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Mental health courts

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Purpose of review

To describe the aims and objectives of mental health courts. To give an overview of the current literature devoted to mental health courts. To suggest where we might go in the future.

Recent findings

While not flawless, mental health courts represent an innovative approach to addressing the needs of individuals within our society who have historically been alienated by both the justice system and the increasingly debilitated and diluted mental healthcare system. New data suggest that mental health courts are efficacious in reducing recidivism rates, reducing substance abuse, and result in reduced costs to governments.

Summary

While the early data is encouraging, there is still a great need for further study regarding the efficacy of mental health courts. In particular, we need to know who (along a variety of dimensions) are likely to benefit from participation in mental health courts, of what sort, and under what circumstances.

Keywords

criminalization, diversion, mental health courts, therapeutic jurisprudence

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Introduction

The provision of mental healthcare services in most western European and North American communities has witnessed a steady decline over the last few decades. Beginning with the deinstitutionalization movement occurring in the later half of the twentieth century, adequate mental healthcare services became increasingly scarce. Despite what was promised, the money saved with the closure of hospitals has typically not been re-invested in community treatment.

In some jurisdictions, mentally disordered accused entering the criminal justice system have increased at a rate in excess of 10% per year over the past 12 years [1]. A criminalization of mental illness has occurred; a shifting of responsibility onto the criminal justice system for the provision of basic mental healthcare services [2] (in some jurisdictions mental health courts may respond to unmet constitutional guarantees [3]).

Mental health courts: a response

Mental health courts have been a response to this dilemma. Despite sharing similar objectives, there are many models that claim the label of a 'mental health court' [4,5]. Accordingly, when considering these courts it is important to gain an appreciation for the scope of what is being referred to. Nevertheless, very generally speaking, mental health courts are all attempting a rehabilitative response to what would otherwise have been criminally sanctioned behaviour.

The operation of a mental health court

While the 'nuts and bolts' of mental health courts will vary, integral to the functioning of a mental health court is a multidisciplinary team approach. Judges and lawyers are supplemented by any number of psychiatrists, psychologists, case workers, and social workers who collaborate on how the particular needs of the accused can effectively be met.

Typically, participation in the 'diversion' component of a mental health court is reserved for individuals with mental disorders charged with minor to moderately serious offences. Nevertheless, certain courts also provide services that do not involve eligibility requirements.

In most mental health courts in the US, eligible and consenting accused are given a choice: participate in a treatment program and have your criminal charges stay the same, be dropped, or reduced, or proceed in the regular stream. The treatment program is strictly voluntary and the accused are most often able to opt out at any time. The approach in Canada has been somewhat different. The primary focus is with respect to assessing fitness to stand trial and providing treatment. The

participation of the accused in this aspect of the court's operation is not voluntary. Thereafter, once fit to stand trial, whether the accused elects to remain with the court for a bail hearing, participate in 'diversion', or resolve the matter with a guilty plea is the accused's option.

The accused individuals who elect to participate in the mental health court will typically be required to comply with an individually tailored treatment program designed by the mental health court team. The benefit of a multidisciplinary team is that treatment can take a variety of forms and is not limited to medication, but can include psychological therapies, educational training, occupational training, housing and access to social services, budgetary counselling, and so on. At the same time, some jurisdictions have a fixed 'program' of a fixed duration in which all candidates enrol. It is the author's view that individually fashioned regimens adjusted to the individual's particular needs are more likely to be successful.

Outcomes

While methodologies are variable [6], information on the efficacy of mental health courts is starting to accumulate (an excellent article suggesting an approach to the collection of mental health court data has been published [7•]). There are now studies that support the previously intuitive projection that mental health courts do indeed reduce recidivism rates [8]. Studies are showing that participation in mental health court programs is associated with longer time without any new criminal charges, or charges for violent crimes [9]. In addition to reducing the probability of future arrests, data are confirming that those who complete their mental health court programs do better than those who do not [10]. Other reports indicate that mental health courts improve access to care [11], save the taxpayers money by keeping mentally ill individuals out of prison, reduce drug abuse, improve overall levels of functioning [12], and should no longer be funded on a 'pilot project' basis [13].

