PUBLIC DEFENDERS: THE IMPOSSIBILITY OF RULE 1.14 AND HOW MENTAL HEALTH FIRST AID TRAINING CAN CONTRIBUTE TO SUCCESS

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* Juris Doctor Candidate 2018, Quinnipiac University School of Law. M.B.A. 2008, University of Nevada, Las Vegas. B.S. in Chemistry 2002, University of Nevada, Reno. I would like to recognize the many public defenders that work tirelessly, often under difficult conditions, to ensure their clients have the best representation possible. Thank you to Michael Richards and the public defenders at G.A. No. 4 in Waterbury, Connecticut for their feedback and inspiration. I am grateful to Professor Jennifer Herbst and the *Quinnipiac Health Law Journal* staff for their comments and editorial work on this paper.

Client Warner is one of fifteen clients waiting to be seen by Attorney Stevens. Court starts in thirty minutes, so Attorney Stevens' patience is thin as he works quickly to get through his list of clients waiting to see him. Client Warner struggles with anger management and other mental health issues. Within minutes of entering Attorney Stevens' office, communication breaks down as Client Warner unleashes his frustration about his case onto his attorney, threatening to fire him and return to a life of violence. In response, Attorney Stevens refuses to speak with him while he is angry and kicks Client Warner out of his office. The next time they see each other is in front of the judge. Both are still angry and neither has communicated to the other information necessary for a successful court hearing.

After meeting with Client Warner, Attorney Stevens heads down to lock-up where he sees Client Brown asleep in her cell after being picked up overnight in a prostitution sting. Attorney Stevens needs to interview her and ten other clients before heading up to court in fifteen minutes where he will argue their bond. Client Brown is suffering from heroin withdrawal and is not providing coherent answers to Attorney Stevens' questions. Seeing the futility of spending any more time with Client Brown, Attorney Stevens moves on to his next client knowing he has no useful information upon which to make a successful bond argument.

I. Introduction

Model Rule of Professional Conduct 1.14 ("Rule 1.14") requires all attorneys to "maintain a normal client-lawyer relationship with the

client"[1] as far as "reasonably possible"[2] when representing clients with diminished capacities due to mental impairment.[3] For public defenders, Rule 1.14 casts its heavy shadow over the majority of client relationships since a disproportionate number of clients suffer from mental health issues.[4] Maintaining normal relationships with these clients can be difficult for public defenders because communication is often strained or virtually non-existent.[5]

As part of maintaining a normal attorney-client relationship, public defenders must also ensure that they are providing effective counsel to their clients as required by the 6th Amendment of the United States Constitution and *Gideon v. Wainwright*.[6] The lack of communication as a result of client mental health issues makes this a difficult challenge for public defenders. In addition, conditions such as heavy caseloads,[7] limited resources,[8] and a lack of mental health training[9] further aggravate the attorney-client relationship so that meeting the ethical obligations of Rule 1.14 becomes next to impossible.

Because of these unique challenges, it is necessary to give public defenders the tools they need to cope with and communicate effectively with clients suffering from mental health issues if they are to be held to the requirements of Rule 1.14. Jurisdictions across the country are now testing various ways to handle the overwhelming number of criminal defendants with mental health issues, including the use of specialty mental health courts and mental health dockets.[10] Unfortunately, these solutions do not address the public defender-client relationship.

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1 MODEL RULES OF PROF'L CONDUCT r. 1.14 (AM. BAR. ASS'N, 1983).

2 *Id.*

3 *Id.*

4 Richard L. Frierson, Mary S. Boyd & Angela Harper, *Mental Illness and Mental Health Defenses: Perceptions of the Criminal. Bar*, 43 J. AM. ACAD. PSYCHIATRY L. 483, 491 (2015), http://jaapl.org/content/jaapl/43/4/483.full.pdf.

5 Chelsea Davis, Ayesha Delany-Brumsey & Jim Parsons, *'A Little Communication Would Have Been Nice, Since This is My Life:' Defendant Views on the Attorney-Client Relationship*, 40 CHAMPION, 28, 28 (2016).

6 *See* Gideon v. Wainwright, 372 U.S. 335 (1963).

7 DONALD J. FAROLE, JR., *A National Assessment of Public Defender Office Caseloads*, BUREAU JUST. STAT. (Oct. 28, 2010), http://www.jrsa.org/events/conference/presentations-10/Donald_Farole.pdf.

8 NORMAN LEFSTEIN, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* 24 (A.B.A., 2011), http://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf.

9 Frierson et al., *supra* note 4, at 491.

10 Hon. Peggy Fulton Hora, *Courting New Solutions Using Problem-Solving Justice: Key Components, Guiding Principles, Strategies, Responses, Models, Approaches, Blueprints, and*

Currently, organizations exist that offer mental health first aid (MHFA) training for the general public.[11] This note explores using a modified version of these MHFA trainings as a simple, resourceful way to give public defenders the skills they need to communicate more effectively with their clients who suffer from mental health issues[12] and, consequently, to meet their ethical obligations under Rule 1.14. It begins with an overview of the existing working environment facing public defenders. The focus is on understanding how a heavy caseload, a lack of funding and resources, and a high number of clients with mental health issues affect how public defenders do their jobs. The note then takes a closer look at the ethical obligations required under Rule 1.14. Finally, the note discusses a possible solution, and potential drawbacks, to the difficulties facing public defenders as they try to meet their ethical obligations of Rule 1.14 while operating in an environment wrought with challenges.

II. Understanding the Public Defense Landscape

Public defender services have been in existence since the United States Supreme Court first ruled on the issue in 1963.[13] In the seminal case *Gideon v. Wainwright*,[14] the United States Supreme Court interpreted the 14th Amendment of the U.S. Constitution as requiring states to provide legal counsel to indigent defendants accused of serious

Tool Kits, 2 CHAP. J. CRIM. JUST. 7, 7 (2011).

[11] *Frequently Asked Questions*, MENTAL HEALTH FIRST AID USA, https://www.mentalhealthfirstaid.org/cs/faq/ (last visited Feb. 19, 2018).

[12] This note, including the proposed solution, is aimed at addressing various common mental illnesses. The National Alliance on Mental Illness describes "mental illness" as "a condition that affects a person's thinking, feeling, or mood." Mental illness encompasses a wide range of specific mental disorders such as bipolar disorder, depression, anxiety disorder, autism, and schizophrenia, among others. By contrast, legal insanity is a legal term that describes "any mental disorder severe enough that it prevents a person from having legal capacity and it excuses the person from criminal or civil responsibility. "Diminished capacity" describes a condition in which a "client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason." Clients suffering from mental illness may have diminished capacity as defined in Rule 1.14. This note focuses on mental disorders that give rise to diminished capacity rather than legal insanity. It is meant to address cases when mental illness may not be easily detectable, but nevertheless require recognition by the public defender so that any ethical issues arising under Rule 1.14 can be addressed. *Mental Health Conditions*, N.A.M.I., https://www.nami.org/Learn-More/Mental-Health-Conditions (last visited Feb. 19, 2018); *Insanity*, BLACK'S LAW DICTIONARY (10th ed. 2014); AM. BAR ASS'N, *supra* note 1.

