Mental Health Courts: An Interface Between Social Work and Criminal Justice

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Mental health courts (MHCs) are emerging as a critical element in the nationwide effort to counter overcrowding in the US prison system and more adequately address the plight of offenders who are diagnosed with a mental illness. The goals of MHCs, an example of problem-solving courts, are to improve the quality of life for those involved in the criminal justice system, link clients to community treatment resources, and reduce recidivism and crime rates in a more cost-effective manner than within the traditional criminal justice process. This article provides a brief history of MHCs, including the rationale behind their initial implementation, an overview of their clientele and process, a review of the role social workers play, arguments for and against their broader introduction, and specific research recommendations to better ascertain their current and future effectiveness. Although MHCs are still too nascent to draw broad conclusions about their rates of efficacy, early results are promising.

Over 7.3 million (1 in every 31) adults in the United States are under criminal justice supervision, and for the first time in the nation's history, the adult incarceration rate is 1 in 100 (Warren, 2008). Between 1997 and 2007, the country's prison population almost tripled. The Department of Justice recently estimated that more than half of all individuals who are incarcerated have been found to have mental health problems (James & Glaze, 2006).

All too often, the US penal system, whose stated goal is to protect society and punish those who have committed crimes, has instead taken the place of community mental health services and in-patient psychiatric units by housing large numbers of people living with mental illness. For instance, in 2008, the Los Angeles County Jail System housed 1,400 people who required daily mental health services, effectively making it the largest mental institution in the country (Montagne, 2008). The size and scope of the issue makes it all the more difficult to devise a workable strategy for the mentally ill that does not bust budgets.

The need for MHC can be directly connected to the deinstitutionalization of psychiatric hospitals roughly 40 years ago, a social movement aimed at releasing patients living with mental illness from deplorable conditions in state psychiatric hospitals and transitioning them to community mental health centers to provide quality treatment. Although this goal was commendable, the subsequent lack of funding for continued community mental health actually left this population without oversight (Fields, 2006).

Advocates in the US concurrently began to clamor for reductions in

crime rates, and politicians consequently sent more people convicted of crimes to jail, including many non-career criminals living with mental illness who were in need of proper psychiatric care. The policies this decision has engendered have led to overcrowded jails, a prohibitive rise in the cost of incarceration, and the ever-present likelihood of recidivism, which played a central role in the creation of the "revolving door" of criminality (Delcka, 2001).

As the number of people in the criminal justice system steadily increases and financial resources become even more scarce, those living with mental illness become less likely to receive the treatment they require. In fact, adults living with mental illness are arrested for the same behavior twice as often as people who are not diagnosed with a mental illness (Teplin, 2000). Therefore, the size and scope of the issue makes it all the more difficult to devise a workable strategy that is fiscally responsible. To wit, 47 percent of federal inmates and 42 percent of jailed inmates with diagnosed mental illness have served three or more prior sentences (James & Glaze, 2006).

These issues evoke equally strong sentiments from victims' rights groups and criminal justice advocates. Among the rehabilitative responses that have provoked rigorous debate are MHCs. This paper will provide a comprehensive overview of MHCs and discuss the benefits and drawbacks of this alternative form of sentencing. Finally, the paper will provide a series of large and small-scale recommendations for social workers and researchers.

What is a Mental Health Court?

The main goals of an MHC are: to provide necessary mental health treatment, decrease recidivism, increase public safety, and reduce legal and incarceration costs. Judges, prosecuting attorneys, police officers, defense attorneys, and family members can all refer participants. Most MHCs use a model that re-routes participants into community mental health treatment instead of the traditional criminal justice system. In some courts, pending charges can be deferred as a judge monitors the person's adherence to the structure of the MHC. Other MHCs require a guilty plea in order to become a client.

MHC staff members include judges, attorneys, social workers, bailiffs, case managers, and court liaisons who have been trained in mental health. This multi-disciplinary team works collaboratively to develop treatment plans and sanctions for those who do not comply. This team also finds community-based mental health providers for additional care, incorporates substance abuse treatment, and locates housing and public benefit agencies. Partnering with all of these service providers builds a lasting support system for the client.

Mental Health Court Clientele

Each MHC utilizes different criteria to determine its participants; there is no nationally recognized standard. Interestingly, research has demonstrated that felony offenders in alternative-sentencing programs remain in treat-

ment longer, successfully complete or "graduate from" those programs at higher rates, and are much less likely to commit crimes post-completion provided they remain under court supervision (Rempel & DeStefano, 2001). The reasons for these higher success rates are two-fold: (1) Felony offenders are mandated to treatment, where they must remain for longer periods of time; and (2) The stakes are higher since failure to complete the program will likely result in a long prison sentence (Redlich, Steadman, Monahan, Petrila, & Griffin, 2005).

