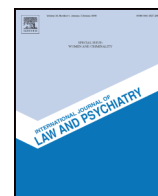




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## Psychology and psychiatry in Singapore courts: A baseline survey of the mental health landscape in the legal arena

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### ABSTRACT

Despite the increasing prevalence and involvement of mental health professionals in local courts, there has been no systematic study of the role played by these expert witnesses in Singapore courtrooms. An empirical study of all existing recorded cases on Lawnet (Singapore's legal database of all court trial cases) from 1975–2014 involving psychologists and psychiatrists was conducted. Results revealed that, not only were these mental health experts increasingly dotting the landscape of the legal arena, the variety of their contributions has also been gradually growing. Furthermore, there were marked differences across criminal, civil and custody cases with regards to the issues of how these experts were consulted and how their inputs utilized and appreciated by judges. Differences between psychology and psychiatry were also apparent. A future with more assistance rendered by these professions to courts, as well as greater synergy between law and mental health, was predicted for Singapore courts.

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### 1. Introduction

While mental health expertise had its occasional presence in Singapore courts in the past, recent judicial and cultural changes have seen its greater involvement and prominence in the local courts. For instance, with the introduction of community-based sentencing options in 2011, such as the Mandatory Treatment Order, as well as the development of Community Court, which specializes in mental health related cases, input from mental health experts to assist in legal decisions has been increasingly required.

Internationally, the reception of forensic mental health evidence in courts has been mixed, ranging from hostility and skepticism to its utility, to warm openness or even welcoming it to the extent of allowing it to have substantial impact on judicial decisions (Redding & Murrie, 2007). However, the local context is starkly different. Not only does the reception to mental health expertise in local courts remain unclear, the precise nature of mental health input has not been studied in an organized or meaningful way other than through anecdotes and informal grapevines within the psycholegal community. The purpose of this systematic stock take of the role of mental health in Singapore courts is thus to understand and describe the local mental health-legal landscape against larger issues witnessed in the international arena.

Firstly, the Singapore legal system will be described for readers to meaningfully appraise the context of the current study. This brief

introduction will then lead into the broader and recent issues faced by the law and mental health community. Where relevant, the local state of these issues will be highlighted. The specific objectives of this study will then be explicated, followed by the methodology of this study, empirical findings and a discussion.

#### 1.1. Singapore legal system

Criminal and civil cases are heard at the Magistrate, District and High Courts, with more severe offenses or larger amounts of sought damages being heard in the latter. Custody issues and Beyond Parental Control cases are heard in family court. A recently developed Community Court specializes in hearing cases that potentially require community resources and criminal justice resolutions, such as attempted suicide cases, or cases involving young offenders or offenders with mental illnesses. There is no jury system in Singapore. Appeals from all courts are heard in the Court of Appeal, with three presiding judges. The death penalty remains in force for offenses like murder and drug trafficking, albeit no longer mandatorily. The use of expert evidence is discretionary in all courts, except when a Mandatory Treatment Order (MTO) is sought (see below).

There are various pieces of legislation in Singapore that particularly concern and involve the input of mental health professionals. Firstly, in a criminal setting, s84 of the Penal Code provides an exculpatory clause for any offense should there be unsoundness of mind, which is comparable to a Not Guilty by Reason of Insanity (NGRI) finding in the United States. Secondly, Exception 7 of s300 of the Penal Code provides for a non-capital sentence for murder should there be diminished

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responsibility, which is caused by “abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts.” Establishing the presence of any mental health afflictions, including intellectual disability, thus becomes a life and death issue in Singapore where the death penalty remains in force for murder. This contrasts with the United States, where the milestone case of *Atkins v. Virginia (2002)* led to a Supreme Court ruling that it was against the United States Constitution to execute someone with intellectual disability. While there are no Atkins provisions in Singapore law, murder cases involving defendants with intellectual disability would come under the diminished responsibility exception.

Recent provisions for community-based sentencing options are particularly significant as they specifically require the input of mental health professionals. For instance, the Mandatory Treatment Order (MTO) was operationalized in 2011 as a sentencing option which enables judges to mandate compulsory psychiatric treatment in lieu of a custodial sentence. This option is only available when the offender is deemed by a court-appointed psychiatrist to have a mental illness that has contributed significantly to the offense, and is amenable to treatment. The court-appointed psychiatrist thus assesses the offender for the existence of any mental illness as well as the need for any follow-up treatment, which may also involve psychological interventions when deemed appropriate. Offenders are required to abide by all treatment conditions recommended by the state psychiatrist, failing which, the order will be revoked and a prison sentence imposed. Formal expert oral testimony in court is not mandated, and remains at the court's discretion.

Other than the MTO, which only improves the post-conviction access to mental healthcare for people with such disabilities, another law reform involves pre-trial diversionary mechanisms. The Attorney-General's Chambers and the Ministry of Home Affairs have incorporated improved screening procedures during police interviews by adapting psychological tools in order to identify offenders with mental illnesses and intellectual disability more accurately. The goal is to inform on deciding between conviction or referral to rehabilitative avenues. As explicitly indicated (*Chong, 2013*), the diversionary goal of these efforts is to place offenders on “suitable rehabilitative programs without putting them through the rigors of the mainstream criminal justice processes.”