General observations and caveats

While traditionally a general criminal court served any type of offender, today mental health courts represent one of many specialized 'problem-solving' courts in existence to serve specific types of offenders with special needs. A mere 10 years ago none were reported to be in existence, while today, over 200 mental health courts exist in North America alone.

It is ironic, however, that if one were to design the optimal mental healthcare delivery system it is unlikely that too many professionals would conclude that judges, courts, and the criminal justice system at large would offer the best vehicle. Unfortunately, our systems, both the mental health and criminal justice system, are the product of evolution rather than design.

The question to ask then is how to proceed; how, and what, should we learn from the short history of mental health courts? A distillation of the accumulating literature (for a comprehensive review of the literature and comparative study of mental health courts, see [14•]) permits us to list the features of mental health courts which should be avoided, those which we should strive to include, and general observations regarding their role in the justice system.

Mental health courts are an example of the justice system's ability to respond to a societal problem in a nontraditional, yet more effective, manner

The traditional punishment-based response of the criminal justice system to individuals who are in need of correction has failed both society and the mentally disordered accused and is, in fact, counter productive. As an example of therapeutic jurisprudence, mental health courts attempt to uncover the underlying root causes of undesirable behaviour (for an excellent discussion of therapeutic jurisprudence as the under-pinning to all problem solving courts see, [15]).

Mental health courts should have no 'entrance ticket' other than a willingness on the part of the accused to attempt change

It is inappropriate to require an accused entering a diversion program to enter a guilty plea or to accept criminal responsibility; it is antithetical to both the goal of 'decriminalization' and the notion that the accused is being diverted because it is more reasonable to see the activity in question as the product of a mental disorder rather than criminal activity. To dangle the prospect of leniency in front of the mentally disordered accused and promise a lenient outcome only if a guilty plea is made completely undermines the voluntariness of the plea.

Participation in a diversion program should be voluntary

Setting aside the philosophical debate as to what is truly voluntary, an accused should be permitted to enter or leave a diversion program at will. It is well established that motivation is the lynchpin for change. It is equally well established that it is rather pointless to waste rehabilitative time, resources, and effort on an individual who is not a willing participant.

Noncompliance with a diversion program should not attract criminal sanctions

Noncompliance should, first of all, be visited with further reassurance and support. Relapse is a normal, expected feature of rehabilitation. If, after all supportive options have been exhausted, the accused is showing no interest in participating, the accused should be permitted to

withdraw and return to the regular prosecutory stream. A mentally disordered accused should not be punished for attempting a therapeutic avenue, but failing.

Upon completion of the diversion program the accused should avoid a criminal conviction

The objective is to 'divert' the accused out of the criminal justice system. Therefore, once society's intervention has been successfully complied with the accused should be rewarded with the avoidance of a criminal conviction. Again, this is consistent with the primary objective of de-criminalizing the mentally disordered individual.

Diversion programs should, as much as possible, divert the accused back into the civil mental healthcare system

To avoid a two-tier mental healthcare system with one perceived to be superior, it is seen as preferable to rely upon one universal system. Diversion programs constitute another entry portal, but the resources should not be dependent upon outstanding criminal charges. It should not be one system for the 'bad' and one system for the 'good'. Such a system may actually serve to increase the arrest rates of mentally disordered individuals if the police believe that the only or best way to secure treatment is to introduce them to the criminal justice system.

The duration of a diversion program should be a function of clinical improvement rather than participation for a fixed period of time

If the objective of the diversion program is to reintegrate the accused back into society once sufficiently stable, it does not seem logical to connect completion or 'success' to a time line. The duration of time spent in the diversion program should naturally vary from individual to individual.

Counsel should be mandatory for all accused entering a diversion program

Given the problematic considerations of 'capacity' to consent to assessment and treatment and the general issues of voluntariness, to some extent the court can take comfort when the accused is represented by counsel. For vulnerable accused individuals, such as mentally disordered, the assignment of counsel is a layer of protection and comfort that should be included as a matter of routine.

The expectations of the diversion program should be explicitly stated

Of course, if accused individuals are to be voluntary participants, it is imperative that they understand precisely what it is that they are agreeing to participate in. A very good practice adopted by some courts is the creation of a 'contract' wherein the particulars of the diversion plan are clearly articulated and agreed to. This may serve a useful purpose in refreshing all parties' memories as to what was agreed. The agreement can be modified, as necessary, in that most rehabilitative programs are to a large extent matters of trial and error. In addition to assisting the mentally disordered accused, clearly defined goals and objectives can provide focus for the service providers within the court.

