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An examination of stakeholder attitudes and understanding of therapeutic jurisprudence in a mental health court

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ABSTRACT

Mental health courts represent a key component of contemporary responses to mental illness and disability in the criminal justice system, and yet there is uncertainty about how these courts should balance their punishment and treatment roles. This paper reports an analysis of interviews with court professionals which considers their understanding of the rationale underpinning an Australian mental health court, its effectiveness in achieving its criminal justice and clinical goals, and of broader notions of therapeutic jurisprudence. This reveals considerable support for diversionary mental health court programs of this type and professional confidence that this type of program is effective. However, the analysis also highlights conflict in the practice frameworks of the different professional groups who regularly contribute to the operations of the court. Suggestions to enhance service delivery are offered.

1. Introduction

Mental health courts have emerged, in part, as a response to the high rates of mental illness that exist in criminal justice systems around the world (e.g., Fazel & Danesh, 2002; Frazer, Gatherer, & Hayton, 2009; Ogloff, Davis, Rivers, & Ross, 2007). They can also be conceptualized as a policy response to the effects of de-institutionalisation, which resulted in large numbers of mentally disordered individuals being discharged from psychiatric institutions and hospitals back into the community (King, Freiberg, Batagol, & Hymans, 2009), only to subsequently find themselves involved in the criminal justice system. As Winick and Wexler (2003) have observed, for many, this resulted in a recurrent pattern of offending, subsequent arrest, and re-imprisonment (otherwise known as the "revolving-door phenomenon") that has been attributed, in part, to the lack of court processes or legislation available to adequately manage them.

Mental health courts are premised on the broad theory of therapeutic jurisprudence (Winick, 2003) and essentially aim to combine the two distinct frameworks of punishment and rehabilitation into a complementary model of justice (Winick & Wexler, 2003). Punishment in this context is embedded within practices that are concerned with accountability and questions of rightness and wrongness, while rehabilitation focuses on skill acquisition and the enhancement of well-being (see Ward & Salmon, 2009). Implicit in any mental health court then is the idea that recidivism can be prevented through the provision of effective treatment to mentally ill offenders in lieu of incarceration (Berstein & Seltzer, 2004; Steadman & Redlich, 2006). And yet, in practice, some courts take the view that the needs of offenders should be addressed not only in relation to mental health difficulties but also in regard to other aspects of life that are considered to be problematic, such as substance use, unemployment, and homelessness. They place great emphasis on behavioral change as something that occurs on a continuum and focus as much on improving psycho-social functioning and lifestyle stability as they do on complete recovery from psychiatric illness. As such, they are not necessarily guided by a model of mental health treatment or offender rehabilitation that is easy to articulate (see Lim & Day, 2012) and have not been without critics (e.g., Arrigo, 2004; Nolan, 1998). Petrila (1996), for example, notes the threats to consumer autonomy that arise when the judiciary are given influence over clinical decision-making. He also draws attention to the dangers associated with paternalistic approaches to mental health and how the basic right to consent to mental health treatment can be compromised. The aim of this study is to investigate how professional stakeholders' understand both the purpose and functioning of an Australian mental health court and to consider the theoretical assumptions upon which they base service delivery. More specifically, it seeks to describe how professionals expect the current policies and procedures of the program to lead to positive program outcomes. This, in turn, should help to determine the underlying logic of the court and contribute to the further development of mental health court diversion programs. Although interviewees were all stakeholders who might be regarded as holding a vested interest in the program (other stakeholder views, notably defendants, were not examined), investigations of the processes by which professionals see these programs as operating are nonetheless

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important, particularly in a country such as Australia where therapeutic jurisprudence initiatives have attracted the support of many of those who are interested in developing constructive alternatives to the adversarial paradigm (Freiberg, 2003; King, 2006; King et al., 2009).

2. Method

2.1. Participants

Purposeful sampling was used to identify those participants who were most likely to be able to provide insight into the rationale for the mental health court program and its current operation. Therefore, all individuals who were considered to have some form of involvement with the policy decisions and/or operational workings of the court were identified and invited to take part in the study. These included judicial officers, program staff, treatment providers, lawyers, and prosecutors. In total, 20 professionals (9 males and 11 females) agreed to be interviewed. Of these, there were 7 magistrates, 4 lawyers, 4 program staff, and 5 treatment providers (all psychologists).

2.2. The South Australia mental health court diversion program

Australia is a federal state governed by a parliamentary democracy and a constitutional monarch. It consists of 6 states (New South Wales, Victoria, Tasmania, South Australia, Western Australia, and Queensland) and 2 territories (the Northern Territory and the Australian Capital Territory). Each state and territory has its own legislation relevant to criminal law, and mental health, although each has a supreme court to make decisions which are binding on lower courts (unless reversed on appeal). Most jurisdictions have an intermediate trial court (sometimes called a district court), with the Magistrates Courts being the courts of summary jurisdiction. South Australia, which is a large geographical jurisdiction, has 16 lower courts (including 7 circuit courts) throughout the regional areas of the State.

