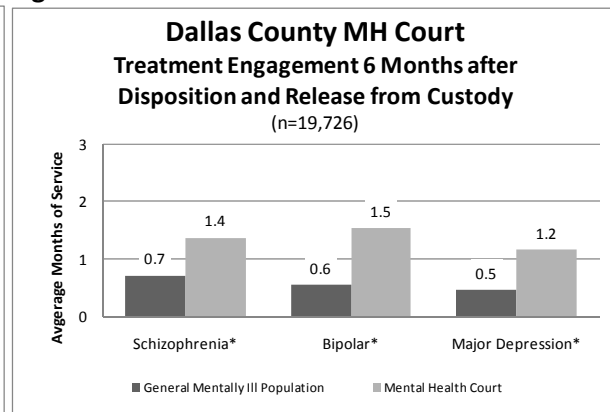


Figure 11



* = $p < .05$ (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
 ~ = Not significant (i.e., the observed difference is not statistically meaningful).

Figures 10 and 11 show the average number of months during which at least one service contact was received. The mean count is low overall because a large proportion of people did not receive any post-disposition services from public providers. Nonetheless, for all diagnoses, mental health court participants received more than twice the rate of treatment compared to their peers who were not enrolled in the program.

Case Disposition

Diversion courts seek to de-criminalize mental illness when appropriate by arranging therapeutic dispositions in lieu of a criminal conviction. Although program completion rates range from 58% in Dallas County to 89% in Tarrant County, every individual who succeeds has their case dismissed. Even after accounting for the negative terminations, far fewer MH court participants are found guilty

compared to similar defendants not in the program. Figures 12 and 13 show large statistically significant reductions in the chance of a guilty verdict for mental health court cases.

Figure 12

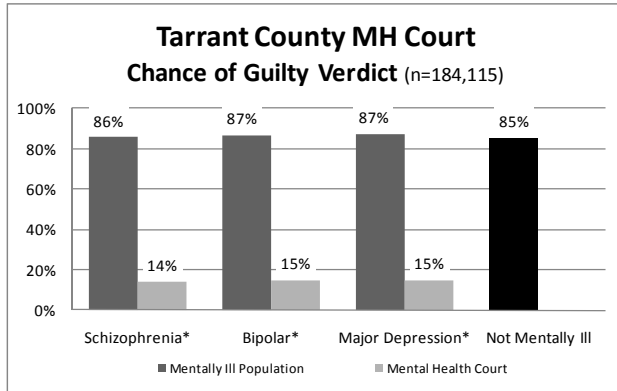
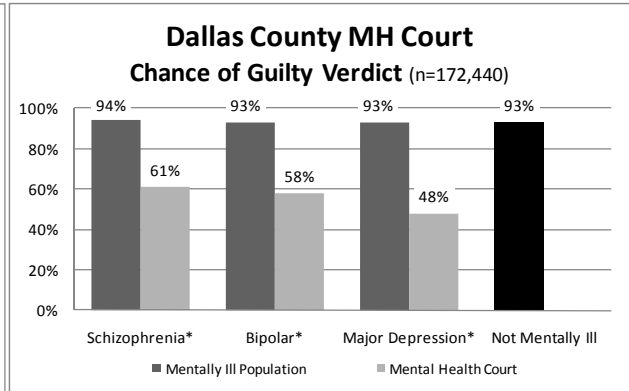


Figure 13



* = $p < .05$ (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
 ~ = Not significant (i.e., the observed difference is not statistically meaningful).

Most of the cases dismissed would have ended in a conviction but for the availability of the MH court. The very existence of these courts provides a venue outside of the traditional criminal case processing system where the focus is on treating the symptoms and avoiding criminal prosecution if possible. The creation of a forum specifically for the purpose of de-criminalizing mental illness is perhaps one of the most powerful impacts of the mental health court model. The very presence of a MH court shifts the focus from punishment to treatment, yielding reductions in guilty verdicts.

Figure 14

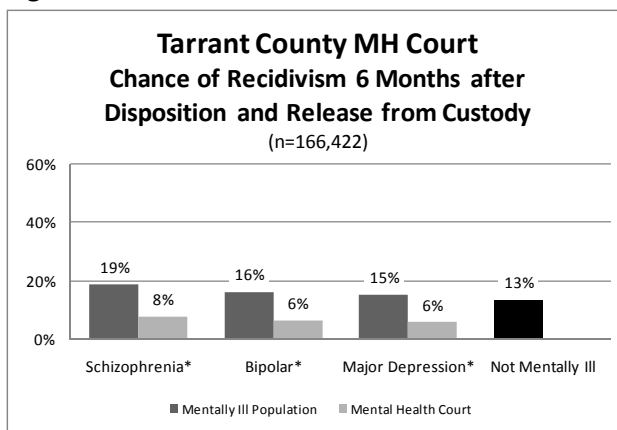
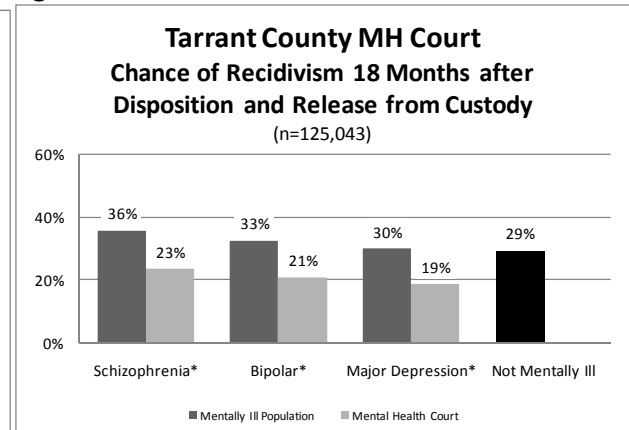


Figure 15



* = $p < .05$ (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
 ~ = Not significant (i.e., the observed difference is not statistically meaningful).

Recidivism

Of all the programs assessed, the Tarrant County mental health court shows the strongest impacts on reducing repeat offending. In the six months following case disposition and release from custody, participants in all three diagnostic categories were less than half as likely to have re-offended compared to their peers not in the program (Figure 14). Remarkably, even 18 months after their case was disposed (Figure 15), Tarrant County MH court participants remain one-third less likely to commit

another offense. Few programs are able to show an impact of this magnitude over an eighteen month duration.

Figure 16

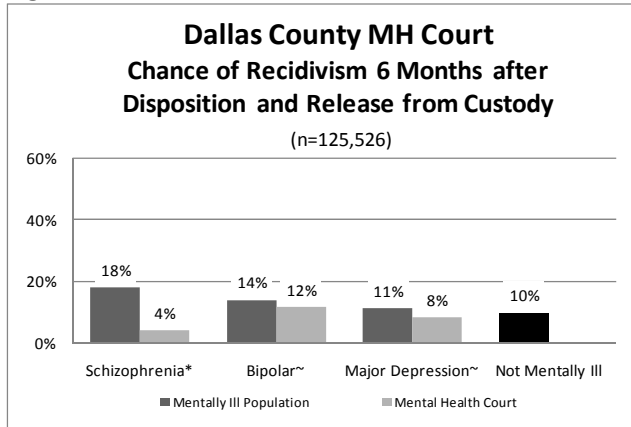
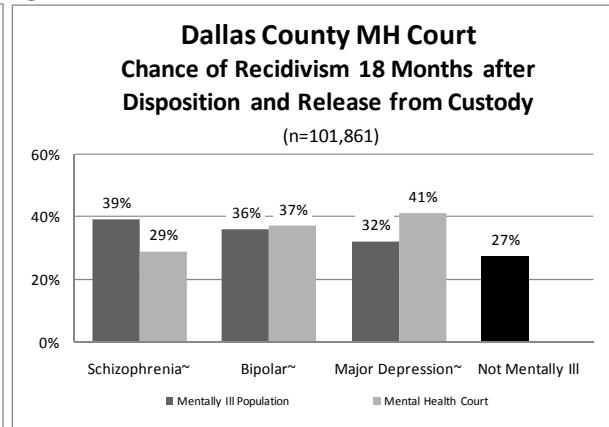


Figure 17



* = $p < .05$ (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
 ~ = Not significant (i.e., the observed difference is not statistically meaningful).

Impacts on recidivism were more moderate in the Dallas County court. Figure 16 shows an impressive 80% reduction in repeat offending for people with schizophrenia for up to six months after case disposition. However, recidivism was statistically identical for people with other diagnoses regardless of program participation. Eighteen months after program completion, there was no significant sustained impact of the Dallas County MHC on recidivism (Figure 17).

Conclusion

These quantitative findings offer a generally positive endorsement for the mental health court model. Neither the Tarrant nor the Dallas County mental health courts significantly reduced the number of days defendants spend in pre-trial incarceration. However, both courts more than doubled participants' level of service engagement and dramatically increased the likelihood of a non-criminal case disposition. Findings with regard to recidivism are mixed. The Tarrant County court shows statistically significant reductions in repeat offending up to 18 months after case disposition, while the Dallas County court reduces recidivism only for schizophrenics up to 6 months after disposition.

In interpreting these findings, it is important to be aware that both courts, to some extent, use eligibility screenings to eliminate from consideration people deemed unlikely to succeed. The Tarrant County court in particular eliminates applicants with extremely high risk attributes such as severe mental impairment or significant substance addiction and favors people with protective factors such as ambition to schedule a screening interview, minimal criminal history, ability to comply with treatment, strong family supports, and a high level of personal motivation. Because these attributes cannot be measured in both the treatment and control group, it is not possible to compare outcomes for mental health court participants against those for individuals with a similar "personal strength profile." Because of this methodological limitation, the research cannot determine whether program effects result more from exposure to the MH court intervention or from pre-existing personal characteristics people already possessed at the time they enrolled.

