



Improving Data Collection and Analytic Capacity in Indigent Defense

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Defenders around the country are hungry for data. They want it to show the inequities of the systems that they and their clients are subject to. They want it to show the successes or failures of programs that are put in place to know whether their clients are doing better as a result, or not. They want it to help manage their operations better, to save time and improve efficiency. In the end, with more data can come more knowledge of our work, and with that knowledge, we can be better advocates.

When IDRA surveyed its members in 2015, deficiencies in the capacity of defenders to collect and analyze data were identified as a top concern. During a series of conference calls in late 2015, IDRA members discussed in detail the nature of the problems they perceived and possible solutions to them. This white paper outlines the scope of the problem based on the words of IDRA members, and also drawing on earlier surveys of providers performed by the National Legal Aid and Defender Association (NLADA), the New York Office of Indigent Legal Services (NYILS), American University, and others, all of which are cited in the Resources section at the conclusion of the paper.

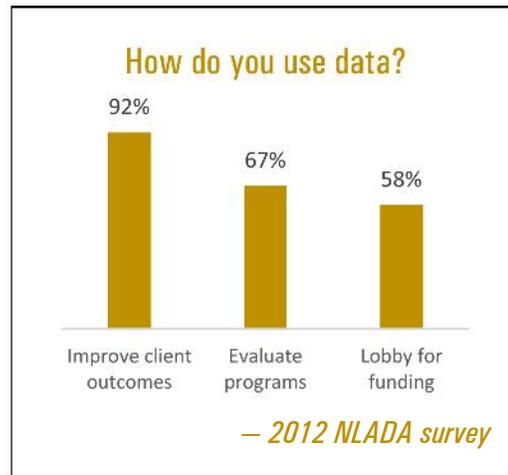
The biggest issue with respect to research is that most defender systems don't collect data at all, or don't have training on what they ought to be tracking and why.

— 2015 IDRA survey respondent

Why Improve Data Collection and Analytic Capacity?

For defenders, data collection can seem abstract next to the life-altering decisions that are made about their clients every day. But IDRA identified three major ways that data collection is important to defenders.

First, defenders want to use data because they care about what happens to their clients. Defenders are acutely concerned about what happens to their clients. A 2012 NLADA survey of defender managers revealed that their key priority was to use it to track what happens to the people they serve. Defenders want to know what is happening to their clients, even if their powers to change those outcomes is limited.



If you got a public defender...well he's not making as much money, he's got a case load that's ridiculous, he doesn't have the time and I think it comes down to time. They don't have the time to put into an individual.

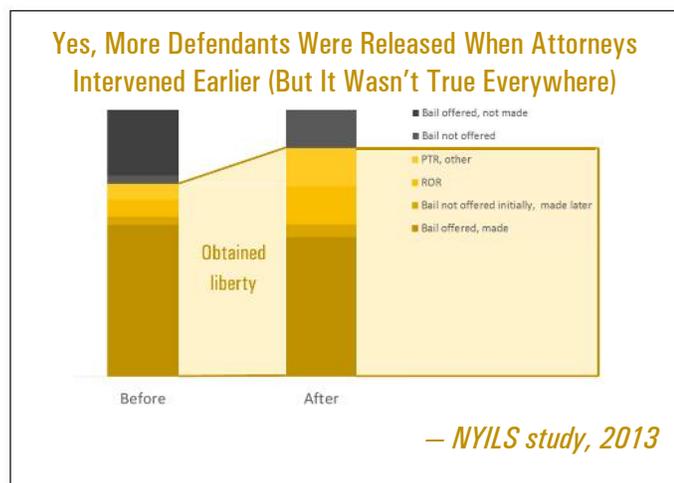
— Defendant interviewee, Campbell et al. 2015

Relatedly, defenders want to earn the support and confidence of the clients and communities they serve and are becoming increasingly interested in strategies such as Participatory Defense as pioneered by the Albert Cobarrubias Justice Project. Data may form a part of a strategy to show what we do to improve understanding and earning trust. Defendants understand and even empathize with overworked attorneys, even while wishing the services they received could be improved. Moreover, in programs which seek to expand client choice such as in Comal County,

Texas, the client community needs sound information on which to base its choices.

Second, data can illuminate our work to ourselves. We may think we have a sense of whether and how we are effective in court, or whether certain programs or courts or prosecutors are particularly troublesome. We can use data to crosscheck those perceptions.