Other than these developments in the criminal side of the law, the most recent legislation in civil law involving mental health professionals would be the Mental Capacity Act, operationalized in 2010. This Act enables lasting power of attorney for nominated donees to make decisions regarding personal welfare, properties and affairs should one become mentally incapacitated. Psychiatric assessments and psychometric evaluations are thus required to determine an individual's mental capacity. Involuntary hospitalization in a psychiatric institution is addressed in the Mental Health (Care and Treatment) Act 2008, which requires a psychiatrist to determine the presence of a mental disorder that warrants detention on the basis of health and safety of the individual or the risks posed to others. In the areas of family and custody law, which includes both private family custodial disputes as well as child removal by the state and placement into foster care, there is no legislation or provision that specifically involves the input of mental health professionals. Nevertheless, such professionals are consulted when their expert inputs are perceived to be useful to the case. As already evident, the psychiatrist is the professional formally identified in legislation to perform numerous roles when mental health input is required. Other mental health professionals nevertheless provide supportive input to this role.

The mental health professionals who provide assessments for courts or are involved in the various legislations described above belong to a multitude of agencies. For instance, state psychiatrists and psychologists in the Institute of Mental Health (IMH), the country's only government psychiatric hospital, typically provide pre-trial evaluations for criminals

suspected of having mental illness, as well as capacity evaluations. Psychologists at the Ministry of Social and Family Development (MSF) assess for suitability for probation and inform on sentencing options, as well as fitness to parent. Psychologists and psychiatrists in prisons inform on fitness for incarceration and release. Their counterparts in general hospitals also provide capacity evaluations, while those in the private sector unsurprisingly contribute to all criminal, civil and family law areas.

### 1.2. Current psycholegal climate

The involvement of mental health in legal and administrative processes has long been debated. Theories of the psychological complex (e.g. *Rose, 1985*), which interpret mental health as a vehicle for control of the population via over-medicalizing and depoliticizing of legal issues, have warned against the rise in influence of mental health. Even psychiatrists in the legal system, upon realizing the reliance on their craft (e.g. *Robitscher, 1977*), have echoed such concerns.

A recent check in the increasing influence of mental health in law comes from the United Nations Convention on the rights of persons with disabilities, which came into force in 2008. The Convention was meant to reduce discrimination on the basis of disability and effect equal access to resources and liberties. It has been argued that, since mental health laws are subject to the scrutiny of this Convention's guidelines, not only does mental illness constitute disability, but that mental health laws are discriminatory and go against the Convention (*Szmukler, 2014*). For example, involuntary treatment laws, such as the Mental Health Act 1983 of United Kingdom, are discriminatory. The United Kingdom's Mental Capacity Act 2005, which deals with the issues of capacity and lasting power of attorney, on the other hand, is in line with the goals of the Convention as it focusses on decision-making capacity per se regardless of the presence of any mental disorder, a distinction advocated to make mental health laws less discriminatory (*Szmukler, Daw, & Callard, 2014*).

By the same reasoning, Singapore's Mental Health (Care and Treatment) Act, which mirrors the Mental Health Act of United Kingdom, would be discriminatory. The Mental Capacity Act (2010) of Singapore would be consonant with the Convention's goal, given that it was fashioned after United Kingdom's Mental Capacity Act 2005 and emphasizes decision-making capability regardless of disorder. Singapore is a signatory of the Convention, and has ratified it since 2013 (*Ministry of Social and Family Development, 2016*). Nevertheless, Singapore has not signed the Optional Protocol to the Convention, which enables complaints regarding the violation of rights under the Convention to be lodged with and investigated by the United Nations Committee on the Rights of Persons with Disabilities (*Lim & Lim, 2012*).

While the debate regarding the United Nations Convention on the rights of persons with disabilities remains largely theoretical with few empirical studies (*Steinert, Steinert, Flammer, & Jaeger, 2016*), the field of therapeutic jurisprudence sheds more light on whether the involvement of mental health input in the law can lead to benefits. Indeed, empirical studies in therapeutic jurisprudence have shown support for lower recidivism and re-hospitalization rates, as well as higher levels of perceived procedural justice and involvement, indicating some success in the criminal realm of things (*Cummings, 2010; Redlich & Han, 2014*). However, a study in Singapore examining the therapeutic impact of the local Mental Capacity Act via the lens of therapeutic jurisprudence found that therapeutic benefits, if any, are conditional, and in reality, not always enjoyed by users of the Act (*Gwee, 2011*). Specifically, while professionals welcomed the new legislation, patients and their families reported anti-therapeutic benefits instead. This local finding thus serves as a reminder that not all stakeholders may benefit from the growing influence of mental health in the domain of law, and that caution has been exercised to prevent harm.

Internationally, the concern over the increasing role of mental health in legal settings has thus been catalyzed by the United Nations

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