The History and Rationale of MHCs

The US has yet to properly answer a fundamental question about its penal system: Are prisons meant to rehabilitate or simply house inmates? There are numerous reasons behind the recent significant increase in the number of mentally ill offenders. Inmates are often released without proper access to necessary medications or referrals for adequate psychiatric care. In addition, there has been a general decline in access to inexpensive psychiatric services and public hospital beds (Watson, Hanrahan, Luchins, & Lurigio, 2001). Together, issues like these conspire to push people living with mental illness away from the treatment they require and toward anti-social behaviors they might not be able to control.

The first MHC opened its doors in Broward County, Florida in 1997 in an attempt to address the issues of individuals diagnosed with mental illness residing among the broader prison population (Watson et al., 2001). The court evolved from a taskforce established three years earlier by a local judge and public defender, who were searching for specific solutions to the interrelated problems of the increasing number of inmates with mental illness and overcrowded jails. Taskforce members consisted of community mental health treatment providers, hospital administrators, a spokesperson for the public defender, representatives of the state's attorney, and county sheriff officers (Watson et al., 2001).

By linking people with a mental illness to alternative forms of incarceration, many MHC advocates view these courts as a form of therapeutic jurisprudence, since they are expected to engender positive long-term lifestyle changes that avert a life of crime. The concept of therapeutic jurisprudence holds that "the law should be used, whenever possible, to promote the mental and physical well-being of the people it affects" (Slate & Johnson, 2008, p. 432).

Therapeutic jurisprudence seeks to focus attention on an often-neglected variable necessary for mental health law and practice (Wexler, 1993). The expectation of proponents of therapeutic jurisprudence is improved psychiatric stability for offenders, which is believed to eventually translate into better public safety, since these inmates should be less likely to commit crimes after release from prison. Therapeutic jurisprudence advocates argue that MHCs are an effective alternative to incarceration, since they target an underserved population but are not an easy way to avoid lengthy prison sentences.

MHCs also offer practical benefits: they are less costly than incarceration. Recent research regarding an MHC in Allegheny County, Pennsylvania found that it saved 18,000 dollars per person verses the traditional criminal justice system, translating to 3.6 million dollars in annual savings (Ridgely et al., 2007). Given current governmental budgetary pressures, this is no small issue. Studies show that state prisoners with mental health illness served four months longer than prisoners without mental health issues (James & Glaze, 2006).

Recent research has demonstrated that clients who are involved in MHCs progress longer without a new criminal offense and are much less likely to be arrested for a violent offense than offenders who are forced to navigate the traditional criminal justice system. Those who graduate the MHC have lower rates of recidivism and commit fewer violent crimes even after direct supervision has ceased (McNiel & Binder, 2007).

The Mental Health Court Process

Although the specific process of entry into a MHC varies from court to court, there are significant similarities across the 250 currently in operation across the US. Post-arrest intake specialists at a jail assess an offender's mental state and competency. If the intake officer, offender, prosecuting attorney, defense attorney, family member, or arresting officer report any symptoms of mental illness, a social worker, psychologist, or psychiatrist immediately performs a more thorough assessment. If an examiner deems the individual mentally ill and recommends him for participation, the case is eligible for transfer to an MHC. All cases are reviewed thoroughly by the MHC team, which makes a final, collaborative admission decision.

As noted earlier, in some courts, once an individual is recommended to the court, he must plead guilty to charges to secure his/her spot. This "guilty" plea is a useful tool: If a participant absconds, misses appointments, or does not follow-through with their treatment plan, the previous guilty plea means they will be sentenced immediately as they would have in the traditional criminal justice system.

The court's clients must pass a number of different stages with full compliance to graduate. There is no nationally recognized number of stages, although most of the 250 MHCs in the United States typically compel clients to complete three to four stages (Vleet, Hickert, Becker, & Kunz, 2008). The duration of each stage differs on an individual basis and from court to court, although all require full compliance before completion. Compliance means attending all court-mandated counseling sessions and hearings, avoiding additional trouble with the law, and passing random drug tests. With the completion of each stage successful clients are rewarded with incentives that include a reduced frequency of court appearances, placement on the "Rocket Docket," which allows them to appear before the judge at the beginning of status hearings and leave court earlier than others (Vleet et al., 2008), certificates of completion, and small gifts such as movie certificates or candy. It is hoped that

these benefits incentivize clients to continue to work hard and successfully complete the program (Gonnerman, 2004).

Over time, a client is given increasing freedom to ease his transition back into society and to ensure that he can effectively cope outside of a structured environment. A judge's level of personal involvement is often critical. The judge is the final arbiter of a client's performance and is therefore in a unique position of determining an individual participant's success or failure.

