

The Effectiveness of the Broward Mental Health Court: An Evaluation

Of the nearly 11 million people arrested each year in the United States, at least 600,000 have an acute mental illness. Another 7 million people arrested have a substance abuse and/or mental disorder. Appropriately responding to these persons in the criminal justice system is one of the most important policy issues confronting local communities. Specialty mental health and drug courts are one local response. Preliminary data from the evaluation of one of the nation's first mental health courts suggests that the court is perceived by those who appear before it as relatively non-coercive and as fair and that persons who are seen by the mental health court are likely to more effectively access treatment than persons seen in a traditional misdemeanor court. While these results are encouraging, several important questions remain regarding the use or threat of punishment in mental health treatment, preservation of legal rights and the appropriateness of treatment planning roles for judges.

Background

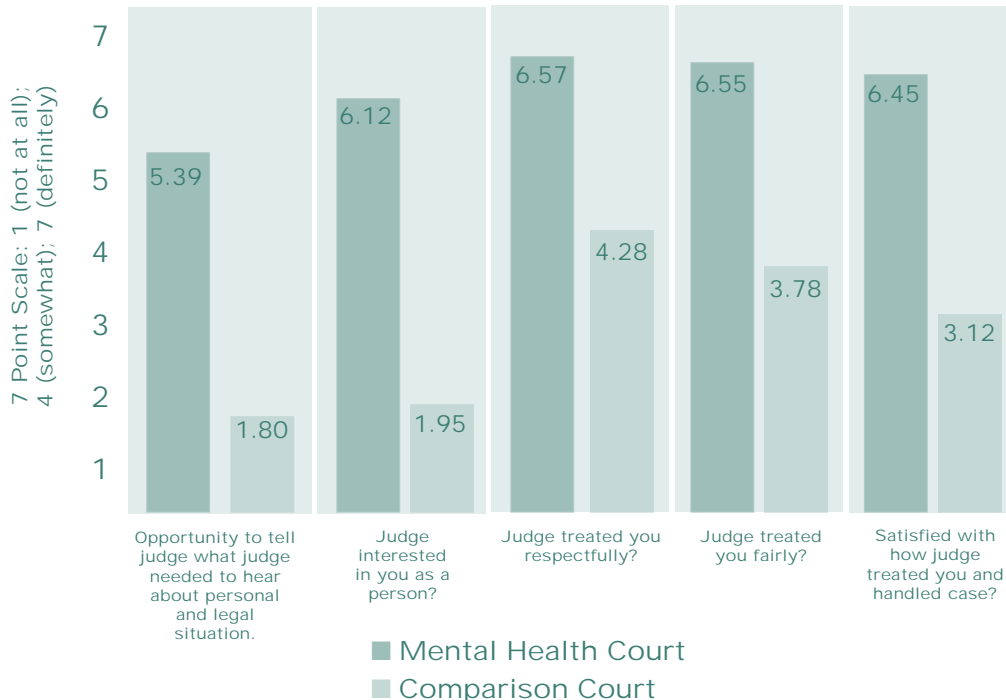
There have been a variety of responses from the mental health and criminal justice systems to this issue. While some communities have focused on diverting individuals into treatment prior to arrest, other strategies focus on diversion after an arrest. The most common example of the latter strategy in the 1990s was the emergence of drug courts. Developed largely in response to changes in sentencing for individuals convicted of drug offenses, drug courts were designed to divert individuals charged with first felonies into drug treatment. If the individual did not adhere to treatment, punishment might follow. In 1992 there were two drug courts in the United States while today there are nearly 1,000 in operation or planned. Mental health courts are the most recent development in the emergence of treatment courts. In 1997, Broward County, Florida, which has pioneered a number of innovations in addressing the needs of people with mental illnesses in the criminal justice system, created one of the nation's first mental health courts. The mental health court (MHC) is a special jurisdiction court designed to divert individuals with mental illnesses who were charged with non-violent misdemeanors into treatment. The court was created by a task force, chaired by Circuit Judge Mark Speiser, which for several years has attempted to address a variety of

issues that arise from the influx of people with diagnoses of serious mental illnesses into the Broward County criminal justice system. The court was created with the goals of reducing the amount of time people with mental illnesses, charged with non-violent misdemeanors, spent in jail and of obtaining treatment for those individuals.