[13] *Gideon*, 372 U.S. at 341.

[14] *Id.*

crimes.[15] Almost ten years later, the Supreme Court extended the right to counsel to all defendants facing a potential loss of liberty.[16] Recognizing the importance of ensuring effective legal representation for indigent individuals, some states now go even further and extend the right to counsel to various other hearings that may result in a loss of liberty.[17]

The result is that public defender offices are responsible for a staggering percentage of all criminal cases. Those familiar with the field of public defense believe that as many as "80-90% of all defendants prosecuted in criminal cases throughout the country are represented by publicly funded counsel."[18] This makes meeting the ethical obligations of Rule 1.14 a daunting challenge for public defenders considering the current circumstances in which they operate. Heavy caseloads, a lack of funding and resources, and a disproportionately high number of clients with mental health issues all add to the challenge.

A. Heavy Caseloads

In 2007, the United States Department of Justice's Bureau of Justice Statistics conducted a census of public defender offices (both state and county administered) across the nation revealing staggering caseloads in many jurisdictions.[19] Based on data from 957 public defender offices principally funded by state or local governments, the results show that public defenders handled more than 5.5 million cases in 2007.[20]

On average, individual public defenders in state-run programs carried a median of eighty-two felony and 217 misdemeanor cases.[21] Those in county-run programs carried a median of 100 felony and 146 misdemeanor cases.[22] One California law firm recognizes the impact that heavy caseloads have on the quality of representation and states this difference in caseloads as the number one reason for choosing a private criminal defense attorney over a public defender.[23] The firm advertises

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15 Suzanne M. Strong, *State-Administered Indigent Defense Systems, 2013*, BUREAU JUST. STAT. (Nov. 2016), http://www.bjs.gov/content/pub/pdf/saids13.pdf.

16 *Id.*

17 *Id.*

18 Phyllis E. Mann, *Ethical Obligations of Indigent Defense Attorneys to Their Clients*, 75 MO. L. REV. 715, 727 (2010).

19 FAROLE, JR., *supra* note 7.

20 *Id.*

21 *Id.*

22 *Id.*

23 *Private Criminal Defense Attorneys vs Public Defender – Top 8 Reasons,*

a more manageable average caseload of ten to fifty cases for each of its private criminal defense attorneys.[24]

In an attempt to protect the quality of representation by public defenders, some states have set caseload limits.[25] In 2007, about 40% of state-run and 20% of county-run public defender programs set maximum caseload limits.[26] Conversely, 32% of state-run and over 50% of county-run programs had neither caseload limits nor allowed public defenders the ability to refuse cases.[27] It can be inferred that the remaining programs do not have caseload limits, but give public defenders the ability to refuse cases. Even with these limits, only four out of seventeen state-run public defender programs felt they had a sufficient number of attorneys to meet the standards in 2007.[28] Similarly, only one in four county-run programs felt they had a sufficient number of attorneys to meet the caseload standards.[29]

In sum, when compared to their private criminal defense attorney counterparts, public defenders wrestle with an overwhelming amount of clients. In addition to excessive caseloads, quality of representation is further threatened by a lack of funding and resources, as well as the difficulty of working with a majority of clients with mental health issues.

B. Lack of Funding and Resources

A lack of government funding and resources go hand in hand with heavy caseloads. The American Bar Association recognizes the importance of adequate funding. In fact, in a 2011 report, the American Bar Association's Standing Committee on Legal and Indigent Defendants identified a lack of funding as the leading problem behind excessive caseloads.[30] The same report stated that two years earlier, in 2009, the National Right to Counsel Committee recommended that legislators "appropriate adequate funds so that quality indigent defense services can be provided."[31] Similarly, the National Association of Criminal Defense

SCHWARTZBERG, LUTHER, APC (Aug. 22, 2016), http://www.ielawoffice.com/private-criminal-defense-attorney-vs-public-defender-top-8-reasons/.

[24] *Id.*

[25] FAROLE, JR., *supra* note 7.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] LEFSTEIN, *supra* note 8, at 20.

[31] *Id.*

Lawyers urged public defender offices to "have sufficient attorneys to permit the maintenance of ethical standards."[32] However, public defense services remain drastically underfunded. The American Bar Association went so far as to say that "[f]unding for indigent defense is shamefully inadequate."[33]

The under-funding crisis exacerbates the difficulties associated with working with clients with mental health issues.[34] Public defenders are left without the time or resources to communicate and work effectively with these clients who often require more attention than a client without mental health issues.[35] As a result, the ability of public defenders to provide effective counsel to their clients with mental health issues is severely limited.[36]

C. Disproportionate Number of Clients with Mental Health Issues

Adding to the complexities created by a lack of funding and heavy caseloads is the fact that public defenders often represent a disproportionate number of clients with mental health issues.[37] In 2009, roughly "2.2 million people with [mental health disorders] nationwide came into contact" with the criminal justice system.[38] Unfortunately, there are relatively few, if any, studies or statistics focusing on the number of defendants with mental health issues who are represented by public defenders. The Vera Institute of Justice is currently conducting a study regarding the role of public defenders when representing clients with mental health disorders.[39] While this study will likely provide valuable

[32] *Id.*

[33] *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, AM. BAR ASS'N (Dec. 2004), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf.

[34] Davis et al., *supra* note 5, at 28.

[35] *Id.*

[36] Olivia Sideman, *New Study Examines Indigent Defense for People with Mental Health Disorders*, VERA INST. JUST.: THINK JUST, BLOG (May 22, 2013), http://archive.vera.org/blog/new-study-examines-indigent-defense-people-mental-health-disorders-0.

[37] *Id.*

[38] *Id.*

[39] Ayesha Delaney-Brumsey, *The Role of Indigent Defense for Defendants with Mental Health Disorders*, VERA INST. JUST., https://www.vera.org/projects/the-role-of-indigent-defense-for-defendants-with-mental-health-disorders (last visited Feb. 21, 2018).

information and statistics regarding the current number of indigent defendants with mental health disorders, the study's findings are still only preliminary. Until the findings are finalized, it is necessary to draw inferences from more accessible information about the number of defendants with mental health issues, and from the relation between those defendants and indigency.

A 2005 study conducted by the Bureau of Justice Statistics revealed that "more than half of all prison and jail inmates had a mental health problem."[40] Of those in local jails, 64% were found to have a mental health problem.[41] This figure is particularly relevant because jails are where individuals are held "pending arraignment, trial, conviction, or sentencing."[42] Nearly 80% of local jail inmates were represented by public defenders.[43] The findings were similar when it came to state and federal prisons. About 56% of state prisoners and 45% of federal prisoners have mental health problems.[44] Public defenders were found to represent about 75% and 50% of state and federal prisoners respectively.[45]

The data above supports what public defenders already know: the large majority of defendants they represent have mental health problems. The types and severity of these mental health problems vary. Some problems are severe enough to meet legally-recognized standards, thus allowing public defenders to access special resources for their clients.[46] For example, defendants who have diminished capacity due to severe mental health issues may be deemed legally incompetent by a medical doctor.[47] In that case, the defendant will receive treatment aimed at restoring them to competency before any further court proceedings. A

[40] Doris J. James & Lauren E. Glaze, Mental Health Problems of Prison and Jail Inmates, BUREAU JUST. STAT., 3 (2006), https://www.bjs.gov/content/pub/pdf/mhppji.pdf (defining "mental health problems" by two measures: a recent history (diagnoses) or symptoms (undiagnosed) of a mental health problem, and excluding from the study "[p]ersons who have been judged by a court to be *mentally incompetent to stand trial or not guilty by reason of insanity*").