**CHAPTER 9:
MENTAL HEALTH PUBLIC DEFENDER'S OPERATIONS**

CHAPTER 9: MENTAL HEALTH PUBLIC DEFENDER'S OFFICE OPERATIONS

Compared to a mental health court, the mental health public defender model offers an alternative but complementary framework for addressing mental health issues in the criminal justice system. MH public defenders are an independent office through which indigent defendants gain access to both specialized legal expertise and social worker support. The integration of case management into the defense function is a cornerstone feature of the MHPD model. Information about the client's situation that may be relevant to the case is maintained by the defense team and used exclusively to the defendant's advantage. Case management is often integrated into the legal strategy by helping people establish and maintain mental stability to face their charges, then using defendants' demonstrated ability to comply with a therapeutic regimen in negotiating with the court for a favorable disposition.

Importantly, MHPDs are able to provide specialized representation to individuals that are not eligible for mental health courts. Both MHPDs in Travis and Dallas Counties have highly successful collaborations with the courts as members of the judicial team. However, they also represent a large number of defendants that would not be accepted into these programs. In this way, in both Travis and Dallas Counties, MHPDs have improved the overall quality and diversity of response to defendants with mental illness.

MHPD Advocacy Approaches

Both the Dallas and Travis County mental health public defender offices were established with the assistance of grant funds from the Task Force on Indigent Defense. Dallas County's mental health division was set up within the public defender's office in 2006. The grant provided for a mental health public defender and two caseworkers to represent all types of misdemeanors and felony cases. The office also supports a separate position to counsel defendants in the misdemeanor jail diversion mental health court, the ATLAS felony probation court, and the dual diagnosis re-entry court. In recent years two additional positions have also been added for a public defender specializing in competency cases and another focusing on civil commitment cases.

The Travis County MHPD's office was established in 2007 as the nation's first stand-alone mental health public defender office. It is currently staffed by two attorneys, two social workers, two case workers, an administrative assistant, and an office specialist.

MHPD's observed at the two study sites advance the interests of their clients in a number of ways including the following:

- MHPD case workers help clients connect with community services for treatment, employment, education, health care, and housing. This service not only benefits clients therapeutically, but also improves the probability of a positive case outcome in court.
- Because social workers are available on the defense team, MH public defenders can assure the court they will supervise clients' compliance with court-ordered treatment.
- MHPDs are familiar with local treatment alternatives for their clients and are prepared to present them in court for consideration in determining the disposition.

- MH public defenders make sure appropriate cases are brought to the attention of mental health prosecutors who are generally more willing to consider the role of mental impairment in the criminal case.
- In Dallas County, the MH public defender commonly advocates to have clients accepted into the mental health court where there is a high likelihood the case will be dismissed.

MHPD's also elevate the overall capacity of the criminal justice system to respond to the needs of people with mental illness. The office is widely viewed as a positive partner working with the jail, the courts, the probation department and other partners to find solutions to the special demands people with mental illness place on the criminal justice system.

- Judges, defense attorneys, and other stakeholders view the MHPD as a resource when they encounter individuals they believe need specialized expertise to help them face their charges.
- Dallas County MH public defenders provide legal representation to participants in three problem-solving courts as a member of the court team. The Travis County MHPD is a member of the mental health docket team and provides specialized counsel to people in that court.
- The Travis County MH public defender's office offers regular training benefitting the entire community. Events are offered every six weeks for judges, prosecutors, law enforcement, the defense bar, jail personnel, advocates, and other stakeholders including participants from surrounding counties.
- The Travis County MHPD supports 25 private practice attorneys currently on a special mental health rotation wheel.
 - These private attorneys are qualified with a minimum of 3 hours of continuing legal education (CLE) in mental health case handling each year above the 15-hour State Bar CLE requirement. The training organized by the MH public defender helps these attorneys both maintain their qualifying credentials and improve their defense skills.
 - The services of the caseworker and social workers are also available upon request to attorneys approved for the mental health rotation wheel. The use of the MHPD caseworker and social workers varies across MH wheel attorneys and many reserve requests for this assistance for the most serious cases.

Table 7 provides an overview of the eligibility criteria for appointment of a mental health public defender, the referral process, and the role of case managers and social workers in the two jurisdictions.

Table 7. Overview of Mental Health Public Defender Offices in Travis and Dallas Counties

| | Travis County Misdemeanor Public Defender | Dallas County Misdemeanor and Felony Public Defender |
|------------------------------------|---|--|
| Eligibility Criteria | <p>The Travis County MHPD provides legal representation and case management for individuals that (a) meet Travis County guidelines for indigence, (b) have committed a Class A or B misdemeanor within the jurisdiction of Travis County, (c) have an Axis I diagnosis, and (d) live in Travis County.</p> <p>As long as program space is available, the MHPD intentionally accepts the most challenging cases, referring those that are more routine to the trained rotation wheel attorneys.</p> <p>The office also makes social work services available to defendants assigned an attorney from the MH wheel. To be eligible for this assistance, the case may be either a misdemeanor or low level nonviolent felony, but must meet the same criteria for indigence, jurisdiction, and diagnosis.</p> | <p>The Dallas County MHPD provides legal representation and case management services for individuals that (a) meet Dallas County guidelines for indigence, (b) have a case within the jurisdiction of Dallas County, and (c) have a history of mental illness/ mental retardation or are currently reporting symptoms associated with a mental illness per the DSM-IV-TR. Cases may also involve individuals who have had a head injury, suffer from post traumatic stress disorder (PTSD), or have other severe cognitive problems.</p> <p>There are several factors that influence which cases are ultimately assigned to the MHPD’s office.</p> <p>First, in courts that choose not to use the public defender’s office, mentally ill defendants are ordinarily assigned an attorney from the general rotation wheel. Where the judge believes special mental health advocacy skill is a necessity, a special request may be made for the MHPD to take these most difficult cases.</p> <p>Second, in order to manage MHPD caseloads, many of the public defender’s easier cases involving mental illness are represented by regular PDs. The cases passed along to the mental health division are those that require additional time and expertise to successfully resolve.</p> |
| Case Assignment and Referral | <p>In Travis County, the PSY code from the jail-based mental health assessment is sent electronically to the criminal court administrator for both assignment of counsel and a docket assignment. The administrator assigns defendants with mental health concerns to either the MHPD or to a MH wheel</p> | <p>MHPD clients eligible for the Dallas County mental health court programs are interviewed and advised of program requirements by the diversion public defender usually within 24 hours of jail book-in. The defender helps ensure that the requirements of the program and the consequences of</p> |

| | Travis County Misdemeanor Public Defender | Dallas County Misdemeanor and Felony Public Defender |
|--|---|--|
| Case Assignment and Referral (cont'd) | <p>attorney based on a rotation system which reserves four of five slots for the MHPD. The MHPD is also intentionally assigned the more serious or complex cases.</p> <p>There is a maximum of 500 cases per year assigned to the MHPD. When the MHPD reaches capacity, the office stops taking appointments and all new cases are assigned to the MH wheel attorneys. There are no limits on the caseload of MH wheel attorneys.</p> <p>If a misdemeanor defendant is found to be incompetent, in most instances the case is transferred to the MHPD caseload to await transfer to a mental health facility or hospital. Less frequently the case may be retained by the MH wheel attorney.</p> <p>Ideally, defense counsel are assigned within 24 hours of the arrest with additional time potentially required if the arrest occurs on the weekend. The MHPD always meets with a client in person within one working day of the appointment and determines if a competency evaluation is needed.</p> | <p>participation are understood. Individuals opting not to participate in the diversion court may be represented by the MHPD outside the context of the MH court.</p> <p>Cases ineligible for the Dallas County jail diversion programs (e.g., violent misdemeanors or felonies) are referred to the public defender's office by court coordinators or private defense attorneys.</p> <p>The public defender and a MHPD caseworker assess the need to request a competency evaluation. If the evaluation is that the individual is competent, the public defender can either represent the case with the case manager's help, or refer it to the mental health division. The MHPD will make initial contact with the defendant within 24 hours of a referral.</p> <p>Though there are no set criteria for determining when cases are eligible for MHPD counsel, the behavior underlying the felony charge must be related to the mental illness.</p> |
| Case Management and Social Work Services | <p>Case management services are provided to all clients represented by the MHPD or by MH wheel attorneys who request the service. The social workers assist the client in setting up and meeting appointments with MHMR and other service providers. Travis County does not have a treatment program specifically for pre-trial defendants, but rather the social workers help them with the tasks of seeking community-based services for housing, employment, health care, and education.</p> | <p>MHPD caseworkers conduct daily staffings to review cases and make decisions regarding clients referred to various programs, such as ATLAS, jail diversion MHC, competency restoration, or who are working toward a conditional dismissal.</p> <p>While defendants are in pre-trial detention, MHPD caseworkers coordinate with Parkland Jail Health Services for psychiatric evaluation and medication services.</p> |

| | Travis County Misdemeanor Public Defender | Dallas County Misdemeanor and Felony Public Defender |
|--|--|--|
| | | <p>Upon release from pre-trial detention, MHPD caseworkers prepare recommendations and client exit plans and ensure that people are released with their medications and linked with NorthSTAR service providers on the same day.</p> <p>Clients are monitored by MHPD caseworkers for a period of 90 to 180 days after the case has been resolved in court. Clients report to the public defender’s office at intervals to review mental health services and compliance with court orders.</p> <p>In addition to accessing NorthSTAR treatment services, MHPD caseworkers also refer clients to other community agencies for additional resources such as housing, GED classes, drug treatment programs, employment, and medical services.</p> |

Conclusion

The MH public defenders evaluated fill a critical void in the local justice system by providing skilled representation for mentally ill individuals who would not otherwise qualify for available diversion programs. These programs provide a means to accommodate the special needs of mentally impaired defendants charged with offenses ranging from serious misdemeanors (Travis County) to violent felonies (Dallas County). MHPDs provide access to legal counsel able to handle the mental health aspects of the case as well as social work supports needed to position the client for a more successful case outcome.

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**CHAPTER 10:
SURVEY OF DEFENSE COUNSEL
REPRESENTING MENTALLY ILL DEFENDANTS**

**CHAPTER 10:
SURVEY OF DEFENSE COUNSEL REPRESENTING MENTALLY ILL DEFENDANTS**

The overwhelming majority of defendants with mental illness do not have the benefit of specialized defense expertise. They are most commonly represented by attorneys on the rotation wheel. These attorneys are not ordinarily trained in issues related to mental illness and may be less aware of strategies for incorporating the illness into the defense. In order to gain some insights into ways mental health public defenders differ from regular public defenders or from private assigned counsel, a survey of attorneys was conducted in each of the three counties studied.