The Evaluation

The Institute's Department of Mental Health Law & Policy has been conducting an evaluation of the Broward MHC, funded by the John D. and Catherine T. MacArthur Foundation and the Florida legislature. The evaluation has several components. These include a description of the court process itself, as well as an assessment of the degree to which individuals appearing before the court find the court coercive and/or fair; and an analysis of long-term outcomes, using a variety of data including several interviews with individuals enrolled in the study as well as archival data. A misdemeanor court in another Florida county with similar characteristics was chosen as a comparison to the MHC. We enrolled 120 individuals from the MHC and 100 individuals from the comparison court, matching them on a number of key variables to attempt to assure that individuals enrolled in the comparison misdemeanor court would have been eligible for the Broward County mental health court.

Perceived Procedural Justice: Mental Health Court vs. Misdemeanor Court



Findings

First, the MHC process, under the leadership of Judge Ginger Lerner-Wren, is extremely informal. Analysis of court transcripts and observations of the court show that the judge often engages the individual in conversation, something that rarely happens in traditional misdemeanor court. Also, treatment staff are routinely at court and there is very little “lawyering” (formal argument; swearing of witnesses; motions to the court) such as is routine in criminal court. This approach is consistent with the court’s effort to establish a non-adversarial tone in the court. One of the critiques of the traditional adversarial system by proponents of treatment courts is that the adversarial system may create barriers to achieving therapeutic outcomes.

Second, individuals who appear before the court report that they perceive it as comparatively non-coercive, and that it provides them an opportunity to have their voice heard. These are important issues in mental disability law. The issue of coercion and its use permeates mental health law and policy, particularly though not exclusively with the on-going debate over civil commitment laws. Whether individuals *perceive* a particular intervention as coercive is important in assessing how coercive a particular intervention might be. The mental health court is perceived by those enrolled in the study as very non-coercive. The question of “voice” and “procedural justice” is also important. A body of thought in social science considers that the more an individual believes he or she has been given voice, and perceives a process to which he or she is subject as fair, the more likely that individual will adhere to the outcomes of that procedure. In this case, the theory would suggest that if individuals perceive the MHC as fair and providing them voice, their adherence to treatment recommendations by the court might increase. Our data show that individuals perceive the MHC as providing much greater voice and respect than do those whose cases were adjudicated by the comparison misdemeanor court.

Third, the MHC, compared to the misdemeanor court, appears to provide greater access to treatment. Our preliminary analyses show that more individuals enter treatment from the MHC than from the comparison misdemeanor court. In addition, those already

in treatment before appearing before the mental health court are more likely to stay in treatment than those in treatment whose cases are handled by the comparison misdemeanor court.

Policy Implications

□ The MHC appears to have achieved significant goals set for it by its creators. At the same time, our analyses, particularly of treatment utilization and criminal justice recidivism are continuing. There are also questions that continue to be debated across the country as mental health courts are developed in other jurisdictions. For example, what is the role of punishment in such courts? As noted above, drug courts routinely use punishment. However, the Broward MHC does not use punishment in general, in part because of a belief that MHCs must acknowledge that relapses occur in the treatment of mental illnesses and in part because of a belief that the use of punishment would “punish” the status of having a mental illness. However, other mental health courts do use punishment, and the impact of using or not using punishment is an important policy question that is receiving continuing scrutiny.

□ Some have argued that the informality of the MHC and the lack of adversarial process results in a diminution of individual rights that need to be preserved in the criminal courts. This argument is not dissimilar to arguments over the role of counsel and courts in civil commitment, in which there has been significant debate over whether legal rights are adequately respected. Advocates for treatment courts assume that traditional legal process impedes access to treatment, and argue that breaking the cycle of arrest, release from jail, and re-arrest without community treatment warrants a more explicitly therapeutic approach by the courts. Others believe an insistence on individual rights is critical to the integrity of any criminal court process and point to the fact that certain rights, for example, the right to speedy trial, are given up as part of entering the mental health court. This issue too will be the subject of further debate.

□ MHCs and drug courts also suggest a new emerging role for judges as treatment planners in individual cases and as systems planners in communities struggling with these issues. These are new roles that not all judges are comfort-

able with; this new role, however, does suggest important new alliances may be available for those concerned with treatment and funding issues for services for people with mental illnesses and substance abuse diagnoses. The emergence of MHCs and drug courts in part reflect continuing and growing frustration with the impact of mental illnesses and substance abuse on the criminal justice system. It is likely that the number of mental health courts will continue to grow, given Congressional appropriation of funds to seed the creation of an additional 100 mental health courts nationally. Whether special courts are appropriate as strategies for addressing these issues is most appropriately considered within the communities where the impact is greatest. Our evaluation to date suggests that in Broward County, the MHC is meeting goals established by those who created it.

This Policy Brief was written by John Petrila, J.D., LL.M., Chair of the Department of Mental Health Law & Policy, Louis de la Parte Florida Mental Health Institute, University of South Florida. It is derived from:

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