In New York a program to provide representation at bail hearings did increase the number that were released. But a closer look at the data revealed that not all judges were equal – and at least one was doing the opposite, detaining more clients and not fewer. That information allowed NYILS to begin a conversation about solutions, and to rethink how such programs would be designed in the future.



“We may be doing fine, or we may not. I’d rather know if the news is bad.”

— 2014 NYILS survey respondent

Sometimes in looking at data we might find something we didn’t expect, of even that we don’t like, but the process should always be informative. And sometimes the data will illuminate a problem that we can work to fix. At its best, data can help us figure out how to serve clients better.

Third, data can help defenders make the case that they need more resources. Policymakers facing budget shortfalls frequently seek to cut costs, and defender budgets, without the support of a powerful political constituency, are easy to cut. Telling the story of what defenders do, and how they help their clients, becomes essential, and legislators may expect data to back up claims of the importance and impact of a program. Used strategically, data can help to reframe a conversation about cutting costs into one about the ‘bang for buck’ that investment in defense represents.

Given the limited resources available, [and] the fact that indigent defendants are neither a popular nor a well organized constituency, we need research that can 1) help us apply resources in the most efficient and effective manner, and 2) demonstrate our value to funding authorities and the community

— 2015 IDRA survey respondent

BOLSTERING THE STORY WITH FACTS

BROOKLYN, NY - In 2009, New York State began providing new funding to reduce public defender caseloads. Research by the Center for Court Innovation in the borough of Brooklyn documented the reduction of weighted caseloads from 505 to 358 through a near-doubling of attorney staff. As a result of the new funds, referrals to social workers, investigators and immigration attorney staff all increased. New in-house training opportunities were created, systems for mentoring novice attorneys were reformed, and specialist positions dedicated to mental health and veteran representation were created. When the researchers asked local judges what differences they saw, they noted attorneys were better prepared to challenge evidence, were using social workers effectively, and that representation of their clients had improved significantly.

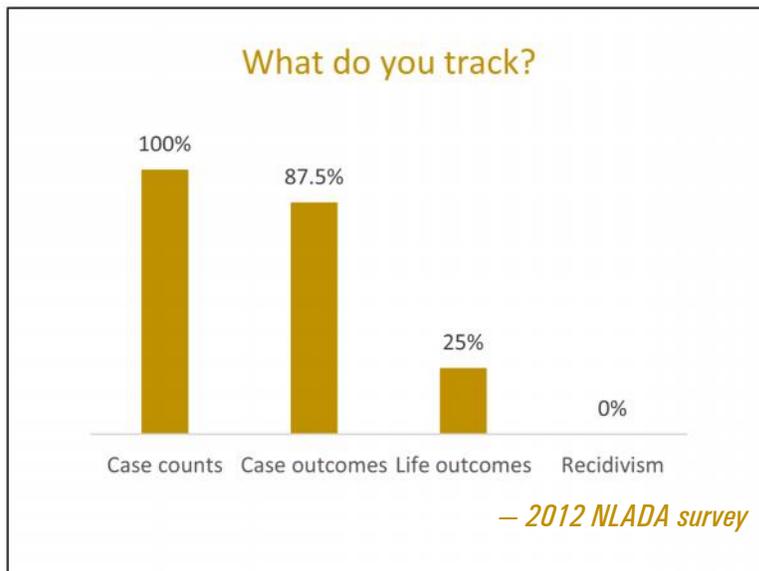
— Indigent Defense Reforms in Brooklyn, Center for Court Innovation, 2015

What Data Collection and Analytic Capacity Do We Have?

Despite several efforts over the years to survey the defense field, basic data on on defender systems are often absent, hard to understand, or more complicated to obtain than they might at first appear. Caroline Cooper’s 2014 survey of defenders, for example, revealed that while many had information on their own caseloads, they often not obtain information on the number of cases processed by courts within their jurisdiction and the percentage of those that they covered.

“[We need] basic information on relevant aspects of defender services that is current, comprehensive and readily available.”

— Caroline Cooper, 2014



Defenders also don’t always have the data they actually are interested to know, or the ability in-house to analyze it. While case management systems may track information which helps defenders to do their work more efficiently like court dates and client contact information, they do not always have the ability to collect or report information on client life outcomes, satisfaction with representation, or any other indicators of whether the defense are doing a good job or has made a positive impact on client lives.

The field also suffers from ‘apples and oranges’ problems. Prosecutors, defense and the courts frequently define and count cases differently, confounding attempts to make sense of even basic information. Differences in system functioning (such as whether a case is assigned to a defender pending determination of financial eligibility, or after that determination has been made) can make substantial differences in basic metrics too.