Mental Health Courts: The Positives and Negatives

When assessing the efficacy of MHCs, it is critical to remember that its clients are living with mental illness and in need of treatment. Many have received little to no psychiatric care prior to incarceration. Consequently, access to treatment is theoretically life-altering, particularly if the client accepts and responds to care and stays with counseling and prescribed medications after graduation. Community mental health professionals, who are highly skilled in psychiatric settings, typically provide regular treatment for clients rather than court staff. When necessary, the mental health professionals can recommend to the judge that clients be provided in-patient psychiatric treatment.

Ongoing arguments about who deserves to participate in these programs continue, as there are no national standards for admission. Other questions include whether MHCs can legally force clients to use legal psychotropic medications and how to codify proper sanctions for non-compliant behavior (e.g. jail time, community service, additional courtroom appearances, or dismissal). Some mental health professionals question whether MHCs violate a client's rights if he is forced to take prescribed medications and/or is remanded to prison for failing to effectively deal with a debilitating mental illness. In addition, some criminal justice advocates believe MHCs engender an unwelcome stigma for clients as both criminals and mentally ill. Conversely, victims' rights advocates argue that many clients are not committed to getting better but are instead finding a way to evade prison.

Mental Health Courts and the Social Work Interface

Given social work's ethical obligations to criminal justice, its unique stance on social justice, respect for human dignity, and commitment to disenfranchised/vulnerable populations, social workers are uniquely qualified and well suited to make significant contributions to individuals and families involved in the criminal justice system (National Association of Social Workers, 1999).

Social workers play a number of critical roles in a MHC. Clinical directors, who typically have a graduate degree in social work, oversee a team of social workers with forensic experience who conduct initial evaluations. Social workers also serve as treatment coordinators who maintain daily contact with clients and also mental health providers who follow up on treatment plans and

create reports for the judge to track a client's progress. They are also charged with the day-to-day responsibilities of providing clients with the skills to lead productive lives and to provide for their basic needs, including substance abuse treatment, psychiatric treatment options, housing, food, and medical care. MHCs are an opportunity for social workers whose interests lie in criminal justice, mental health, and social service systems to influence an emerging enterprise that is setting new standards and creating new solutions.

Unfortunately, as the social work profession has evolved, it has largely abandoned the field of criminal justice and corrections; neither the National Association of Social Workers (NASW) nor the Bureau of Labor Statistics lists how many social workers currently or have previously worked in corrections. In addition, the NASW does not regard corrections as one of its eight specialty practice methods (NASW, 1999).

The social work field's Code of Ethics mandates that social work professionals maintain a commitment to social justice (NASW, 1999). Unfortunately, the lack of criminal justice curriculum in master-level social work programs is keeping future social workers from gaining the skills to address an area of critical need, considering many students will work with clients affected by crime, corrections and the justice system. Recent studies indicate among the 95% of Council on Social Work Education-certified MSW programs that had field placements in the criminal justice arena, over half were specific to law and social work and therefore did not include work within criminal justice settings (Epperson, Roberts, Tripodi, Ivanoff, & Gilmore, 2009).

Research Conclusions

Researchers and advocates on all sides should remember that this is still a relatively new initiative and documenting the performance of one MHC should not be generalized to all. Therefore, researchers must be careful to allow the MHC initiative broad adoption before beginning to draw meaningful conclusions.

Specific Research Recommendations:

- Delay evaluations until a court has been fully implemented and procedures have been standardized for measurement purposes.
- Ensure validity of the design. Assess the effectiveness of a court by using other innovative legal approaches dealing with clients who are mentally ill and implement treatment other than typical processing. For example, compare MHCs to other interventions, including mandatory treatment as part of probation/parole requirements, pre-trial diversion or assignment of a mental health advocate (Almquist & Dodd, 2009).

- Collect information on the characteristics and percentages of clients who are eligible but choose not to participate or reasons clients were deemed ineligible for the MHC.
- Provide a clearer picture of the people, court systems, and communities most suited for a MHC, explaining clearly why one community or client population might have better outcomes.
- Determine whether MHCs improve criminal justice outcomes by linking participants to effective treatment, increased public safety, reduced recidivism, and reduction of correction costs.

(Almquist & Dodd, 2009)

Until we can begin to draw conclusions about the broader efficacy of MHCs, judges and prosecutors must continue to vigilantly assess the viability of each potential client, the failure to do so, given the possibility an offender might commit additional crimes, could possibly derail the entire initiative. MHCs offer an alternative to the criminal justice system, beyond standard plea agreements or trials by jury, which might not be the proper course of legal remedy for some offenders. As with virtually anything, MHCs will rise or fall largely on the actions of those who populate them, from judges, to lawyers, to social workers and, most crucially, to clients.

Because initial evidence shows that MHCs are more cost-effective and provide generally better client outcomes than traditional justice settings, adoption is likely to become more widespread over the coming years. Therefore, social workers, policy makers, and researchers must devise ways in which to more fully involve themselves, ensure broader utilization, and make the entire concept better and more workable for both clients and professionals.

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