Description of the Sample

Survey respondents were identified from the approved list of indigent defense attorneys in Dallas, Tarrant, and Travis Counties, as well as from the membership of county chapters of the Criminal Defense Lawyer’s Association.²¹ Response rates, illustrated in Table 8, were lower than expected and desired. Many factors, including survey length, salience of the topic, affiliation of the survey administrator, compensation levels, and instrument design can all impact the decision to return an answer.²² A meta-analysis of studies analyzing email response rates from 1991 through 2000 found average response rates of 37% across 31 studies. However, customer satisfaction surveys and market research surveys often have response rates in the 10% - 30% range.²³

Table 8. Defense Attorney Survey Sample Size and Response Rate

| | # Attorneys Surveyed | # Attorneys Responding | Response Rate |
|----------------|----------------------|------------------------|---------------|
| Dallas County | 234 | 15 | 6% |
| Travis County | 211 | 27 | 13% |
| Tarrant County | 169 | 25 | 14% |
| TOTAL | 614 | 67 | 11% |

Table 9 provides descriptive information about respondents by category. Though only a few respondents are affiliated with a public defender’s office, the entire population of PDs and MHPDs in the study counties are included. Missing data was limited to private defense attorneys only. It is possible that the low response rate within the private bar demonstrates a limited focus on the mentally ill client population. If it is assumed that those who did choose to respond are the most active in representing this group, then survey findings might represent the perspectives of an “elite” group of the most informed and engaged counselors.

Respondents have been licensed to practice criminal law at least 14 years on average, and have at least a decade of experience representing indigent defendants. Average caseloads range from a high of 84 clients among public defenders to a low of 60 clients for mental health public defenders.

Questions assessed attorneys’ attitudes toward therapeutic dispositions, their use of case managers, training and special expertise, and relationships with mental health-related entities in the criminal justice system and the community at large. In general, findings depict a clear difference in professional methods, resources, and philosophy between mental health public defenders and those without a mental health specialization.

Table 9. Attributes of the Defense Attorney Survey Sample

| | MH Public Defender | Public Defender | Rotation Attorney |
|---|--------------------|-----------------|-------------------|
| Total number of respondents surveyed | 4 | 13 | 67 |
| Dallas County | 2 | 13 | 15 |
| Tarrant County | 0 | 0 | 29 |
| Travis County | 2 | 0 | 23 |
| How many years have you taken appointed clients? | 13.0 | 10.0 | 11.4 |
| How many years have you been licensed to practice criminal law? | 17.3 | 14.0 | 16.9 |
| How many active cases do you personally currently have? | 60.0 | 83.7 | 64.9 |
| Do you currently represent appointed indigent defendants? | 100% | 100% | 94% |

Attitudes toward Therapeutic Dispositions

Figure 18 indicates that mental health public defenders are more likely to actively advocate for treatment as an element of the case disposition. The majority of MHPDs (75%) report some type of treatment-oriented case outcome in the past year. About one-third of regular public defenders or rotation attorneys have gotten a therapeutic result for their clients.

Traditional public defenders and rotation attorneys are also less likely to view arranging treatment as a core component of defense function (Figure 19). MH public defenders, by contrast, universally agree that arranging treatment is an integral aspect of their work.

Figure 18

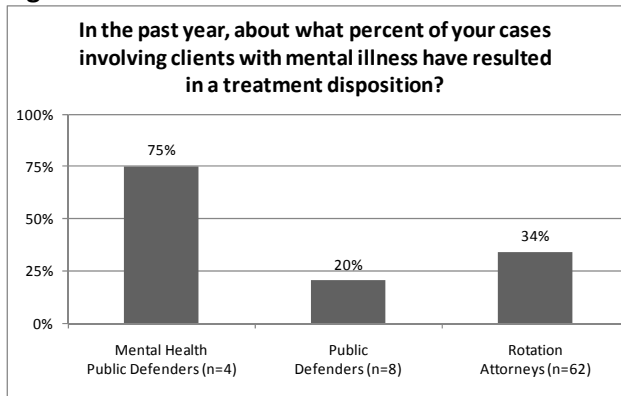
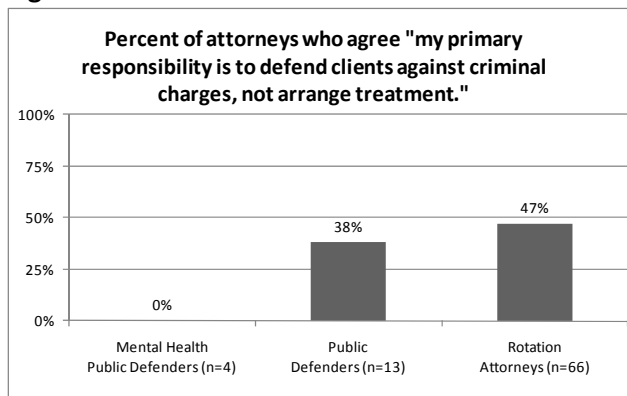


Figure 19



Only about half of mental health public defenders and one-third of other attorneys are extremely likely to encourage clients to take a treatment disposition rather than jail time (Figure 20). When advising clients, all attorneys seem to balance the demands of a treatment program against other considerations such as the defendant’s level of need and/or the severity of the criminal penalty.

When asked how likely clients are to request mental health treatment instead of jail time, only 8% of private bar attorneys felt their clients would want this option (Figure 21). A higher proportion of public defenders and mental health public defenders (25%) believed their clients would be interested in treatment. This finding suggests that defendants are not typically a driving force behind therapeutic

Figure 20

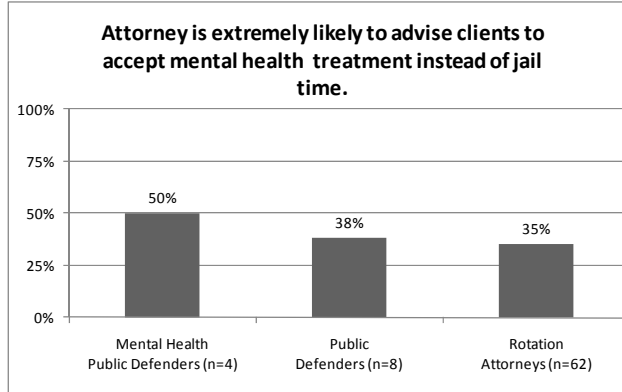
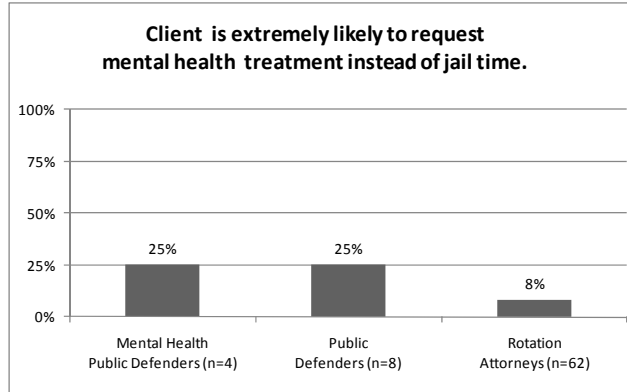


Figure 21



dispositions. To the extent that these alternatives are used, attorneys will need to raise awareness for their clients. Because of their special knowledge in this area, MHPDs may be able to provide clients with more information about treatment options and how they might benefit. Perhaps this explains the perception that MHPD clients might be more willing to consider a therapeutic disposition.

Figure 22

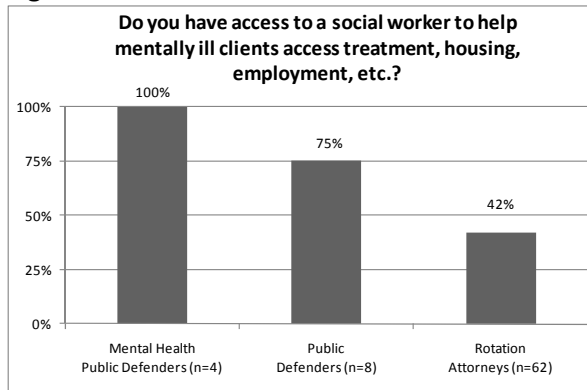
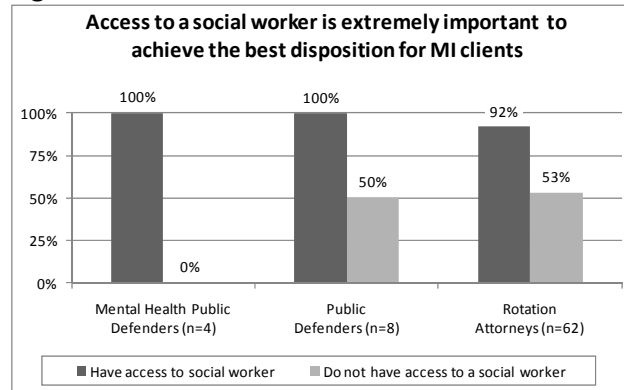


Figure 23



Role of Case Management in the Defense

Every mental health public defender surveyed has access to a social worker to help clients find treatment, housing, employment, and other supports (Figure 22). A large proportion of regular public defenders also have social workers available, primarily because Dallas County public defenders can access the MH case managers for their clients as needed. Attorneys on the rotation wheel are the least likely to report having social workers available to assist with cases. Still, given the lack of institutional infrastructure available to most private practice attorneys, it is surprising and perhaps encouraging that as many as 42% have social workers available.

Where attorneys do use social workers to assist in the legal defense, there is far greater recognition of their importance. Figure 23 shows that virtually every attorney using case managers feels they are extremely important to achieve the best disposition for mentally ill clients. This perspective was shared by only half of the attorneys who opt not to use social workers. These results highlight the philosophical distinction between attorneys who are actively incorporating the therapeutic aspects of mental illness in

their criminal case response, versus those who still consider mentally ill defendants in much the same way as other clients.