Any jurisdiction contemplating a diversion program or mental health court should not see that as a singular or unidimensional response to the problem of mentally disordered individuals coming in to the criminal justice system

The need for a mental health court should often be seen as symptomatic of a 'sick' civil mental healthcare system. A full review and overhaul of the civil mental healthcare system will also reduce the extent to which the mental health court will be relied upon as a principal delivery vehicle. It makes little sense to divert an accused back to a civil system that was not adequate in the first place. In addition, it is apparent that precharge diversion and the identification of high-risk individuals may be preferable to postarrest diversion. Accordingly, mental health courts comprise only one response within a range of solutions.

Every diversion program or mental health court should strive to include a plan for evaluation

A confluence of factors and barriers has served to frustrate research into the functioning and efficacy of mental health courts. To counter this reality, it is important for mental health courts to be diligent in data collection and to collect data ranging from the volume of accused coming through the system to recidivism rates. Monitoring a program in a systematic way will provide useful information as to which components are efficacious and which are not.

A court-based diversion plan should incorporate as many community 'partners' as possible

The success of a diversion program will inevitably be, in part, determined by how robustly the community is supporting the plan. In many ways the effectiveness of a mental health court can be predicted by the strength of the essential services found in the community. By having both forensic and nonforensic programs and community agencies in the diversion scheme, mental health courts will provide for a better transfer of the accused out of the criminal justice system and back into the community.

All professionals participating in the diversion program or mental health court should receive specialized training

Training is an important aspect of a mental health court to ensure that participants are approaching the task of diversion from the same perspective, and having the same objectives ensures that the team will function more consistently. As an example, it is not uncommon for different factions within a mental health court to view

'success' differently, such that the accused will be confronted with a confusing and frustrating set of expectations.

Trained judges, lawyers and prosecutors, clinicians and other court personnel, are at the forefront of a new and challenging area of service provision and study

These professionals are often in the best position to understand the complex relationship between mental disorder and criminality, and the plight of the mentally ill in the criminal justice system. Their knowledge and experience provides them with an opportunity to play a unique educative role within their own community, or other communities looking to put a mental health court in place.

Families and friends of the accused should be included in the diversion process to the greatest extent possible

Whenever possible, and if appropriate, mental health courts should strive to enlist the support of friends and family so that accused individuals will experience a consistently supportive environment within which they may progress. Individuals close to the accused can also be recruited as 'therapists' and sources of information with respect to progress as well as relapse.

Upon completion of a diversion program a continuation of treatment and support in the community must be guaranteed

It is pointless to invest in a court-based diversion program only to have all the support put in place withdrawn upon completion. Involvement with a mental health court should not lead to a dead end but hopefully represents a bridge to the recipient of essential services on an ongoing basis. Again, this points to the desirability of having one universal mental healthcare system that supports all mentally disordered individuals regardless of whether they are currently before the courts.

Mental health courts should intervene at multiple junctures

A comprehensive mental health court should assist the accused at multiple junctures, not just 'diversion'. This view is both obvious and inevitable in light of the various mental health concerns that often arise at any point from the inception to conclusion of a criminal prosecution. Commencing at the point of arrest, a specialty court can assist the mentally disordered accused with bail hearings, the assessment of fitness, treatment orders, keep fit orders, uncomplicated criminal responsibility matters, disposition hearings, guilty pleas, sentencing as well as the business of diversion.

Conclusion

Mental health courts represent an innovative approach to addressing the needs of individuals who have been alienated by both the justice system and the debilitated and diluted mental healthcare system. They are an example of therapeutic jurisprudence at work in reducing the criminalization of the mentally disordered individual. A much more direct and expedient approach to the problems sought to be addressed by these courts is deceptively simple: re-invest in the mental healthcare system so that that the needs of these individuals would be addressed at the first instance. Without a major change in this regard, mental health courts continue to be innovative attempts to patch a broken system.

References and recommended reading

Papers of particular interest, published within the annual period of review, have been highlighted as:

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Additional references related to this topic can also be found in the Current World Literature section in this issue (pp. 000–000).

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