[41] *Id.*

[42] *Id.*

[43] Steven K. Smith & Carol J. DeFrances, Indigent Defense, BUREAU JUST. STAT. (1996), https://www.bjs.gov/content/pub/pdf/id.pdf.

[44] James & Glaze, *supra* note 40.

[45] Smith & DeFrances, *supra* note 43.

[46] *See* Lukas Saunders, *Competency to Stand Trial*, NOLO, http://www.nolo.com/legal-encyclopedia/competency-stand-trial.html (last visited Feb. 19, 2018); *see Mental Health*, A.B.A., http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_mentalhealth_blk.html (last visited Feb. 19, 2018).

[47] Sheena E. Arteta, *How to Legally Declare Someone as Mentally Incompetent?*, THE LAW

public defender may also motion the court to appoint a guardian ad litem, conservator, or guardian to represent defendants with severe mental health issues.[48] Some jurisdictions have other resources available, including mental health specialty courts or specially trained public defenders.[49] However, these resources are reserved only for defendants with severe mental health issues, and public defenders are left to struggle with defendants with less severe mental health problems.[50]

Less severe, but far more common mental health issues usually get no special attention or treatment by public defenders or the court system, despite standards set forth by the American Bar Association calling them to do so.[51] Considering that a large majority of a public defender's clients have some sort of mental health problem, it would be impossible, from both a time and financial standpoint, for each of those defendants to receive special treatment or services. They may go unrecognized by public defenders because public defenders are not trained to screen for mental health disorders.[52]

The 2005 Bureau of Justice Statistics study mentioned above attempted to identify the number and types of both diagnosed and undiagnosed mental health problems most commonly suffered by prison and jail inmates.[53] Of the 64% of inmates in local jails who reported having a mental health problem, only 11% were actually diagnosed by a mental health professional.[54] For inmates in state prisons, the figure dropped to 9% and for federal prison inmates, it dropped to 5%.[55] The remaining inmates who reported mental health problems exhibited symptoms only or had some other mental health history that did not include an official

DICTIONARY, http://thelawdictionary.org/article/how-to-legally-declare-someone-as-mentally-incompetent/ (last visited Feb. 19, 2018).

48 MODEL RULES OF PROF'L CONDUCT r. 1.14 (AM. BAR ASS'N 1983), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_14_client_with_diminished_capacity.html (last visited Feb. 21, 2018).

49 Jeff Bouffard, Elizabeth Berger & Gaylene S. Armstrong, *The Effectiveness of Specialized Legal Counsel and Case Management Services for Indigent Offenders with Mental Illness*, HEALTH AND JUSTICE (July 11, 2016), https://healthandjusticejournal.springeropen.com/articles/10.1186/s40352-016-0038-6.

50 *Id.*

51 *See* CRIMINAL JUSTICE STANDARDS ON MENTAL HEALTH STANDARD 7-1 (AM. BAR ASS'N 2016), http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/mental_health_standards_2016.authcheckdam.pdf.

52 Frierson et al., *supra* note 4, at 491.

53 *See* James & Glaze, *supra* note 40.

54 *Id.*

55 *Id.*

diagnosis.[56]

In the study, symptoms of mental health problems were reflective of disorders such as major depression, mania, and psychotic disorders, and included behaviors such as "persistent sadness, loss of interest in activities, insomnia or hypersomnia, psychomotor agitation, and persistent anger or irritability."[57] Moreover, "[i]nsomnia or hypersomnia and persistent anger were the most frequently reported" symptoms.[58]

To further aggravate these mental health disorders, many inmates suffer from substance dependence or abuse.[59] Of the jail and state prison inmates who were found to have mental health problems, about 76% and 74%, respectively, were found to also have a substance abuse or dependence problem.[60]

Similarly, the American Bar Association identified the most common mental disorders found in the criminal justice system as schizophrenia, bipolar disorder, major depressive disorders, developmental disabilities, and "substance abuse disorders that develop from repeated and extensive abuse of drugs or alcohol or some combination thereof."[61]

For public defenders that have the majority of their clients exhibiting these types of symptoms, providing effective representation can be a difficult, if not impossible task. Each of these symptoms can adversely affect communication on both ends of the attorney-client relationship. Clients may provide little or no useful information to their attorney as a result of angry outbursts, irritability, or being under the influence of illegal substances. Attorneys may become so frustrated that they cut client meetings short or only share the bare minimum amount of information in an effort to move the meeting along.

When communication is adversely affected, it becomes more challenging for the public defender to represent the client's interests effectively. Early findings in the study currently being conducted by the Vera Institute show that poor communication among public defenders and indigent clients with mental health issues hinders development of positive

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56 *Id.*

57 *Id.*

58 *Id.*

59 *Id.*

60 *Id.*

61 *See* CRIMINAL JUSTICE STANDARDS ON MENTAL HEALTH STANDARD 7-1.1(a) (AM. BAR ASS'N 2016), http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/mental_health_standards_2016.authcheckdam.pdf.

and trusting relationships.[62] Indeed, "clients frequently reported that being able to communicate effectively with their attorney was integral to their experience of, and perceived quality of, legal representation."[63] The same study found that poor communication can also lead to disagreements between the attorney and client.[64] While disagreements about key decisions were common, poor communication led to a marked difference in the time at which attorneys and clients perceived disagreements.[65] In addition, 36% of disagreements went unresolved.[66]

The American Bar Association recognizes the difficulties of representing clients with mental health problems and has set forth numerous standards (the "Standards") addressing the topic.[67] For example, Standard 7-1.2 reads:

> Officials throughout the criminal justice system should recognize that people with mental disorders have special needs that must be reconciled with the goals of ensuring accountability for conduct, respect for civil liberties, and public safety.[68]

Standard 7-1.4(b) goes so far as to warn attorneys of the difficulties that can arise when working with clients with mental disorders. It states that "[a]ttorneys should be prepared to deal with difficulties in communication that can result from the client's mental disorder."[69]

In addition, the Standards specifically address the roles of the attorney representing a defendant with a mental disorder,[70] as well as the

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[62] Davis et al., *supra* note 5.

[63] *Id.* at 6.

[64] *Id.* at 4.

[65] *Id.* at 4.

[66] *Id.* at 5.

[67] *See* CRIMINAL JUSTICE STANDARDS ON MENTAL HEALTH STANDARD 7-1 (AM. BAR ASS'N 2016), http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/mental_health_standards 2016.authcheckdam.pdf.