Specialized Mental Health Expertise

One of the great strengths of MH public defenders compared to other types of defense attorneys is that they possess a specialized body of knowledge that prepares them to mount a better defense for the mentally impaired. Daily experience with this client population, combined with daily interaction with professional peers who are expert in these issues, is expected to broaden the base of knowledge and sharpen advocacy skills for MHPDs. MHPDs are the only attorneys that confidently report that they have a great deal of knowledge about programs and services for clients with mental illness (Figure 24). Fewer than one in five regular public defenders or rotation attorneys claim to share this expertise.

Figure 24

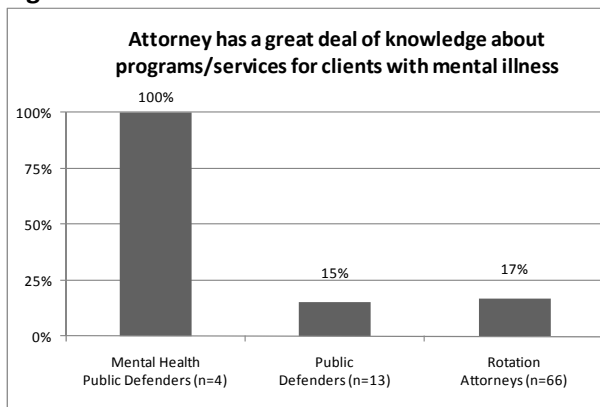
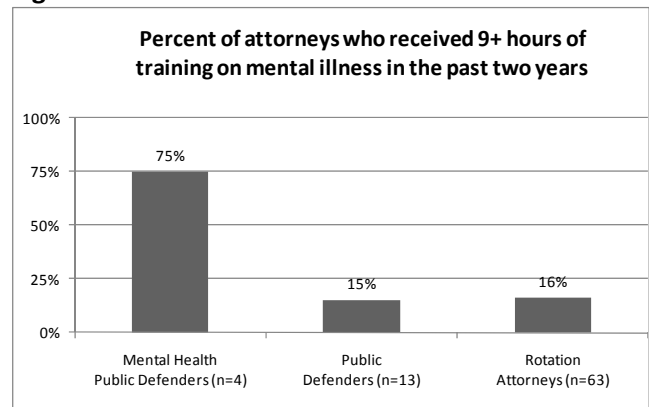


Figure 25

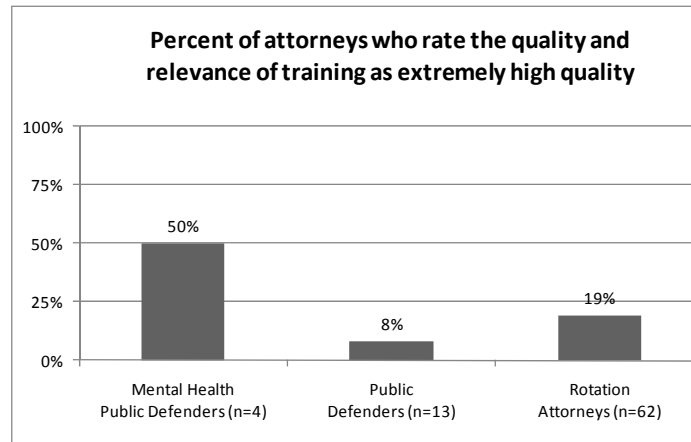


The difference in expertise available from mental health public defenders versus rotation wheel attorneys is highlighted in a quote from a mental health court team member:

“You know, I think we struggle some with figuring out ways to even educate the general attorney population of all the things that are available here in the county for them to take advantage of because we do have a lot of different programs. It is kind of complicated if you have a client with special needs, figuring out if they would be in dual diagnosis or mental health divert or drug court. And so I just don’t think [assigned wheel attorneys’] emphasis is necessarily on plugging them into where they should be as much as it is – and this is a generalized statement – as much as just resolving the criminal case.”

MH public defenders are also far more likely to keep their professional knowledge current through active participation in conferences and workshops. Three out of the four MHPDs surveyed have received at least 9 hours of training in the past two years (Figure 25). In Travis County the MHPDs office routinely sponsors training several times each year to raise awareness and competency among all stakeholders working with the mental health population. Perhaps this is why MHPDs also rate the quality and relevance of their training much more positively than do other types of attorneys (Figure 26). Where they are available, MH public defenders may be the most significant source of expertise on defendants with mental illness in the entire county criminal justice system.

Figure 26



Institutionalized Relationships in the Criminal Justice and Treatment Communities

It is not entirely surprising that attorneys believe prosecutors, and to a lesser extent judges, are generally more concerned with the criminal aspects of cases rather than the potential effects of the mental illness. Fewer than half of all defense attorneys surveyed say judges and prosecutors view treatment-oriented dispositions “very positively” (Figures 27 and 28). Still, mental health public defenders are nearly twice as likely as other counselors to perceive judges and prosecutors as supportive of therapeutic dispositions.

Figure 27

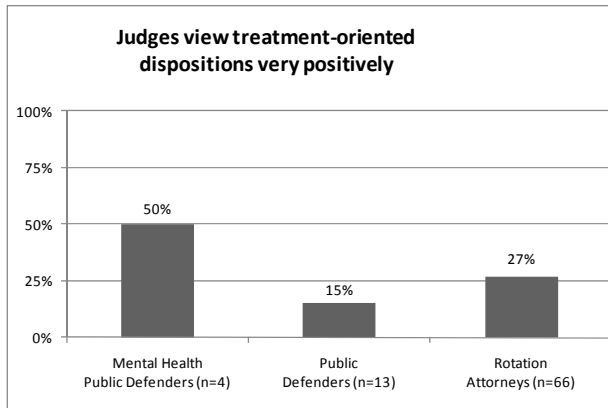
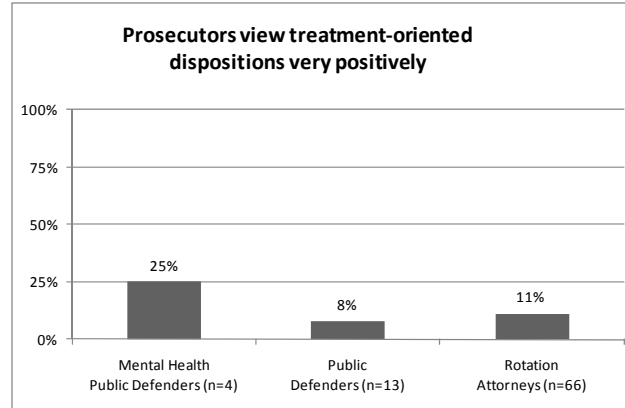


Figure 28



It is possible that the presence of a specialized office such as the MHPD may contribute toward increasing awareness and changing attitudes in the courtroom regarding the potential role of mental illness in explaining criminal behavior. By consistently advocating exclusively for people with mental illness it is suggested here that a MHPD can increase awareness among court officials, develop respect and trust, and ultimately encourage judges and prosecutors to consider treatment dispositions that otherwise might not have been contemplated.

Unlike assigned rotation attorneys, MH public defenders have repeated interactions with judges and prosecutors involving similar types of cases. Over time, these actors develop greater awareness of each other’s priorities and concerns about the mentally ill defendant population, and a fairly broad repertoire of mutually understood alternatives for case resolution may emerge. This “shared language” of

advocacy options is not as readily available for defense counsel who do not focus primarily on special needs clients. In this sense, the MHPD is expected to cultivate stronger networked relationships with other system actors needed to achieve more favorable case outcomes for their clients.

Figure 29

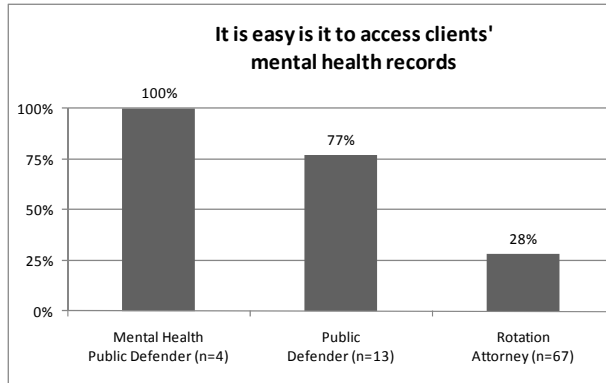
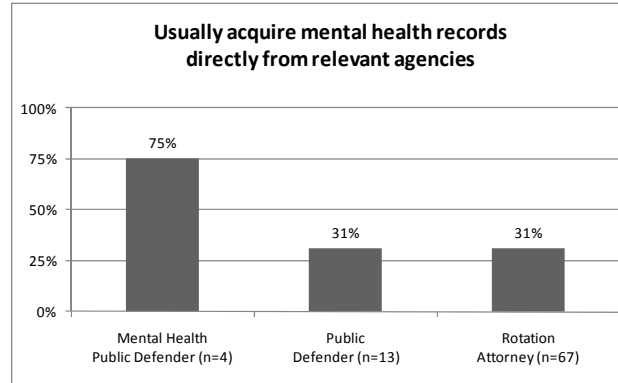


Figure 30



Similarly, MH public defenders have greater understanding of the treatment provider system. MHPDs agree it is easy to access clients' mental health records, and routinely take advantage of the law allowing attorneys direct acquisition of those files.²⁴ Less than one-third of attorneys on the rotation wheel find it easy to access those same records (Figure 29). MHPDs have established relationships with service providers that increase access to documentation of the illness that is potentially pertinent to the criminal defense (Figure 30).

Conclusion

A survey of defense counsel in Dallas, Travis, and Tarrant Counties finds distinct differences in knowledge and attitudes between mental health public defenders, regular public defenders, and rotation wheel attorneys. Specifically MHPDs are:

- more likely to view helping people access mental health treatment as a legitimate aspect of the defense function;
- more likely to utilize social workers in the delivery of defense services;
- more likely to be knowledgeable about local programs and services for clients with mental illness;
- more likely to have received advanced training on mental illness in the past two years; and
- more likely to find it easy to access clients' mental health records, and to be able to acquire them directly from the relevant agencies.

These findings highlight the special niche that MHPDs are able to fill in communities where they are available.