The South Australia Magistrate's Court Diversion Program (MCDP) was established in 1999, and was the first mental health court in Australia to deal specifically with offenders suffering from a mental impairment (see http://www.courts.sa.gov.au/). The program is best characterized as a pre-sentence program as it endeavours to initiate early intervention through referral to appropriate treatment and rehabilitation services while the formal legal process is adjourned (see Burvill, Dusmohamed, Hunter, & McRostie, 2003). In practice, the MCDP relies heavily on the services of mental health professionals to guide program application and sentencing, and aims to provide an opportunity for eligible individuals to address their offending behavior and mental health and disability needs while legal proceedings are adjourned for a period of around 6 months (and no more than a maximum time of 12 months). During this time participants are required to access mental health treatment in the community as well as support, if required, to address identified psychosocial needs (e.g., housing, financial difficulties, and interpersonal relationship problems). Their progress is monitored through case management and bi-monthly court reviews, usually by the same judicial officer. Sentencing is only carried out after completion of the program.

In order to be considered as eligible for the program, a participant must be diagnosed with a mental illness, brain injury, intellectual disability, or a personality disorder (with the exclusion of Antisocial Personality Disorder). Other factors taken into account when determining suitability include the relationship between their mental illness and criminal behavior, the availability of treatment in the community, and the level of mental health service a participant is currently receiving. In some cases, offenders with an ongoing serious mental health problem may be accepted into the program independently of any known association between their mental health and their offending. One other defining aspect of the South Australian mental health court is the brokerage model of services it adopts; the program staff acts as assessors and case managers rather than as direct service providers, and are responsible for monitoring compliance on behalf of the court.

In May 2010, a new court program was established which attempted to combine the key principles of mental health and drug courts. This was driven by the high rates of co-morbidity (mental health and substance use) that are present in the local offender population. The South Australian Treatment Intervention Program (TIP) initially commenced as a pilot program out of one of the metropolitan courts and incorporated the MCDP as one of three program streams (i.e., the "Mental Impairment" stream), although its aims, structure, and eligibility criteria remained unchanged. The structure of the two remaining streams of TIP, however (the "Co-morbidity" and the "Substance Use Disorder" streams), are significantly more intensive than the "Mental Impairment" stream. Participants in these two streams are required to submit to random urinalyses on a weekly basis, appear before a Magistrate on a fortnightly basis, and comply with mandatory group therapy programs as part of their TIP rehabilitation plan. This is in addition to attending any other form of treatment identified as necessary in the assessment. Each defendant is subject to an individual treatment plan to address his or her particular treatment needs and offered assistance and treatment through group therapy, intensive supervision, case management and, where necessary, urine testing. All programs are of 6 months' duration; however, there is scope for participation to be extended in order to maximise treatment outcomes (see http://www.lsc.sa.gov.au/dsh/ch04s11.php#sthash.XF4aWZf8.dpuf). The Treatment Intervention Program subsequently replaced the MCDP in Adelaide and all of the other metropolitan Magistrates Courts. However, regional courts continue to retain the MCDP paradigm as the sole problem-solving program in those jurisdictions.

2.3. Interview protocol

The interviews consisted of a series of general questions designed to elicit from the participants their understanding of (1) the parameters of the work (e.g., "*What regular decisions about the program do you have to make that are specific to your job scope—are there any criteria you would use in sentencing, perceptions of risk pre- or post-program, treatment progress, etc.*?"); (2) the rationale behind the court (e.g., "*Why do you think these sorts of programs have been established*?", "*What, in your opinion, are the most important/effective features of the program*?"); (3) the relationship between mental health and crime (e.g., "*What are the most common types of mental disorders that you see and how do you think they contribute to criminal behavior*?"); and finally, (4) their expectations of program outcomes (e.g., "*What are the main objectives of the court*?"). In accordance with the semi-structured interview format, not all questions were asked, some were amended, and follow-up questions were often necessary to clarify participants' responses, or to further elucidate themes that had been highlighted in previous interviews. Specific terminology, such as use of the term "therapeutic jurisprudence", was avoided in an attempt to ensure that participant responses did not simply reflect personal understandings of this language.

2.4. Procedure

The interviews were conducted in locations chosen by the participants, which were either at their respective chambers (Magistrates) or professional offices. Each interview was scheduled to last approximately 40 min, but this was generally flexible and participants were given as much time as they needed to voice their opinions. Two participants who worked in the same office elected to be interviewed at the same time, and therefore, this interview lasted nearly 90 min. The interviews were recorded and contemporaneous hand-written notes were also taken by the first researcher.

The audio-recorded interviews were then transcribed and entered into N-Vivo software. Initially, each transcript was subjected to open coding (Strauss & Corbin, 1990), which involved a line by line analysis

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