[68] *Id.* Standard 7-1.2 goes on to read:

> Criminal justice officials should work with community mental health treatment providers and other experts to develop valid and reliable screening, assessment, diversion, and intervention strategies that identify and respond to the needs of individuals with mental disorder who come into contact with the justice system, diversion program, or post-adjudication supervision monitoring.

[69] *Id*. Standard 7-1.4.(b)

[70] *Id*. Standard 7-1.4.(a-b). Moreover,

> Attorneys who represent defendants with mental health disorders should provide client-centered representation that is inter-disciplinary in nature. These attorneys should be familiar with local providers and programs that offer mental health and related services to which clients might be referred in lieu of incarceration, in the interest of reducing the likelihood of further involvement with the criminal

need for "programs offering advanced instruction on mental health . . . law"[71] for public defenders.[72]

The standards are, however, vague and do not offer concrete recommendations. Budget-conscious state court systems are left to figure out how to meet the standards when resources are already scarce. The result is that only the most severe cases receive attention and public defenders are forced to attempt to provide effective representation with very little assistance and with inadequate training.

III. Ethical Obligations of Public Defenders Under Rule 1.14

Most lawyers are held to the ethical standards presented in the ABA's Model Rules of Professional Conduct.[73] For public defenders working with a significant number of clients with mental health issues, Rule 1.14 is particularly important. Rule 1.14(a) reads:

> When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-

justice system.

Id. Furthermore, "[a]ttorneys who represent defendants with mental disorders should work particularly close with their clients to ensure that the clients understand their options." *Id.*

[71] MENTAL HEALTH, MENTAL RETARDATION AND CRIMINAL JUSTICE: GENERAL PROFESSIONAL OBLIGATIONS STANDARD 7-1.3(b)(ii) (AM. BAR ASS'N, Criminal Justice Section Archive), http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_mentalhealth_blk.html (last visited Feb. 21, 2018).

[72] *Id.* ("Bar associations, law schools, and other organizations having responsibility for providing continuing legal education should develop and regularly conduct programs offering advanced instruction on mental health and mental retardation law and mental health and mental retardation professional participation in the criminal process. Prosecutors, public defenders, and other attorneys who specialize in, or regularly practice, criminal law should participate in these programs.")

[73] MODEL RULES OF PROF'L CONDUCT r. 1.14 (Am. Bar Ass'n 1983), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html (last visited Feb. 18, 2018). The *ABA Model Rules of Professional Conduct*, adopted by the ABA House of Delegates in 1983, serves as models for the ethics rules of most states. *See Variations of the ABA Model Rules of Professional Conduct*, A.B.A. (Sept. 15, 2016), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_114.authcheckdam.pdf. As of September 15, 2016, twenty-seven states follow the ABA's version of Model Rule 1.14 verbatim. *Id.* Texas chose not to adopt any version of Model Rule 1.14 and California has its own set of professional conduct rules that are not structured after the *ABA's Model Rules of Professional Conduct*. *Id.* The remaining states adopted a similar version of the ABA's Model Rule 1.14 with only minor word changes. *Id.* For example, Alabama changes "capacity" to "ability" in section (a) and North Dakota replaces "diminished" with "limited" throughout the rule. *Id.*

lawyer relationship with the client.[74]

However, maintaining a "normal relationship"[75] "as far as reasonably possible"[76] can be next to impossible for public defenders and defendants suffering from mental health issues.

It is necessary to examine the Sixth Amendment to the United States Constitution to determine what it means to "maintain a normal relationship."[77] In *Gideon v. Wainwright* and subsequent cases, the Supreme Court has continued to interpret the Sixth Amendment as establishing the right to effective counsel for indigent criminal defendants.[78] This means that indigent clients need more than just an assigned attorney – "representation by counsel is a necessary but not sufficient condition to satisfy the *Gideon* right."[79] In other words, "the right to counsel is only as strong as the underlying commitment to the quality of representation provided by attorneys for indigent defendants."[80]

In addition to needing more than just an assigned attorney, effective counsel has been interpreted by the United States Supreme Court to mean that "when a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his case."[81] In essence, "the Due Process Clause requires states to provide indigent defendants with the 'basic tools' of an adequate defense."[82] Moreover, "[m]ost courts have interpreted 'basic tools' to mean an investigative or expert service that is absolutely necessary to the defense."[83] Effective communication with one's attorney is a basic tool that is absolutely necessary in creating an adequate defense.

As discussed above, communication is often strained between public defenders and their clients as a result of the clients' mental health problems.[84] How are public defenders expected to be held to the same

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74 *Id.* r. 1.14.

75 *Id.*

76 *Id.*

77 *Id.*

78 John H. Blume & Sheri Lynn Johnson, *Gideon Exceptionalism?*, 122 YALE L.J. 2126, 2137 (2013).

79 *Id.*

80 *Id.*

81 *Id.* at 2143 (quoting Ake v. Oklahoma, 470 U.S. 68, 76 (1985)).

82 *Id.*

83 *Id.* at 2144.

84 *See* Davis et al., *supra* note 5.

"effective counsel" standards as other attorneys when they have significantly more barriers to providing quality legal representation and very few, if any, resources to assist them?

IV. Proposed Solution

Any proposed solution to the difficulty that public defenders face when it comes to fulfilling Rule 1.14 must take into account the current working environment and ongoing funding crisis facing public defender services. As such, this note proposes a simple, cost-effective solution to provide public defenders with the basic tools needed to communicate more effectively with clients suffering from mental health issues. The proposed solution is not meant to take the place of mental health services for seriously ill indigent defendants. Rather, it is meant to give public defenders skills that can help them identify clients who suffer from mental health issues that may or may not be easily identifiable and interact with them more effectively

One of the challenges for public defenders working with mentally ill clients is that they are not necessarily qualified to recognize signs of mental health disorders even though they work with more mentally ill clients than all other law occupations.[85] Many times, public defenders may mistake clients with mental health issues as just being uncooperative. If public defenders cannot recognize the symptoms of a mental health disorder, they are unable to effectively screen clients for social services, mental health dockets, or other mental health services. As the ABA's Criminal Justice Mental Health Standards state, a public defender has an obligation to connect mentally ill defendants with the services they need.[86] This means public defenders need to be able to quickly recognize when a client is in need of additional services. This can be difficult when the defender has an excessive caseload and not

[85] *See* Frierson et al., *supra* note 4 (finding that attorneys may have little experience working with mentally ill clients due to inadequate training in law school based on a survey of 492 members of the criminal bar in South Carolina).

[86] AM. BAR ASS'N, *supra* note 51. Moreover,

> Attorneys who represent defendants with mental health disorders should provide client-centered representation that is inter-disciplinary in nature. These attorneys should be familiar with local providers and programs that offer mental health and related services to which clients might be referred in lieu of incarceration, in the interest of reducing the likelihood of further involvement with the criminal justice system.

Id. Furthermore, "[a]ttorneys who represent defendants with mental disorders should work particularly close with their clients to ensure that the clients understand their options." *Id.*

much time to evaluate the client. As a solution to this problem, this note proposes that public defenders be required to participate in mental health first aid courses specifically tailored to fit the needs and challenges of public defenders.