**CHAPTER 11:
MENTAL HEALTH PUBLIC DEFENDER EVALUATION RESULTS**

**CHAPTER 11:
MENTAL HEALTH PUBLIC DEFENDER EVALUATION RESULTS**

Just as mental health courts were expected to improve outcomes for defendants with mental illness, it was hypothesized at the outset of this study that mental health public defenders would yield many of the same advantages. The same factors were assessed for MHPDs including pre-trial jail days, mental health treatment engagement, case disposition, and recidivism. As with the mental health court analyses, multivariate statistical analyses were used to control for as many relevant factors as were available in the county datasets (see Chapter 2, “Research Methodology”).²⁵

The results that follow reflect MHPDs’ work on behalf of defendants with more prior offenses and more serious current charges (Figures 5 through 7) than those served in mental health courts. They are typically cases the regular public defender’s office chose to refer to the mental health division because of their challenge and complexity. In contrast to mental health courts, people entering MHPD caseload are not screened and are not required to complete pre-enrollment interviews or demonstrate their potential to improve. The program impacts measured below are therefore unlikely to be enhanced by selection factors such as defendants’ desire to succeed in treatment or access to strong family and other external supports.

Pre-Disposition Jail Days

Even though MH public defenders begin working on obtaining bond for their clients within one working day of receiving the case, people represented by the Dallas County MHPD are held in pre-trial detention considerably longer than those in the general mentally ill population. Figure 31 shows individuals with schizophrenia are detained nearly three times as long if they are represented by the MH public defender. Those with bipolar disorder are held more than twice as long. This unexpected result was completely counter to the initial hypothesis.

When the finding was described to staff in the public defender’s office however, they registered no surprise. It is common for a case involving a mentally ill defendant to be randomly assigned to an attorney on the rotation wheel who either does not recognize the mental illness or lacks the ability to properly respond. As a result, the defendant will remain in jail for several weeks or months until the original assigned attorney finally turns to the MHPD for help.

Figure 31

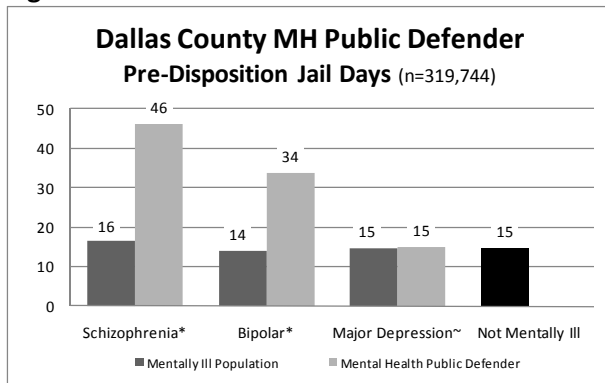
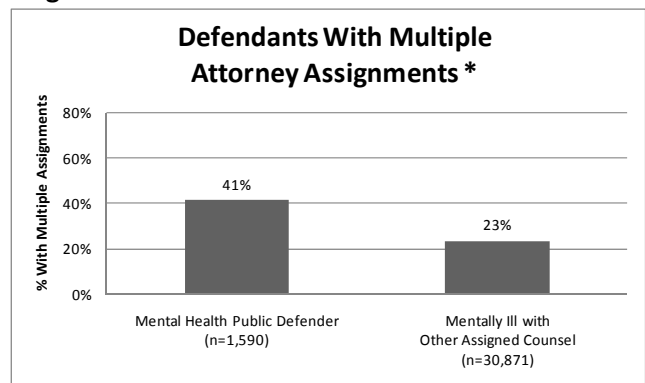


Figure 32



* = p<.05 (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
~ = Not significant (i.e., the observed difference is not statistically meaningful).

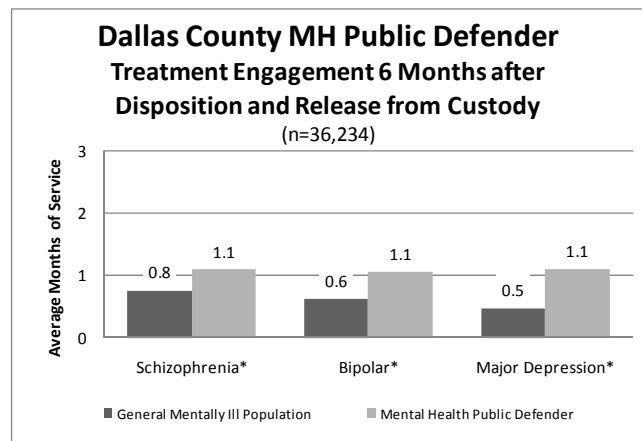
Data is not available to measure the number of days spent in jail before the case is transferred to the MH public defender. However, there is evidence that about 40% of all MHPD cases were originally assigned to a different attorney – nearly twice as many as mentally ill defendants with assigned private counsel (Figure 32). It does, therefore, appear that a large proportion of cases were originally handled by a private bar attorney then later re-assigned to the MHPD as a replacement.

In this way, the MHPD takes on the role of “fixer” for cases that are not being efficiently handled by untrained counsel on the rotation wheel. While the data implies the MHPD moves cases out of jail slowly, more likely the MHPD is responsible for the release of defendants who might otherwise have been held even longer.

Mental Health Treatment Engagement

When represented by a MH public defender, a social worker is a member of the defense team. This case management specialist helps people access supports needed to become mentally stable after arrest. In addition, the social worker can help make sure clients meet any conditions set by the court to reduce the penalty or receive a conditional case dismissal. In Dallas County, the MH public defender continues to provide social work support for six months after the case is resolved in order to help clients integrate successfully into community mental health treatment. This service has a meaningful effect in terms of keeping clients engaged in treatment.

Figure 33



* = $p < .05$ (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
 ~ = Not significant (i.e., the observed difference is not statistically meaningful).

Figure 33 shows the average number of months during which statistically identical defendants have at least one mental health treatment contact after their case is disposed and they are released from custody. Individuals represented by the MH public defender have significantly more treatment contact after the case is resolved. Because most people have no treatment follow-up after disposition, the average number of contacts is relatively low overall.

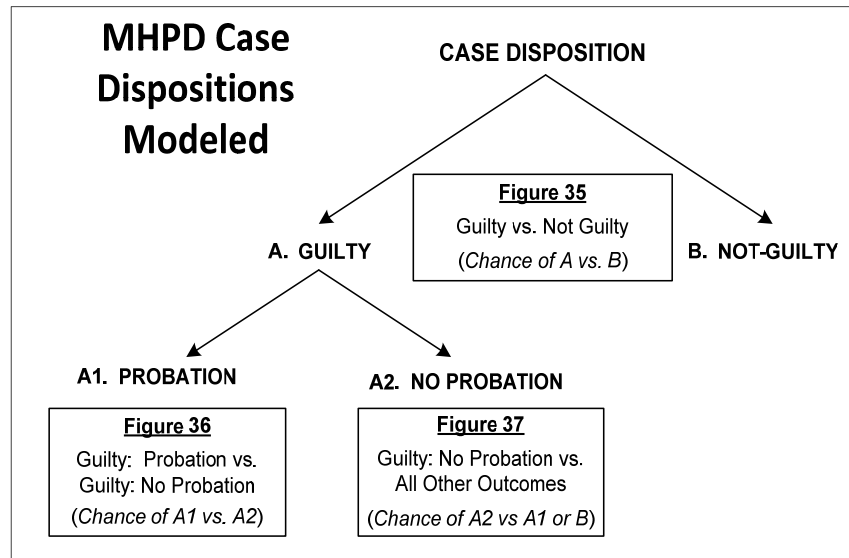
Case Disposition

Once an individual is selected for a mental health court, case dismissal is virtually certain if the defendant can comply with treatment. Not-guilty verdicts are therefore routine and expected. Cases represented by mental health public defenders, on the other hand, have no such expectation. It is the job of the defense attorney alone to convince an adversarial court that the illness should be considered in determining the case disposition. Given this challenge, the data shows that having an MHPD significantly improves defendants' chance of a positive case outcome as measured in terms of:

- reduced chance of a guilty verdict (Figure 35);
- increased chance of probation if found guilty (Figure 36); and
- reduced chance of the worst possible outcome: both being found guilty and receiving jail or prison time as a sentence (Figure 37).

The specific comparisons made in each of these statistical models are illustrated in Figure 34.

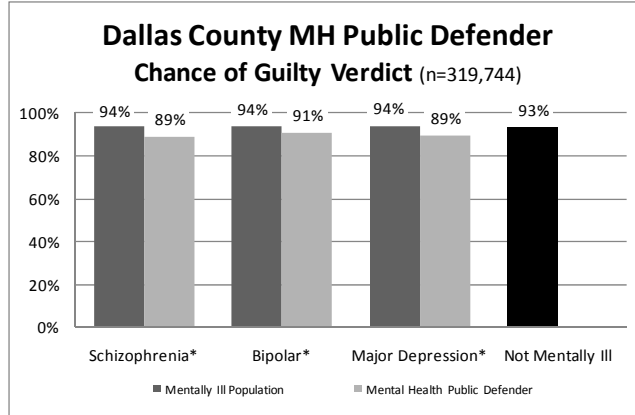
Figure 34



Chance of a Guilty Verdict. Although a verdict of “not guilty” is always the best outcome for the defendant, there is very low probability that most defendants will achieve this result (Figure 35). Statistically identical people have about a 93% to 94% chance of being convicted of their charges either with or without a mental illness. For those with a mental impairment, however, having a mental health public defender significantly reduces the odds of this outcome. MHPD clients are 3 to 5 percentage points less likely to be found guilty and face punishment compared to otherwise identical peers. This is a notable impact given the clear system impetus toward convictions in most cases.

Chance of a Guilty Verdict with Probation. If an individual is found guilty by the court, the most favorable outcome is to receive a disposition to probation in lieu of receiving incarceration. Mental health public defenders excel in this area. Following a guilty verdict, the chance of probation for people represented by the MHPD is approximately twice that of their peers with other forms of counsel (Figure 36). People with schizophrenia are generally the least likely to get probation, but their chances double if

Figure 35



* = $p < .05$ (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
 ~ = Not significant (i.e., the observed difference is not statistically meaningful).

their counselor is a MH public defender. Remarkably, convicted MHPD clients with bipolar disorder or major depression are more than twice as likely to receive probation than statistically identical people with no mental illness ($p < .01$). This is a particularly meaningful outcome given that detention can worsen the condition of people with mental impairments. Under community supervision these individuals can be held accountable for their criminal behavior while avoiding the stresses of confinement and reducing the risk of decompensation.