“We just can’t do long-term follow up. It would be great, but our clients are such a mobile population that trying to do it would be insane. All we can do is look at them when we close the case.”

— NYILS survey respondent, 2014

Improving Capacity: Stories of Success, and Obstacles Faced

Federal funding, State oversight, Local participation

Upon its creation in 2007, the Louisiana Public Defender Board recognized the acute need it had for information. They obtained a \$50,000 allocation from the state administrator of Federal Byrne-JAG funding for site visits by an advisory team who researched options for an upgraded, statewide data system and worked on getting buy-in from districts. After choosing and purchasing a system with state funds, another \$50,000 grant supported a state PD office staff position for coaching on data recording and compliance. Funding to parishes was made contingent on data submission, meaning that those jurisdictions that didn't put data in about their cases would lose funding proportionately. LPDB was also deliberate in conducting inclusive focus-group discussions on what users wanted. They got lots of requests for improvements and came to regard this engagement a good way to get buy-in. Above all this process took a lot of time, a lot of listening, and a lot of feedback from providers of representation themselves to be implemented successfully.

Accessing help the community can offer

Until recently, defenders in Montgomery County, PA, had no data collection system. Through communication with the North Carolina Office of Indigent Defense Services, they obtained software from the North Carolina Appellate Defender upon which they have been able to build. Montgomery County's IT staff are adapting that model to collect 10-12 of the data points recommended in the NLADA report *Basic Data Every Defender Program Needs to Track*, in addition to some other items such as defendant demographics and judge identity. Dean Beer, the county defender, reports his Commissioners like to be data-driven in their decision-making and had been shocked to learn how little capacity the office had to produce reliable numbers. The anticipated cost to fix this problem was over \$100,000. Working with the County It department and NCOIDS, they were able to produce a database at no cost.

The Texas Indigent Defense Commission has funded one county to develop data-collection standards. Texas is moving incrementally forward and focusing closely on measures that respond to policy priorities.

— IDRA call participant, 2015

Tracking time

When Missouri's State Auditor wrote in 2012 that the State Public Defender (MSPD) had no data to back up its claim it was overloaded, MSPD responded by implementing mandatory, permanent time tracking for all defenders across the state. In combination with a subsequent Delphi study, which set standards for what defenders should do in every case, the new data allowed the office to respond definitively to the Auditor's criticism. The resulting databases are huge, rich, and available to researchers.

Litigation in Missouri and Florida has shown how this type of data can be used to support caseload reductions. Amicus briefs filed by the American Bar Association have used it to argue that Public Defender judgment on workloads is entitled to substantial deference (citing other cases where the judgments of prison officials on their internal operations have also been given weighty consideration).

As of now, timekeeping projects are also underway also in Rhode Island, Tennessee, Kentucky, Colorado, Louisiana and New York. This work has been cumulative: Louisiana, for example, was able to adopt the

system developed in Knoxville, TN, for time tracking and use much if it unmodified. The NAPD Steering Committee blog posting cited below in the references section provides more details on the experience of implementing time tracking in Knoxville, TN.

Cooperation and Buy-in

Louisiana estimates that the cost of filling out a single field of data in every case for a year is between \$13,000 and \$25,000 in that state. Recognizing that large upgrades would break the bank and be met with pushback from defenders themselves, Louisiana proceeded incrementally focusing first on counting caseloads and costs. Next, they looked at measures from which inferences could be made about quality. They also tried to focus on things defenders can use such as tracking bail decisions and amounts to detect and address any judicial decision making that is harsher than the state average.

Many jurisdictions incentivize data collection through 'the power of the purse' – reducing funding as in Louisiana, or requiring assigned counsel lawyers to fully fill out data fields on vouchers for payment before reimbursement. Beyond these 'sticks' which compel data entry, other recommendations included performing Continuing Legal Education sessions on the value and impact of high quality data collection, and showing attorneys that the data they enter are being used to generate new insights, improvements, or interesting feedback. It can be helpful to produce charts, reports or statistics that attorneys recognize are only possible because of the data they enter, and to report to them any findings on the effectiveness or impact of what they are doing. Even if the outcomes aren't what was hoped, involving the people who entered the data in the process of understanding and analyzing the findings can be motivating, and can help to improve the research itself.