A. What is Mental Health First Aid?

Mental health first aid, such as those produced by Mental Health First Aid USA,[87] is designed to "give[] people the skills to help someone who is developing a mental health problem or experiencing a mental health crisis."[88] First developed in 2001 by Tony Jorm and his wife, Betty Kitchener,[89] the "groundbreaking public education program . . . introduces participants to risk factors and warning signs of mental health problems, builds understanding of their impact, and overviews common treatments."[90] Similar to a CPR or physical first aid course which teaches participants to give immediate medical attention in emergency situations, and then follow up with professional help, mental health first aid courses are meant to give participants the basic tools they need to assist individuals experiencing a mental health crisis.[91] In fact, "[t]he training gives [participants] the skills [they] need to reach out and pro-

[87] *See* Rebecca A. Clay, *Mental Health First Aid: A Growing Movement Trains Laypeople to Spot Mental Health Concerns. What Does it Mean for Psychologists?*, MONITOR ON PSYCHOL., July–Aug. 2013. Organizations similar to Mental Health First Aid USA were already in the United States when the program was brought over from Australia. *Id.* For example, the National Coalition for Mental Health Recovery's Emotional CPR program also teaches participants how to assist those in crisis, while Psychological First Aid trains American Red Cross workers to assist people in the wake of disasters. *Id.* This note focuses on the model created by Mental Health First Aid because of its increasing popularity, simple structure, and accessibility to the general public. *Id.*

[88] MENTAL HEALTH FIRST AID USA, *supra* note 11.

[89] Clay, *supra* note 87, at 33. Jorm, a mental health literacy professor, and Kitchener, a nurse, first thought of the idea while on a walk conversing about her history of depression and suicide attempt at fifteen years old. *Mental Health First Aid*, NAT'L COUNCIL BEHAV. HEALTH, https://www.thenationalcouncil.org/training-courses/mental-health-first-aid/ (last visited Feb. 19, 2017). Kitchener had never received professional help and sought to help others with similar problems. *Id.* The first course was developed over a period of five years during which expert clinicians, consumer advocates, and caregiver advocates created guidelines and response protocols to address common mental health issues. *Id.* By 2001, the first class was being tested. *Id.* In 2008, Mental Health First Aid was brought to the United States by the National Council for Behavioral Health. *See* MENTAL HEALTH FIRST AID USA, *supra* note 11.

[90] *Mental Health First Aid*, NAT'L COUNCIL BEHAV. HEALTH, https://www.thenational-council.org/training-courses/mental-health-first-aid/ (last visited Feb. 21, 2018).

[91] *About*, MENTAL HEALTH FIRST AID USA, https://www.mentalhealthfirstaid.org/about/ (last visited Feb. 21, 2018).

vide *initial* help and support to someone who may be developing a mental health or substance use problem or experiencing a crisis."[92]

Typically courses are eight-hours in length and cost anywhere from $0-100 depending on the class size, instructor, and venue.[93] In addition, each course results in a three-year certification, which can be renewed by taking a ninety-minute online refresher course.[94] Courses address a variety of topics, including depression and mood disorders, anxiety disorders, trauma, psychosis, and substance abuse disorders.[95] Participants learn to recognize the signs, symptoms, and risk factors of each disorder, as well as how to implement a five-step action plan in both crisis and non-crisis situations based on which disorder is involved.[96] In addition, they learn interventions such as how to assist an individual experiencing a panic attack, suicidal thoughts or behaviors, non-suicidal self-injury, acute psychosis, overdose or withdrawal from alcohol or drug use, or reaction to a traumatic event.[97] During these live-training courses, participants simulate various situations that involve assessing a mental health crisis.[98] For example, in one simulation, a participant uses his mental health first aid skills to assist a neighbor who seems to be suffering from paranoia as a result of discontinuing her medications.[99]

In addition to its general adult course, Mental Health First Aid USA offers a variety of other curriculums targeting various fields that may benefit from tailored action plans. Currently, it offers specialized courses for those working in higher education, law enforcement, and public safety, as well as those working with members of the military, veterans, youth, or the elderly population.[100] The program tailored for

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92 *Id.* (emphasis added).

93 *Find a Course*, MENTAL HEALTH FIRST AID USA, https://www.mentalhealthfirstaid.org/cs/take-a-course/find-a-course/ (last visited Feb. 21, 2018).

94 *Mental Health First Aid Re-Certification*, MENTAL HEALTH FIRST AID USA, https://www.mentalhealthfirstaid.org/cs/re-certification/ (last visited Feb. 21, 2018) (advertising the cost of online recertification at $29.95).

95 *What You Learn*, MENTAL HEALTH FIRST AID USA, https://www.mentalhealthfirstaid.org/cs/take-a-course/what-you-learn/ (last visited Feb. 21, 2018).

96 MENTAL HEALTH FIRST AID USA, YOUTH MENTAL HEALTH FIRST AID USA FOR ADULTS ASSISTING YOUNG PEOPLE 5 (Mental Health Ass'n Md. 2012).

97 *Id.*

98 NAT'L COUNCIL BEHAV. HEALTH, *supra* note 90.

99 MENTAL HEALTH FIRST AID USA, *supra* note 95.

100 *Course Types*, MENTAL HEALTH FIRST AID USA, https://www.mentalhealthfirstaid.org/cs/more-information/ (last visited Feb. 21, 2018).

public safety is especially relevant because it is designed to give participants the tools they need to de-escalate tense situations[101] – something public defenders find themselves doing.

Mental Health First Aid USA states that the public safety program is especially useful for police, corrections officers, and other public safety officials[102] – essentially, groups that deal with the same individuals as public defenders. In September 2016, the House of Representatives approved an amended version of H.S. 1877, the Mental Health First Aid Act of 2015, which authorizes grants for mental health and substance abuse awareness training to emergency response personnel, law enforcement, and various other groups who work with individuals with mental health issues.[103] The rising popularity of mental health first aid is evidenced by the fact that more than 780,000 people across the United States have been trained so far.[104]

B. Mental Health First Aid for Public Defenders

The pre-packaged course that currently exists can be easily adapted to fit the needs of public defenders. While similar skills will be taught, the purpose of the course will be slightly different when geared towards public defenders. As mentioned above, the regular course is designed to empower participants so that they may provide initial support for someone developing a mental health problem or experiencing a mental health crisis.[105] By contrast, the purpose of a course for public defenders will be to provide attorneys with the skills needed to be able to identify clients with mental health disorders and to give them the tools needed to aid communication, increase patience, and enhance understanding so that attorneys will be able to fulfill their Rule 1.14 obligations.

In addition to teaching about unique risk factors, common disor-

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101 *Mental Health First Aid for Public Safety*, MENTAL HEALTH FIRST AID USA, https://www.mentalhealthfirstaid.org/cs/wp-content/uploads/2016/01/Public-Safety-Overview-2.pdf (last visited Feb. 21, 2018).

