

Each year, many people with mental illness come in contact with the criminal justice system. This video is one in a series designed to train defense attorneys for better understanding of how to best represent a client with mental illness.

When it comes to understanding mental illness, the best place to start is with a definition. In the South Dakota Criminal Code, mental illness is defined as “...any substantial psychiatric disorder of thought, mood, or behavior which affects a person at the time of the commission of the offense in which impairs a person's judgment.” Mental disorders are common. In the U.S., 1 in 4 have some type of mental disorder in any given year. In the criminal justice system, 50 to 60 percent of the jail and prison population has a significant mental illness at any given time, a much higher rate than found in the general population.

Despite the myth that people with severe mental illness are more violent, the majority of those with mental illness in jail are arrested for nonviolent offenses. There are a variety of mental illnesses ranging from mild to life threatening. Let's review a few of the more serious illnesses.

Schizophrenia is a mental disorder that impairs the ability to think, make judgments, respond emotionally, remember, communicate, interpret reality, and/or behave appropriately. Symptoms include poor reasoning, disconnected and confusing language, hallucinations, delusions, and deterioration of appearance and hygiene.

Bipolar disorder is characterized by a person's moods alternating between two extremes of depression and mania. This condition is also known as manic depressive disorder.

Major depressive disorder is much more severe than the depression most of us feel on occasion. People with major depression can lose their interest in daily activities, feel unable to perform daily tasks, have trouble sleeping, be unable to concentrate, have feelings of worthlessness and may have suicidal thoughts.

Say you have a client with mental illness. Why should you care?

Mental illness can affect various aspects of a case, such as your client's ability to understand their rights, the reliability of your client statements, your client's memory and ability to make decisions, your client's ability to understand cause and consequence, your client's ability to waive rights in a voluntary manner, and your client's ability to participate in trial preparation and at trial.

It's important to note that even if your client has a mental illness and impaired capacity, he or she still has final decision making authority over key aspects of the case, such as which plea to enter, whether to waive a jury trial, whether to testify on his or her own behalf, whether to appeal and to represent himself or herself, and the objective and methods of representation.

After a full consultation, you as the attorney will be responsible for these key strategic decisions: which witnesses to call, whether and how to conduct cross-examination, which trial motions to make, along with all other strategic and tactical decisions. Do your part to ensure fair justice by recognizing those defendants who have mental illness. It can make a difference in someone's life.