Chance of a Guilty Verdict with No Probation. The worst possible outcome for any criminal defendant is that they are both found guilty and receive a sentence involving jail or prison time. The chance of both of these outcomes occurring together is illustrated in Figure 37. MHPD clients with schizophrenia are 17% less likely to face a jail sentence, while those with other diagnoses are 36% less likely compared to similar people with other forms of counsel. This is a statistically significant reduction for all diagnoses.

Figure 36

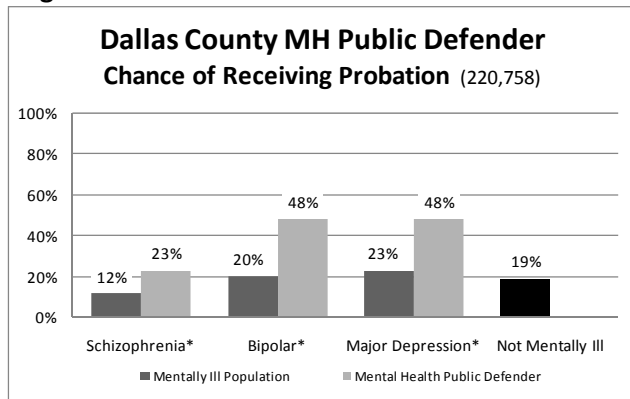
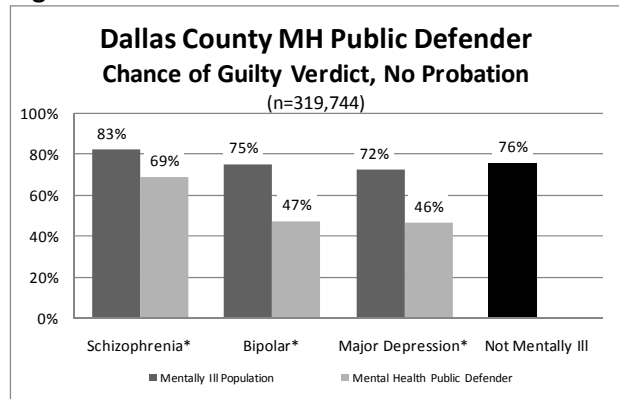


Figure 37



* = $p < .05$ (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
 ~ = Not significant (i.e., the observed difference is not statistically meaningful).

Taken together, these data provide evidence that the MH public defender is providing effective criminal case representation to their special needs clients. They are increasing dispositions that address the criminal case attributes while at the same time incorporating consideration of the mental illness. By

raising the court’s awareness of the impact of illness on criminal behavior, clients are less likely to receive a conviction or to spend time in jail.

Recidivism

Six months after case disposition, mentally ill individuals represented by the mental health public defender experience significantly lower rates of recidivism than do otherwise identical people who are not in the program (Figure 38). Reoffense rates for MHPD clients with schizophrenia or major depression are about two-thirds lower and rates for people with bipolar disorder are half that of their statistically identical peers.

Recidivism continues to be suppressed up to 18 months after case disposition for people with schizophrenia (Figure 39). This is a particularly important achievement in light of the fact that approximately half of the overall MHPD caseload is comprised of people with this diagnosis (Figure 3).

Figure 38

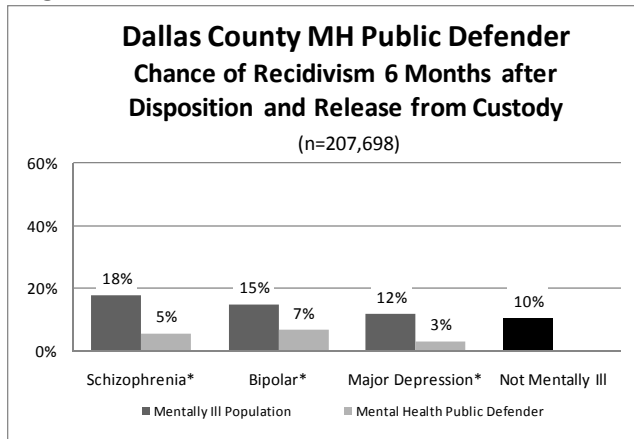
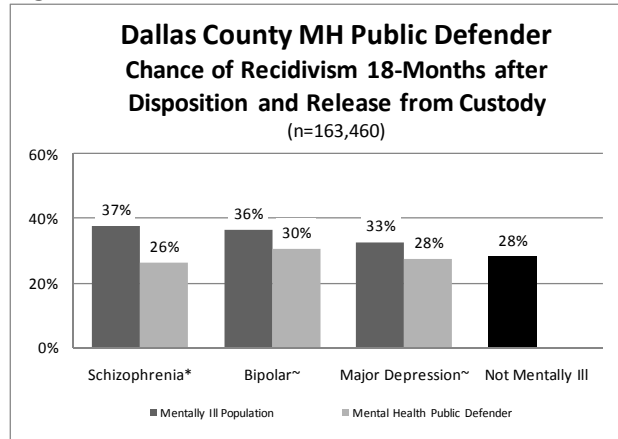


Figure 39



* = p<.05 (i.e., the observed difference is statistically meaningful; it is expected to occur by chance fewer than 5 times in 100).
 ~ = Not significant (i.e., the observed difference is not statistically meaningful).

Conclusion

Mental health public defenders provide legal defense services for the most challenging cases involving people with mental illness. They accept cases that are referred by the courts or by the regular PD’s office because of their complexity. Their cases have more serious prior offenses and current charges compared to mental health courts. Furthermore, the office accepts all defendants without a screening to select cases most likely to succeed. In most instances the MHPD is the only resource available for these highest-need defendants, and the evaluation has measured strong positive impacts of the office on their behalf.

The evaluation is unable to demonstrate definitively that the MHPD reduces the number of days people spend in jail. However, there is strong anecdotal evidence that many clients have already been detained for an extended period of time before they are referred to the office. Data supports this explanation. It appears to be primarily through the work of the MH public defender that these individuals are ultimately released from custody.

Regardless of diagnosis, MHPD clients are significantly less likely to have a guilty verdict or, if convicted, more likely to receive a probationary disposition. Over the long term, people represented by the MH public defender are also more likely to remain engaged in mental health treatment and less likely to recidivate.

Taken together these findings are a strong endorsement for the MHPD model. While mental health courts create a special venue where the expectation is that the accepted cases will be dismissed if at all possible, mental health public defenders are helping to reduce criminal penalties for behavior that results from mental illness, and they are doing so within the mainstream court system.

CHAPTER 12: CONCLUSIONS

**CHAPTER 12:
CONCLUSIONS REGARDING ADVOCACY ALTERNATIVES
FOR MENTALLY ILL CRIMINAL DEFENDANTS**

Among defendants with mental illness, engagement in treatment can potentially reduce future justice involvement by half (Figure 2). Two new initiatives, mental health courts and mental health public defenders, both seek to take advantage of criminal justice system contact as an opportunity to facilitate mentally impaired individuals' access to treatment and reduce repeat offending. These programs use different methods designed for different types of people. Ultimately, however, they offer mutually complementary ways to improve outcomes for individual defendants and the criminal justice system as a whole.

This study has sought to document the impacts of MH courts and MHPDs based on multiple sources of information. Site visits were conducted in Dallas, Tarrant, and Travis Counties during the spring of 2009. This qualitative information was combined with analysis of six years of mental health and criminal justice data, and a survey of defense attorneys at each of the three study sites. A special focus of the research has been on clarifying the role of defense attorneys both as a member of the mental health court team and as defense counsel operating in an adversarial court context. The following paragraphs review the major conclusions.

Finding 1: Both mental health courts and mental health public defenders are increasing non-criminal case outcomes for defendants with mental illness and increasing access to mental health treatment.

Quantitative mental health and criminal case records were available for three programs: the Tarrant County mental health court, the Dallas County Misdemeanor Jail Diversion Program, and the Dallas County mental health public defender's office. Using these records, it was possible to measure the impacts of each of these programs on four categories of outcomes: pre-trial jail days, engagement in the mental health system during the six-month period following case disposition, chance of a guilty verdict, and chance of recidivism. Two additional outcomes describing the likelihood of receiving probation and jail time were considered for MHPDs only. Overall results were positive. A broad summary of the findings is presented in Table 10.

Pre-trial Jail Days. All of the programs studied seek to remove people with mental health issues from jail as quickly as possible. Detention can be highly stressful, potentially worsening their condition. Jailers also point to the cost and logistic challenges of monitoring impaired individuals in confinement. Mental health courts and MH public defenders both seek to get people who are not a safety risk out on bond as quickly as possible so they can enter community treatment. It was therefore expected that participants in these programs would be detained fewer days than statistically identical peers.

This finding was not confirmed. Participants in mental health courts are detained for about the same number of pre-trial jail days as similar defendants who are not in the program (Figure 8 and Figure 9). Furthermore, in an unexpected finding, MH public defenders were actually found to spend significantly more pre-trial days in jail than individuals with other types of counsel (Figure 31). The data suggests that cases involving defendants with mental illness are commonly first assigned to an attorney on the rotation wheel who either does not recognize the mental illness or lacks the ability to properly respond (Figure 32). MHPD staff say they often receive these cases after the defendant has spent weeks or months in jail. In this way the MHPD fixes cases that are not being handled efficiently by untrained outside counsel.