102 *Id.*

103 Rebecca Farley, *House Passes Mental Health First Aid Act*, MENTAL HEALTH FIRST AID USA (Sept. 29, 2016), https://www.mentalhealthfirstaid.org/cs/external/2016/09/house-passes-mental-health-first-aid-act/; *see also* Mental Health First Aid Act of 2016, H.R. 1877, 114th Cong. (2d Sess. 2016), https://www.congress.gov/bill/114th-congress/housebill/1877/text?q=%7B%22search%22%3A%5B%22HR+1877%22%5D%7D.

104 MENTAL HEALTH FIRST AID USA, *supra* note 91.

105 *Id.*

ders, warning signs, and helpful action plans, a course for public defenders should focus on teaching skills geared toward specific situations commonly faced by public defenders, such as delivering bad news to clients with anger issues. Another focus of the course should be on teaching public defenders to recognize when clients are suffering from mental illness so that the clients can be recommended for mental health services. This is especially important in cases where a client's mental illness is not readily apparent to an untrained individual.

The purpose of the course will not be to teach public defenders to be mental health providers and is not meant as a substitute for appropriate mental health care. Likewise, the course will not be geared towards working with clients with severe mental health issues. Those clients will likely be easily identified by attorneys and quickly screened for appropriate available mental health services. While the tools learned in the specialized course may assist attorneys in communicating with those clients, the focus will be on situations in which clients suffer from milder mental health conditions. Addressing these goals, including the most common problems and disorders among clients of public defenders, such as depression, anxiety, acute psychosis, bipolar disorder, substance abuse, and aggression, would require little change to the current curriculum.

A program teaching the following skills has the potential to positively impact the attorney-client relationship:

- De-escalate tense and stressful situations
- Manage violent and aggressive behavior
- Use appropriate body language and vocabulary to avoid triggers that may create or enhance problematic situations
- Communicate bad news and manage resulting client behavior
- Communicate with clients under the influence of drugs or alcohol
- Communicate with clients experiencing withdrawals from drugs or alcohol
- Recognize the existence of a mental health disorder in order to screen for specialized services, such as placement on a mental health docket or assistance of a social worker
- Recognize mental health disorders that may be more difficult to identify in isolated meetings because symptoms are often sporadic

- Strategies for maintaining composure and patience in stressful situations involving mentally ill clients
- Self-care strategies for public defenders

During the course, public defenders can practice using these skills in simulations designed after common workplace experiences. For example, participants can role-play a situation in which a new client is exhibiting angry and aggressive behavior after just being brought into custody by police. The public defender can use her mental health first aid skills to de-escalate the situation, while working to gather information for the public defender services application. In another scenario, participants can simulate a client meeting where the attorney needs to convey unwelcome news regarding a bleak pretrial offer. The attorney will need to use his skills to handle the situation with care by avoiding trigger words or behavior so that the client remains calm and the meeting is ultimately productive.

Possessing and practicing these skills will empower public defenders to deal more efficiently, effectively, and compassionately with mentally ill clients, and will result in more trusting lawyer-client relationships and increased communication. In turn, better communication will lead to more effective representation allowing public defenders to fulfill their ethical obligations under Rule 1.14.

Like other mental health first aid courses, the program for public defenders will result in a three-year certification, which will need to be renewed every three years. Similar to the recertification course provided by Mental Health First Aid USA,[106] public defenders will be able to take the recertification course online in just ninety minutes and for a minimal cost.[107] Because knowledge about brain science and mental health is constantly expanding, this structure ensures public defenders will be equipped with the latest, most effective strategies and tools for dealing with clients with mental health issues.

C. Will it Work?

Considering the relatively low financial investment and time commitment, this simple program contains big promises for changing the way public defenders do their job. The question is: *Will it actually work?*

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[106] *See* MENTAL HEALTH FIRST AID USA, *supra* note 94.

[107] *See id.* (advertising the cost of online recertification at $29.95).

A Pennsylvania corrections officer, who works in the female mental health unit and as part of the Crisis Intervention Team, claims it has changed the way he does his job:[108]

> Working in the mental health unit of a state correctional institution is stressful and challenging at times. . . . In the past, we might not have recognized the signs of a mental health crisis . . . . An inmate that refused to cooperate with instructions may have been seen as simply being non-compliant . . . . An inmate that is hallucinating or experiencing psychosis, for example, may not be in a position to follow orders. . . . Our officers are trained to tell the difference between non-compliance and an inmate who cannot follow orders because they are in crisis. . . . We de-escalate [] situation[s] so they do not feel threatened. Doing so reduces the need for force, which is better for everyone.[109]

Recently, the Rhode Island Police Department became one of the first to require all new police recruits to complete mental health first aid training.[110] Retired West Warwick Police Captain Joe Coffey facilitates the trainings[111] because, considering the prevalence of mental illness related calls, he recognizes the need to equip all of his officers with the tools necessary to safely de-escalate crisis involving mentally ill individuals.[112] Coffey estimates that as many as 7-15% of the calls they go on involve some sort of mental health crisis.[113] He now offers his testimonial in support of mental health first aid training on the Mental Health First Aid USA website.[114]

An article about the new Rhode Island training requirement recounts a story about an officer trained in mental health first aid who responds to a call involving a suicidal woman.[115] The woman in the story

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[108] Virgil Meyer, *Mental Health First Aid Has Changed the Way We Do Our Job*, MENTAL HEALTH FIRST AID USA (June 28, 2016), https://www.mentalhealthfirstaid.org/cs/success-stories/mental-health-first-aid-changed-way-job/.

[109] *Id.*

[110] Kristin Gourlay, *Rhode Island Police Learn How to Respond to People Struggling With Mental Illness*, W.B.U.R. (Dec. 27, 2016), http://www.wbur.org/morningedition/2016/12/27/mental-health-police-training.

[111] *Id.*

[112] Joseph Coffey, *I Was Able to Save a Life*, MENTAL HEALTH FIRST AID USA (Dec. 4, 2013), https://www.mentalhealthfirstaid.org/cs/success-stories/we-were-able-to-save-a-life/.

[113] *Id.*

[114] *Id.*

[115] Gourlay, *supra* note 110.

shares that "[the officer] treated her like a human being."[116] In the same article, Coffey's co-facilitator, Trisha Brouwer, equates mental health first aid skills with those learned for the purpose of conducting CPR or other physical first aid:[117] Indeed, "mental health first aid is similar and just as critical. That's because someone in crisis might not behave the way officers expect. Knowing how to respond can mean the difference between life and death – between making an arrest or helping the person get into treatment."[118] Finally, more pervasive training by police departments can ultimately "help divert more people from an overburdened criminal justice system . . . into treatment."[119]

Like the Rhode Island Police Department, other organizations are recognizing the value of mental health first aid training and are working to incorporate it into their organizations. Recently, the New York City Department of Correction ("NYC DOC") received a $250,000 grant from the U.S. Department of Justice, which it will share with other organizations to set up clinic and intake support teams to assist inmates "through [an] emphasis on mental-health first aid and de-escalation."[120] These teams "will help conduct mental health interventions, expedite clinic cases, educate individuals on the resources available to them, and identify individuals with mental illness who may have gone undiagnosed during intake, the process by which inmates enter the DOC facilities."[121] In addition, the teams will "offer support to correctional staff by providing skill refreshers and reinforcement of Mental Health First Aid training and techniques."[122] The goal is for the teams to use mental health first aid and de-escalation to "strengthen the efforts of the agency's 14-Point Anti-Violence Agenda"[123] and ultimately reduce use of force.[124] NYC DOC Commissioner, Joseph Ponte, estimates that about 42% of the

