



The Assessment and Referral Court List program in the Magistrates Court of Victoria: An Australian study of recidivism

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Abstract

Mental Health Court programs have been steadily increasing in number since the late 1990s. This paper described the Victorian model of diversion in the Assessment and Referral Court List within the Melbourne Magistrates' Court. The results of a two-year recidivism study suggest that successful completion of the list significantly reduced recidivism rates. Furthermore, this program is also effective at reducing the severity of offending behaviour post-program completion. Several factors that ought to inform the ongoing development of Mental Health Diversionary Courts in Australia are also discussed.

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1. Introduction

Individuals who have been diagnosed with a mental illness are more likely to appear before the courts, to be imprisoned (Petrla and Redlich, 2008) and to repeat their interactions with the criminal justice system, so much so, that some have stated that our courts and prisons are

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merely 'revolving doors' for the mentally ill (Graham, 2007; Denckla and Berman, 2001). In recognition of this growing issue and in an attempt to provide alternative procedures, Australia has followed the lead of other key jurisdictions such as the United States, United Kingdom, and Canada in introducing several operational mental health diversion programs into the local courts. Court-based mental health diversion programs are based on the concept of therapeutic jurisprudence, which emphasises the law's 'healing potential to increase wellbeing' (Graham, 2007; Wexler and Winick, 1996). As such, these programs seek to address the underlying causes of criminal behaviour, mental illness or intellectual disability, rather than merely responding to the 'symptom', the offending behaviour (Wexler, 1990). This approach has now been adopted by four Australian jurisdictions, South Australia in 1999, Tasmania in 2007, Victoria in 2010 and most recently Western Australia in 2013. Although the number of mental health diversionary programs has been steadily increasing in Australia, recent research by Lim and Day (2014) confirms that there is a lack of uniform evidence supporting their efficacy, particularly with regard to recidivism.

The purpose of the current study is to assess the efficacy of the operation of the Magistrates' Court of Victoria's Assessment and Referral Court List.

1.1. Australian studies

The literature base surrounding the implementation of mental health courts in various states in the USA and in other jurisdictions such as Canada is well known and has been commented on widely. This paper will focus largely on the Australian research that has been done to date.

In Australia, two previous mental health diversionary lists have been studied: the Magistrates' Court of Tasmania's Mental Health Diversion List and the South Australian Magistrates Court Diversion Program. The Tasmanian Mental Health Diversion Program Evaluation was conducted by Newitt and Stojcevski in 2009. Whilst the South Australian program has been studied twice, the first study was a pilot study by Skrzypiec et al. (2004) and more recently Lim and Day (2014) conducted a two year study focussing on recidivism.

The initial evaluation of the South Australian Magistrates Court Diversion Program was conducted in 2004 and compared two-year pre and post offending rates. It was found that two thirds of the study sample did not reoffend and that over three quarters of the sample size were identified as non-recidivist or had less serious offending behaviours post program completion. This is in line with the results from the more recent Lim and Day's (2014) study that found that over half of the participant sample ($n = 219$) did not reoffend in the 2 years post program, irrespective of whether or not they had successfully completed the program ($n = 166$; 75.8%). Furthermore, Lim and Day (2014) found that gender, the presence of a co-morbid substance abuse disorder, offending history, and failure to complete the program were significant predictors of reoffending (as defined by the number of convictions per participant post-program).

A study of the Magistrates Court of Tasmania's Mental Health Diversion List (Newitt and Stojcevski, 2009) assessed the reoffending outcomes 6 months pre and post program participation ($n = 112$). This study found that the total amount of reoffending by program completers dropped from 57% in the 6 months prior to the program to 3.8% in the 6 months post program participation.

2. Research limitations

It is well known that a number of methodological limitations exist in the various mental health court studies on recidivist behaviours of specialist court participants (Hollin and

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