Table 10. Summary of Program Impacts

| | Tarrant County MHC | Dallas County MHC | Dallas County MHPD |
|--|---------------------------|--|--|
| Pre-trial Jail Days | No significant impact | No significant impact | Significant increase (wrong direction) |
| Treatment Engagement 6 Months After Disposition | Significant increase | Significant increase | Significant increase |
| Disposition: Guilty Verdict | Significant decrease | Significant decrease | Significant decrease |
| Disposition: If Guilty, Chance of Probation Instead of Jail | N/A | N/A | Significant increase |
| Disposition: Guilty Verdict with Jail Time | N/A | N/A | Significant decrease |
| Recidivism 6 Months After Disposition | Significant decrease | Significant decrease, schizophrenic diagnosis only | Significant decrease |
| Recidivism 18 Months After Disposition | Significant decrease | No significant impact | Significant decrease, schizophrenic diagnosis only |

Mental Health Treatment Engagement. By linking defendants to mental health treatment, both the MH courts and MH public defender hope to reduce symptoms and minimize future criminal contact. Each of the programs evaluated was found to successfully improve treatment contact rates for at least six months after disposition (Figure 10, Figure 11, and Figure 33).

Importantly, different methods are used to achieve this same outcome. MH courts enroll volunteers who the judge and team members believe are capable of doing well, then use rewards and punishments available under the authority of the court to encourage treatment compliance. MH public defenders, by contrast, use the resources of the office (i.e., specialized defense counsel and social workers) to advocate for a therapeutic disposition in traditional adversarial court. Defense social workers also help clients prepare for trial and comply with treatment ordered by the court in order to receive a conditional dismissal. Thus, both MH courts and MHPDs offer different means of increasing access to mental health treatment for different types of criminally involved individuals.

Case Disposition. Each of the programs evaluated significantly reduced the likelihood that participants will receive a guilty disposition. This is a particularly important outcome confirming that, as intended, these initiatives are creating alternatives to criminalization of the mentally ill. The greatest reductions were observed for mental health courts where, depending upon county and diagnosis, participants were between 35% (Figure 13) and 83% (Figure 12) less likely than otherwise identical peers to be convicted. In problem-solving courts, it is understood that people who meet the enrollment criteria will have their case dismissed if they comply with program requirements.

Cases represented by the MH public defender have no initial expectation of a dismissal. Rather, the defense attorney is required to build a case in adversarial court that the illness should be considered in determining the disposition. Even given this challenge, mental health public defenders significantly improve defendants' case outcome as measured in terms of:

- reduced chance of a guilty verdict (Figure 35);
- increased chance of probation if found guilty (Figure 36); and
- reduced chance of the worst possible outcome: both being found guilty and receiving jail time as a sentence (Figure 37).

Recidivism. By helping defendants access mental health treatment, both mental health courts and MHPDs were found to successfully reduce the probability of repeat offending. The level of impact varies by program. The Tarrant County mental health court had the strongest reductions demonstrating statistically significant declines in recidivism for at least eighteen months (Figure 15). The Dallas County misdemeanor mental health court achieved reductions for people with schizophrenia for up to six months after program completion (Figure 16). MHPDs show reductions for all clients at 6 months (Figure 36) and for people with schizophrenia up to 18 months after disposition (Figure 37).

Taken together, these results offer encouragement for the continued development of creative treatment-oriented case processing options for people with mental illness. Positive impacts were documented for all programs assessed, and the benefits extend not only to the individuals whose lives are impacted, but to the broader criminal justice system as well.

Finding 2: Mental health public defenders and mental health courts are contributing to a change of culture regarding the criminal case processing of individuals with mental illness.

Mental health public defenders and mental health courts are creating separate and complementary centers of awareness related to defendants with mental illness. These programs are introducing important innovations to allow the mental health aspects of criminality to be addressed. In addition they are creating pressures, incentives, and assistance for other components of the justice system to increase their expertise and capacity in response. For example:

- At all three study sites, prosecutors have designated assistant district attorneys to handle cases assigned to the mental health courts and dockets. These positions were created largely in response to the fact that diversion courts, mental health dockets, and mental health public defenders began to seek special consideration for defendants with mental illness. These prosecutors are qualified to weigh the role of mental impairments in the criminal case. After considering risks of harm to society and consulting with victims, mental health prosecutors factor mental illness in the development of charges and recommended dispositions.
- In collaboration with MH courts and MH public defenders, local mental health treatment providers are increasingly developing services tailored to the needs of criminally involved individuals. New criminal justice funding streams, particularly from TCOOMMI and DSHS, are supporting new treatment capacity and bridging the gap between criminal justice and community treatment. Even where programs are not being formally funded, in Travis County, the misdemeanor mental health docket team has engaged MHMR mental health providers so individuals can transition from the court directly into the community mental health system as soon as the case is disposed.

- In Travis County, the MHPD and MH court dockets are raising standards within the private defense community. The county created a mental health rotation wheel of specially trained private bar attorneys to complement the MHPD. Furthermore training is provided by the MHPD's office for these and other community stakeholders about every six weeks. By creating opportunities for professional development in this area, the MHPD can spur interest in greater skill development and use of therapeutic alternatives among members of the private bar.
- Mental health court judges interviewed for this study report that other courts are increasingly willing to transfer cases to their jurisdiction. Whereas in the past most judges focused narrowly on the charges irrespective of defendants' mental status, attitudes are changing to favor placing special needs defendants in a venue where they can receive appropriate treatment while also facing charges.

In these important ways, MH public defenders and mental health courts are changing the criminal justice culture and empowering the system to respond more effectively to the complex relationships between illness and criminality.

Finding 3: Mental health public defenders and mental health courts benefit different populations of defendants with mental illness.

Mental health public defenders and MH courts vary considerably in the criminal risk attributes of their client populations. Problem-solving courts generally choose first-time offenders without a lengthy criminal history. Table 5 describes the factors considered by the MH courts when determining who can enroll. Among the factors considered are clients' current offense, offense history, and qualifying diagnosis. Prosecutors also have a say in whether they feel the defendant is a candidate for diversion court and whether victims support this course of action. There is additional case by case consideration of whether the team feels the participant is a good "fit" and stands to benefit from the intervention. Among mental health courts, willing volunteers may fail to qualify, and there is no benefit within the program for those that are not chosen.

MH public defenders, by contrast, do not screen cases based on the perceived likelihood of a successful case outcome. They take on more challenging cases involving violent misdemeanors or felonies and multiple prior offenses. It has been argued that, in this sense, MH public defenders offer a more just alternative by responding to the needs and rights of all people with mental illness equally.²⁶ The Travis County MHPD intentionally seeks out the most complex and challenging indigent misdemeanor cases. The Dallas County MHPD also takes on the most difficult assigned cases, often involving severe current and prior offenses and referred from the court of jurisdiction or from the regular public defender's office specifically because of their complexity. Where a MH public defender is available, people who might otherwise be excluded from therapeutic justice opportunities are able to have their illness addressed as a component of their legal defense.

MH courts help meet the needs of low-level offenders who pose a minimal risk to society. MH public defenders promote the consideration of mental illness as a contributing factor in more serious offenses. Together these interventions offer a continuum of resources capable of impacting the full range of mental health cases.

Finding 4: Where MH courts are highly selective, some positive outcomes could be explained by selection bias.

Because mental health courts choose which individuals can participate, some study findings may be impacted by selection bias. In all the MH courts studied, individuals must volunteer to enter into the program. After volunteering, potential participants must be approved by multiple stakeholders including prosecutors, treatment providers, and other MHC team members including the judge. People who clear these hurdles may have important but unmeasurable attributes that make them more likely to succeed than their peers who did not meet intake standards. The more weight unmeasured personal traits carry in program selection, the more likely it is that people who enter MH courts will possess internal strengths needed to achieve positive outcomes irrespective of the court's intervention.

As an example, in the Tarrant County court participants are selected with the specific intention of enrolling those with a high likelihood of success. The symptoms of their illness are generally less severe and they cannot have substance abuse problem so serious that detracts from the court's ability to treat the mental health issues. Enrollees have a very low rate of prior offenses (Figure 5), many are not indigent, are employed, and have private insurance. Those invited to participate generally have other strengths as well such as recent engagement in treatment (Figure 4) or a strong family support system. Because characteristics such as self-motivation, mental competency, positive treatment attitude, or family backing could not be measured in the study, there is no way to limit comparisons to control group subjects who were similar on these dimensions. Outcomes may have been different if MHC participants had been compared directly to non-participants who possessed the same unmeasured assets.

There is less concern that selection bias will artificially inflate outcomes measured for the mental health public defender. The MHPD accepts all referred cases without a screening process aimed at choosing clients likely to have a successful case outcome. Indeed, if bias exists, it is more likely to suppress than inflate true program effects. For example, courts that do not ordinarily use the public defender still refer particularly intractable cases to the PD's mental health division. Similarly, both private and public defenders may handle some of the easier cases involving defendants with mental illness, but they commonly pass the most challenging cases to their colleagues in the MHPD unit. As a result, any positive effects of observed for the MH public defender's office would seemingly be quite conservative – achieved in spite of rather than because of the unmeasurable characteristics of their clients. It is not possible to quantify the effects of selection bias on the outcomes presented here, but it is important to be aware of their potential impacts in interpreting study findings.

Finding 5: The mental health public defender model is more compatible with the defense attorney's ethical obligation to represent the interests of their clients.

This study highlights meaningful differences in the role of defense counsel in a collegial problem-solving court versus in adversarial court. Defense representatives assigned to diversion courts participate as a member of the court team along with the judge, prosecutor, a court coordinator or probation officer, and case managers. In regular staffings, the team reviews each participant's progress and recommends to the court what action to take with each participant at the next appearance. While team recommendations often involve rewards for successful compliance, non-compliance may lead to sanctions such as ineligibility for an incentive, community service work, extra drug or alcohol testing, or brief confinement in jail. Ultimately, in the event of complete failure to comply with program demands, these sanctions may involve a decision whether to terminate the defendant and revert to full

prosecution of the criminal charges. At this point, defense counsel may perceive a conflict with their ethical obligations to zealously defend their clients.

The practical significance of this dilemma was expressed in an interview with a specialty court attorney:

“At least 3 times on a weekly basis I’m pulling my hair out because I have to kind of stop myself sometimes and go ‘what is my job on this – what do I do?’ and some days I just don’t have an answer.