116 *Id.*

117 *Id.*

118 *Id.*

119 *Id.*

120 Danielle Poole, *NY DOC Receives Grant to Help Mentally Ill Inmates* (Feb. 8, 2017), https://www.mentalhealthfirstaid.org/cs/external/2017/02/ny-doc-receives-grant-help-mentally-ill-inmates/. The grant will be shared among the NYC DOC, NYC DOC's health provider, NYC Health + Hospitals, and the Vera Institute of Justice. *Id.* The NYC DOC hopes to have all DOC facilities staffed by clinic and intake support teams trained in mental health first aid by July 30, 2019. *Id.*

121 *Id.*

122 *Id.*

123 *Id.*

124 *Id.*

DOC's inmate population has mental health issues.[125] As such, New York City First Lady Chirlane McCray, who leads mental health and substance misuse efforts in New York City, feels "it is essential to tailor resources to meet the needs of both inmates and correction officers so they can respond [to situations] responsibly and compassionately."[126]

These first-hand stories and testimonials are promising in that they provide some early support that mental health first aid training can be used by public defenders to increase the quality of the communication and the overall relationship with clients. Police officers, corrections officers, and public defenders all deal with the same clientele, just at different points in the criminal justice system. With increasing numbers of police and corrections officers taking advantage of mental health first aid training,[127] it seems to follow that public defenders should be given the same advantage. In fact, for public defenders who have an ethical obligation to maintain as normal a relationship as possible with clients who suffer from mental health issues, it is even more important that they be given the tools they need to do just that. While police officers only interact with an individual for a brief period of time, attorneys often work with clients over the course of months or years. Because of the necessity of having a trusting, confidential relationship with clients, public defenders should have access to practical tools that can help them succeed in building and maintaining that relationship.

With mental health first aid being a relatively new concept, the quantitative evidence supporting its effectiveness is limited.[128] The studies that do exist, however, show promising results.[129] Perhaps one of the most comprehensive sources of quantitative evidence regarding mental health first aid is a 2014 analysis performed by the National Centre for Suicide Research and Prevention of Mental Ill-Health.[130] This source

125 *Id.*

126 *Id.*

127 *See* Gourlay, *supra* note 110.

128 *Mental Health First Aid Efficacy: A Compilation of Research Efforts*, MENTAL HEALTH FIRST AID USA, https://www.mentalhealthfirstaid.org/cs/wp-content/uploads/2013/10/MHFA-Research-Summary-UPDATED.pdf (last visited Feb. 21, 2018). MHFA keeps a running list of studies undertaken to evaluate the effectiveness of mental health first aid. Currently, there are only thirty-three studies on the list with several listed as still in progress. The studies listed were undertaken by a variety of organizations. *Id.* Some of the earliest ones were conducted by MHFA founders Kitchener and Jorm. *Id.*

129 *Id.*

130 *Id.*

provides an overview of the effectiveness of mental health first aid.[131] The study consisted of a meta-analysis of fifteen other mental health first aid studies and resulted in a collective evaluation of the results obtained by each study.[132] The fifteen studies that were used were quantitative in nature and evaluated both adult and youth mental health first aid.[133] The meta-analysis showed that mental health first aid "increases participants' knowledge regarding mental health, decreases their negative attitudes, and increases supportive [behaviors] toward individuals with mental health problems."[134] In addition, it concluded that the mental health first aid program appeared "recommendable for public health action."[135] These results have been interpreted as "'reasonably strong'"[136] evidence that "individuals trained in [mental health first aid] experience improvements in knowledge, attitudes, and help-provision behaviors."[137]

As promising as the results of the meta-analysis are, they should be read cautiously. Of the fifteen studies included in the analysis, twelve were conducted in Australia (where mental health first aid originated), two were conducted in Sweden, and one in Canada.[138] Therefore, the results do not necessarily reflect the responses of any participants from the United States.[139] This means that results will likely only show the effectiveness of mental health first aid in the United States to the extent that the foreign participants and participants living in American are similar.[140]

In another study, the effects of mental health first aid in multicultural communities were examined.[141] The findings of this study "sug-

131 *Id.*

132 *Id.*; *see* Eunice C. Wong, Rebecca L. Collins & Jennifer L. Cerully, *Reviewing the Evidence Base for Mental Health First Aid* (July 15, 2015), http://www.rand.org/content/dam/rand/pubs/research_reports/RR900/RR972/RAND_RR972.pdf. Meta-analysis is a statistical method that "provides a rigorous systematic process for quantifying the overall effect of a treatment or program by summarizing findings across independent studies." *Id.*

133 Wong et al., *supra* note 132, at 1.

134 Gergö Hadlaczky et al., *Mental Health First Aid is an Effective Public Health Intervention for Improving Knowledge, Attitudes, and Behaviour: A Meta-Analysis*, 26 INT'L REV. PSYCHIATRY 467, 467 (2014), https://www.ncbi.nlm.nih.gov/pubmed/25137113.

135 *Id.*

136 Wong et al., *supra* note 132, at 2.

137 *Id.*

138 *Id.*

139 *Id.*

140 *Id.*

141 MENTAL HEALTH FIRST AID USA, *supra* note 128.

gested that [mental health first aid training] increased participant recognition of mental illnesses, concordance with primary care physicians about treatments, confidence in providing first aid, actual help provided to others, and a reduction in stigmatizing attitudes."[142] In addition, a six-month follow up demonstrated long-term effects of mental health first aid.[143] This study is significant because it attempted to study the effects of mental health first aid on diverse communities. Since this note is recommending that mental health first aid would be beneficial to public defenders throughout the country, this study suggests that the program would not need to be individually tailored to account for the diversity within each jurisdiction or community.

In 2005, mental health first aid founders, Betty Kitchener and Anthony Jorm, along with Stephen Mugford, performed a study, which consisted of compiling stories from participants about their subsequent use of mental health first aid.[144] The study found that participants reported increased empathy and confidence, and felt better able to handle a mental health crisis.[145] In addition, participants felt the course was very useful, and felt enthusiastic about seeing it repeated and extended.[146] The other significant finding that came out of this study was that "there was no evidence that the [participants were] over-reaching themselves because of over-confidence."[147]

One of the limitations of the previously mentioned studies is that they reveal little information about the effects of mental health first aid on the recipients.[148] A recent study, whose results have not yet been published, attempted to draw inferences about the impact on recipients based on information provided by past participants of mental health first aid training courses.[149] The qualitative study revealed that participants "described gaining knowledge, skill and confidence to help someone in

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142 *Id.*

143 *Id.*

144 Anthony F. Jorm et al., *Experiences in Applying Skills Learned in a Mental Health First Aid Training Course: A Qualitative Study of Participants' Stories*, BMC PSYCHIATRY (Nov. 9, 2005), https://bmcpsychiatry.biomedcentral.com/articles/10.1186/1471-244X-5-43. The study analyzed stores of ninety-four former mental health first aid course participants anywhere from nineteen to twenty-one months after they completed the course training. *Id.* Of the ninety-four participants, 78% had utilized their first aid training skills. *Id.; see also* MENTAL HEALTH FIRST AID USA, *supra* note 128.