Staffing and Technology

Assuring that defenders have sufficient administrative support to perform data entry is crucial. In resource-stretched offices, finding the time to perform data entry for attorneys and non-attorney staff alike can be challenging.

Experienced and competent administrative staff can prove invaluable when it comes to data entry. The professional pride of such administrators in assuring that the information entered is complete and accurate also results in better data all around.

Recent technological advances have led some offices to make data collection significantly easier. Mobile technology now allows attorneys to type notes from anywhere, or even to dictate to a voice transcription app which places the attorney's dictation directly into the case file as typed case notes. Other offices have begun to experiment with software for communicating with clients via text message, including to remind about upcoming court dates.

"The data said 'look what an amazing job you've done!' It was a big morale booster and it allowed us to work with staff to tighten things on the margins. They aren't just plugging along without understanding the outcomes any more. They aren't working in a vacuum."

— NYILS interview, 2014

Looking Outside the Office

In some places, the courts and jail systems may already record useful data which, either by itself or when joined up with defender data, can save time on data entry and offer real insights. Court data are especially good for tracking case dispositions and the dates and times of court appearances. Jails tend to meticulously capture when accused persons enter and leave custody. Both may have additional information on how and when they were arrested, how and when bail was set and made, and the client's basic demographics. IDRA researchers in Washington, Texas, and New York have had success merging this information with data from other sources to as a component of defense research.

While there are lots of differences across counties, there is a broader movement to upgrade capacity in other areas of county justice systems that is parallel to IDRA's Public Defender-focused discussion. There may be are technical issues and quality concerns regarding the overlapping of several different data sources, and there may be legitimate confidentiality or other concerns that make the data inaccessible. These can often be overcome with a combination of IT expertise and appropriate data sharing agreements.

King County, WA, is swimming in data, and has good relationships with the jail and court system that make obtaining data relatively easy. However, getting attorneys to enter specific data, such as time spent on motions, is more difficult.

— IDRA call participant, 2015

In some places, such as King County, WA, integrated data systems already. There, researchers have been able to identify trends by working with data extracted directly from the county's system. Texas A & M University also frequently extracts data from local systems in its indigent defense research work. And the very significant NCSEP work led by Margaret Gressens and Meg Ledyard in North Carolina and Texas respectively is almost entirely based on exploitation of extremely detailed and valuable information recorded by courts.

Defenders may wish to consider collaborations with external researchers in academic or other settings who have the expertise to merge large datasets, and who may also have an interest in using the information for their own research. IDRA's whitepaper on *Creating a Defender-Driven Research Agenda* may be a valuable resource to those considering that route, as well as NLADA's *Building In-House Research Capacity*.

IDRA and the Future of Data Collection and Analytic Capacity

IDRA stands ready to assist defenders facing the questions and issues raised in this paper. Many of the issues discussed here are common to us all, and the solutions proffered just scratch the surface.

Through our listserv, whitepapers, and other means, we endeavor to facilitate communication so that solutions and insights may be shared. IDRA members in the past have shared examples of data sharing agreements as models for one another, and regularly post questions and report on novel projects they are undertaking which may be of interest to all. We are exactly as strong as our membership, and we rely on each other's willingness to share knowledge.

We discussed the possibility on our calls of developing a set of 'data collection standards' similar to standards elsewhere in the defense field prescribing the types of services, systems, or performance levels that the defense ought to adopt. Such standards might discuss the types of data that defenders should collect, and also related issues such as (a) whether and to what extent defenders should prioritize data collection when resources are stretched thin, (b) what measures must be taken to protect client confidentiality in the context of increased data collection, and (c) the technological, resource and other needs that data collection standards would impose in order to ensure the data themselves were high quality and useful.

Such standards would clearly have to recognize that resource constraints affect the amount and types of data collection and analysis that can occur. In addition, standards would need to recognize that significant, long-standing differences remain among jurisdictions across the United States and that 'standardization' of data for apples-to-apples comparison across jurisdictions is both extremely challenging, and for some purposes may not even be desirable. When generating such standards, therefore, the discussion should also consider what types of data will best serve the interests of defenders, defendants, and their communities as well as researchers; whether the standards should be "granular" or "broad based principles" when stipulating what to measure; and ways to ensure that the people and agencies involved see the value in what they are collecting.

IDRA's members are the experts in both what is desirable, and what is possible, when collecting data. We remain committed to the exploration of the benefits of improved data collection and analytic capacity for defenders, and welcome responses to this paper, and thoughts on directions for future development.

Resources

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