...[The judge] strives to create an atmosphere where all opinions are welcome, ...and I would say for the most part it’s a collegial atmosphere which is very unusual, and that’s what makes me kind of step back sometimes and go ‘Wow, this is really strange’ because some of these people are on probation for some rather scary offenses and I am the lawyer [who is] supposed to be defending them and all this information’s coming out in a meeting. And so, yes, if it works out, it works great and it’s very good. [But if not] ...then at the end of it all you’ve got a client that is suddenly looking at being revoked and sent to the penitentiary, all of this information has already come out, the judge is aware of it, and the judge is the one making the decision, and that’s where, at the end of the day I just kind of go, ‘Wow, what do we do about this now.’”

This type of dilemma is far less likely to emerge with the defender in a traditional adversarial role. When the defense team retains its independence by advocating for therapeutic justice in court, potentially harmful information about the defendant’s personal challenges remains protected by attorney-client privilege. Defendants still receive access to mental health treatment and case management support, both to help maintain stability in preparation for trial and to assist in meeting any conditions imposed by the court. However, because treatment oversight is a component of the defense, information about treatment outcomes can only be used to advantage clients, never to punish based on compliance success.

Finding 6: Mental health public defenders offer an institutionalized base of expertise capable of supporting mental health courts and the overall criminal justice system.

Judicial leadership is a defining attribute of both the MH courts and the MH docket observed in this study. The existence and operational parameters of these courts are tied closely to the personality, values, and interests of the judges that have taken leadership roles. On the one hand, the commitment of a powerful principal may be a driving force accounting for many of the court’s successes. On the other hand, the stability of these courts can be disrupted or court operations can be entirely dissolved if the judge leaves the bench or fails to be re-elected. Replacing a departing judge with a peer of equal experience or commitment may be difficult. The National Association of Criminal Defense Lawyers emphasizes the importance of finding another individual who is committed to the issues and willing to become expert at the court’s work.²⁷

MHPDs, on the other hand, offer a more permanent institutional presence helping to sustain focus on mental illness in the justice system over the long term. MH public defenders operate within a professional office infrastructure with a full-time focus on criminal mental health law. In addition to being highly trained, MHPDs also network daily with courts, prosecutors, service providers, and other entities that impact case processing of the mentally impaired.

In Travis County, the MH public defender has become the jurisdiction's primary resource for increasing capacity to address mental illness. Trainings sponsored by the office about every six weeks reach virtually all types of stakeholders in the county, from judges to prosecutors to jailers, and attract visitors from other jurisdictions. The office supports the private defense community by promoting high standards of defense for the mentally ill, helping attorneys qualify for the mental health wheel, making case management available when needed, and accepting referrals of particularly challenging cases.

One stakeholder in Dallas described the ways in which the expertise of the MHPD has benefitted the mental health courts:

"I think it would be very difficult to do this kind of program if you were relying on court-appointed attorneys or private attorneys. It's my personal view that... the public defender's office is far superior in dealing with clients that have mental illnesses. I mean, there is absolutely no comparison in their knowledge, their focus, their knowledge of the specialty programs, their continuing education focus."

Because mental health courts are largely founded on the efforts of individual judicial leaders, they may be vulnerable to change or dissolution as a result of turnover. A mental health public defender's office can offer a complementary and more permanent institutional platform to support the needs of defendants, MH courts, traditional courts, private defense attorneys, and a broad array of other stakeholders who encounter people with mental illness in the jurisdiction.

Conclusion

The evaluation findings presented here represent a strong positive endorsement for the continued support of criminal justice programs designed to treat rather than punish defendants whose offense is a result of a mental illness. Mental health public defenders and mental health courts represent different but complementary approaches for addressing the needs of the mentally impaired. These initiatives target different types of defendants with different strategies, but both pursue a common objective of therapeutic justice.

In mental health courts, defenders represent the interests of their client in coordination with other members of the problem-solving court team. In cases assigned to MHPDs outside of the problem-solving courts, they promote therapeutic dispositions in a traditional adversarial court context. Where MH public defenders and mental health courts are both available, they can be complementary and mutually supportive. In the counties studied, these programs are raising awareness and spearheading creative approaches regarding new possibilities for achieving the dual objectives of treatment and accountability.

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ENDNOTES

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¹ The Task Force on Indigent Defense (Task Force) operates under the Office of Court Administration (OCA), the administrative arm of the Texas judiciary under the Texas Judicial Council and the Texas Supreme Court. The Task Force is a body of thirteen members supported by ten staff and charged by the Texas Legislature to help state and county courts improve their indigent defense systems.

² Existing public defender offices in El Paso County (2005) and Dallas County (2006) were enhanced to add specialized mental health defense capability.

³ Free-standing mental health public defender offices are established in Travis and Fort Bend Counties.

⁴ Priority population diagnoses include schizophrenia, bipolar disorder and major depression.

⁵ Texas Correctional Office on Offenders with Medical or Mental Impairments, *Biennial Report to the Texas Board of Criminal Justice* (Austin, Tx.: Author, 2007) p. 27 and 28.

⁶ National Alliance on Mental Illness (2004). *Spending Money in All the Wrong Places: Jails and Prisons*. (Arlington, VA: Author, 2004). Available as of March 27, 2010 at: http://www.nami.org/Template.cfm?Section=Fact_Sheets&Template=/ContentManagement/ContentDisplay.cfm&ContentID=14593

⁷ Ditton, Paula M., "Mental Health and Treatment of Inmates and Probationers," *Bureau of Justice Statistics Special Report*, (1999). Available (As of March 29, 2010) at: <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=787>; Ward, Mike, "Texas selected for study of mental health illnesses in state prisons," *Austin American Statesman*, Feb 19, 2007; Bernstein, Robert and Tammy Seltzer, "The Role of Mental Health Courts in System Reform," *University of the District of Columbia Law Review*, 7 (2003):143. Available as of March 29, 2010 at: <http://www.bazelon.org/issues/criminalization/publications/mentalhealthcourts/index.htm>.

⁸ *Ibid*, endnote 5.

⁹ Information about the appointment of indigent counsel was not available in the Tarrant County dataset.

¹⁰ In calculating the likelihood of recidivism, multivariate methods were used to control for a range of factors other than treatment that might impact repeat offending. While these control variables (*detailed in the "Methodology" section*) remained constant, the only factor allowed to vary was the number of months during which treatment contact occurred with the public mental health system.

¹¹ *Polk County v. Dodson*, 454 U.S. 312, 318 (1981).

¹² King, John D., "Candor, Zeal, and the Substitution of Judgement: Ethics and the Mentally Ill Criminal Defendant," *Washington and Lee School of Law Public Legal Studies Research Paper Series*, (December 23, 2008): 211.

¹³ Under this model, a judicially-led team helps inform decision-making about case disposition but treatment supervision is provided through a specialized probation caseload.

¹⁴ The Dallas County CDLA president declined to distribute the survey to organization members in that county.

¹⁵ Because Travis County was implementing a significant upgrade to the criminal justice information management system at the time of the study, some necessary files were not available in time for quantitative analysis to be included in this report.

¹⁶ The term “Bot” is internet lingo for a program that interacts with people in a conversational manner through the widely understood internet chat paradigm. (See http://stlqp10.edapt.us/hlihome.nsf/JDIM_Whitepaper.pdf)

¹⁷ Because of complications related to a comprehensive data system upgrade, Travis County was unable to provide all of the requested data.

¹⁸ The categories “Cases w. Non-MI Defendants” and “Cases w. MI Defendants” are used to describe individuals without and with mental illness respectively who were not enrolled in the programs of interest. To simplify presentation of these comparison groups, cases were aggregated for both Dallas and Tarrant Counties. Checks were conducted to make sure that combining these cases would not obscure substantial variation within the separate counties. Differences between counties were found to be minimal. Prior offenses do not differ from the mean by more than 0.2 offenses. For misdemeanor and felony case types, no differences from the mean were greater than three percentage points.

¹⁹ Interpretation of the statistical models requires the specification of a “base” or comparison person against whom to measure the impact of outcome variables assessed. All of the specified attributes of this hypothetical individual are held statistically constant with the exception that the one variable of interest in each model is allowed to change. The base attributes selected were designed to represent the most “typical” person in the criminal justice systems studied.

The attributes assigned are white male with a current non-violent misdemeanor offense and the average number of prior offenses of each type (i.e., violent and non-violent felony and misdemeanors). The referent individual is assumed to have no mental illness and the average number of months of mental health treatment contact in the year prior to arrest. In Dallas County the individual is assumed to have assigned counsel (not available for Tarrant County). In Tarrant County, the individual is assumed to be an unmarried citizen (not available for Dallas County). If these assumptions are changed, the magnitude of statistically significant relationships may vary but the direction of the relationships and the overall conclusions will remain unchanged.

All analyses for the Dallas County mental health court are constrained to non-violent misdemeanor cases because that is the only type of case accepted in that court.

²⁰ Treatment received from private providers outside the public mental health system could not be measured.

²¹ The Dallas County CDLA president declined to distribute the survey to organization members in that county.

²² Sheehan, Kim, "Email Survey Response Rates: A Review," *Journal of Computer-Mediated Communication*, (January 2001). Available as of March 29, 2010 at:
<http://jcmc.indiana.edu/vol6/issue2/sheehan.html>

²³ CustomInsight.com, "Maximizing Survey Responses." Available as of March 29, 2010 at:
<http://customer-satisfaction-surveys.custominsight.com/maximize.html>

²⁴ Access to records from relevant agencies as allowed under Sec. 614.017 of the Texas Health and Safety Code

²⁵ *Ibid*, endnote 18.

²⁶ National Association of Criminal Defense Lawyers, *America's Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform*, (September, 2009): 23-24. Available as of March 29, 2010 at:
[http://www.nacdl.org/public.nsf/2cdd02b415ea3a64852566d6000daa79/665b5fa31f96bc40852574260057a81f/\\$FILE/problem-solvingreport_110409_629\(K+PMS3145\).pdf](http://www.nacdl.org/public.nsf/2cdd02b415ea3a64852566d6000daa79/665b5fa31f96bc40852574260057a81f/$FILE/problem-solvingreport_110409_629(K+PMS3145).pdf)

²⁷ *Ibid*, endnote 26, p. 29.



APPENDIX A



Dallas County Misdemeanor Mental Health Jail Diversion Program Outcomes for Successful Program Graduates