145 Jorm, *supra* note 144.

146 *Id.*

147 *Id.*

148 MENTAL HEALTH FIRST AID USA, *supra* note 128.

149 *Id.*

distress, empathy for people with mental illness, and developing a sense of responsibility and permission to try to help when needed."[150] Participants also shared that they used their new skills on clients, among others, and in a variety of situations, which suggests mental health first aid can have positive effects in a workplace setting.[151]

Another study worth looking at is currently being undertaken at the University of Kansas.[152] Similar to other studies, the preliminary results indicate that mental health first aid courses can "provide a solid base of knowledge for people with a limited mental health background who are taking it for the first time, and can even act as a useful refresher for individuals with previous mental health education or experience."[153] It is possible that some public defenders will not see the value in a mental health first aid course because they are confident that they can recognize when a client has mental health issues. This study points out that even for people who may have experience with or knowledge about mental health disorders, mental health first aid training can serve as a valuable refresher tool. In addition, it ensures that all employees have the opportunity to acquire the same knowledge and skills so that clients are not at a disadvantage if represented by someone with fewer skills.

With a growing number of success stories and testimonials, as well as increasing amounts of relevant research attesting to the effectiveness of mental health first aid training, it seems promising that a simple course can help public defenders improve their communication skills and better fulfill their Rule 1.14 ethical obligations to "maintain a normal client-lawyer relationship with the client"[154] as far as "reasonably possible."[155] That said, there are possible barriers and drawbacks that should be taken into consideration.

For example, some public defenders may not recognize the value of the course and will perceive it as simply another requirement to fit into their busy schedules. As discussed above, public defenders struggle with overwhelming caseloads[156] and may believe they do not have the

150 *Id.*

151 *Id.*

152 *Id.*

153 *Id.*

154 *Rule 1.14: Client with Diminished Capacity*, A.B.A., http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_14_client_with_diminished_capacity.html (last visited Feb. 21, 2018).

155 *Id.*

156 FAROLE, JR., *supra* note 7.

time to take the class. Similarly, supervisors of public defenders may not be receptive to the idea of carving out time for the class for each of the defenders. In addition, public defenders may not recognize the need for the course. Depending on each defender's experience, the attorney may believe she already possesses the skills needed to recognize clients with mental health issues and to adequately work with these individuals. There will also be an administrative burden imposed on public defender offices since they will need to keep records of which attorneys have taken the class and subsequent refresher courses. Finally, there is also a funding concern. As discussed above, public defender services are in the midst of a funding crisis.[157] Offices may be unable to pay the fee required to take the course.

To overcome these burdens, the value and potential benefits of the course will need to be clear to administrators, supervisors, and public defenders. This can be done by providing data from other organizations utilizing similar courses and by hearing testimonials and positive first-hand accounts from past participants. For those defenders who believe they already possess the tools to recognize mental health illness in their clients, a mental health first aid course can serve as a useful refresher course.[158] While there may be an added administrative burden and slight cost, these administrative burdens need to be weighed against the benefit that public defenders will receive. Hopefully, most jurisdictions will see that providing public defenders with the tools needed to successfully fulfill their Rule 1.14 ethical obligations outweighs the burdens imposed.

V. Conclusion

Client Warner is one of fifteen clients waiting to be seen by Attorney Stevens. Court starts in thirty minutes, so Attorney Stevens' patience is thin as he works quickly to get through his list of clients waiting to see him. Client Warner struggles with anger management and other mental health issues. Within minutes of entering Attorney Stevens' office, communication breaks down as Client Warner unleashes his frustration

[157] LEFSTEIN, *supra* note 8, at 20.
[158] MENTAL HEALTH FIRST AID USA, *supra* note 128.

about his case onto his attorney, threatening to fire him and return to a life of violence. In response, Attorney Stevens remains calm and attempts to de-escalate the situation. He speaks slowly, confidently, and in a caring tone of voice as he tells Client Warner to calm down. He stops shuffling the papers on his desk as he remembers that he should avoid projecting nervous behavior. He redirects the conversation until Client Warner is sufficiently calm, at which point they are then able to finish the meeting productively. When they see each other in court, they both feel confident in what will be presented to the judge and are ready for the hearing to begin.

After meeting with Client Warner, Attorney Stevens heads down to lock-up where he sees Client Brown asleep in her cell after being picked up overnight in a prostitution sting. Attorney Stevens needs to interview her and ten other clients before heading up to court in fifteen minutes where he will argue their bonds. Client Brown is suffering from heroin withdrawals and is not providing coherent answers to Attorney Stevens' questions. Attorney Stevens reminds himself to slow down and be respectful to Client Brown. He then focuses on using simple, clear language in an effort to make things easier for her to understand. Attorney Stevens takes the time to calmly repeat his questions several times, which seems to help because Client Brown becomes more responsive. Once he has the information he needs, Attorney Stevens moves on to his next client feeling confident that he has enough information to make a successful bond argument for Client Brown.

Public defenders operate in an extremely challenging environment. While the call is a noble one, finding its genesis in the wake of *Gideon*

v. Wainwright,[159] the attorneys who answer and dedicate their careers to representing indigent clients face seemingly insurmountable obstacles to providing quality representation.

In particular, public defenders face overwhelming caseloads, inadequate funding, and a high number of clients suffering from mental illness. When clients have severe mental illness, attorneys will likely recognize the client's condition and will seek social services or competency hearings for their clients. On the other hand, when a client's mental illness presents itself in a milder form, it may be difficult for the attorney to recognize even though it still interferes with the attorney-client relationship.

Poor communication and a lack of trust are the result, leaving the attorney feeling frustrated and impatient. With little time and few resources to assist them in these cases, public defenders are left to struggle as best they can. Unfortunately, the result is that it can be next to impossible for public defenders to fulfill their ethical obligation under Rule 1.14.

Keeping in mind the limited resources available to public defender services in remedying this problem, a possible solution to assist public defenders in better fulfilling their Rule 1.14 obligations is to require them to participate in a mental health first aid course geared toward the unique challenges presented by their job. A mental health first aid course tailored for public defenders would give them the skills they need to communicate more effectively with clients who suffer from mental illness.

While there are some barriers to implementing this type of program and further research is needed, the potential benefits likely outweigh the potential burdens. Mental health first aid is relatively new, but the preliminary results, both quantitative evidence and personal testimonies, are promising. As the mental health first aid movement gains traction and recognition among lawmakers, employers, and community members, public defender offices around the country should take notice and consider taking advantage of its benefits as a way to give these attorneys the tools they need to do their job effectively and ethically.

[159] Gideon v. Wainwright, 372 U.S. 335 (1963).