Tasmania's Mental Health Diversion Court – AsPac 2010

Wrest Point, Hobart, Tasmania

Chief Magistrate Michael Hill

24/11/2010

Overview

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Best Practice Guidelines

September 2010 the National Justice CEOs (NJCEOs) Group released **"Diversion and support of offenders with a mental illness; Guidelines for best practice"**

Provides guidance on an evidence-informed approach to establishing diversion and support programs in the community for offenders with mental health issues

It proposes 10 principles which underpin best-practice diversion and support :

1. Collaboration, communication and coordination are essential
2. Community safety is not compromised
3. Accountability for criminal behaviour is retained
4. Human and legal rights are protected
5. Consumer and family or carer participation ensures policy and service development are better targeted, more effective and sustainable

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Best Practice Guidelines cont.

6. Mental illness and associated issues are identified, assessed and treated as early as possible
7. Programs deliver culturally safe, holistic services tailored to individuals
8. Quality and integrity of health interventions are maintained
9. A recovery orientation is essential
10. Programs balance fidelity to the evidence base with environmental constraints and innovation

Guidelines are available at the AIC website:

http://www.aic.gov.au/crime_community/communitycrime/mental%20health%20and%20crime/njceos.aspx

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How the List started

- The MHDL started in 2007 and pre-dates these Guidelines – the Court did not have a checklist approach
- But in its establishment, procedure, philosophy and method the court upholds and strives to better achieve these best practice principles

- Bottom-up Approach
- Court-led: collaboration b/w dedicated magistrate, FMHCLO police prosecutors and legal practitioners
- Re-arrangement of Court lists to divert defendants with mental illness into specialist sittings

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Procedure

- **Referral**: A person can refer themselves into the program or be referred into it by their Solicitor, TasPolice (including Prosecutions), Magistrates, Mental Health Case Managers, Other Service Providers, or Anyone with a genuine interest in the welfare of the person.

- **Assessment**: In order to determine whether a person is suitable for the program they must first undergo an assessment interview by a Forensic Mental Health Court Liaison Officer.

- **Court Diversion**: Once assessed as eligible and suitable by the FMHCLO, the person will appear before the Magistrate presiding over the List. The Magistrate will, on the basis of information provided to the Court by the FMHCLO, police and defence lawyer, decide whether to accept a person on to the program and tailor an order—usually a bail order—best suited to addressing the person's mental health needs.

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Procedure (cont.)

- **Court Review**: During a person's diversion program, a series of court reviews will take place, which the person will be required to attend unless excused by the Magistrate. This is a relatively informal process that provides an opportunity for direct interaction with the Magistrates.
- **Sentencing**: At one of the reviews a final date will be given for the person to return to Court for finalisation of their matters. A Magistrate may take into account the person's success or otherwise in the diversion program when considering a final sentence.
- **Consent**: Participation in the program is at all times **voluntary** and any assessment will only occur after the potential participant or their legal guardian has provided written consent.

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Key Players

- Magistrates
- Forensic Mental Health Court Liaison Officers (FMHCLO)
- Prosecution
- Legal Aid
- Private Legal Practitioners

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Magistrates

- Encouragement
- Support
- Sympathy
- Listening
- Praising

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On Magistrates: Offender Interviews

- ‘They could tell that I was really worked up and they accommodated it…they got my partner to come over and sit next to me on the big round desk…they were very aware of how I was feeling I think.’
- ‘The magistrate, he was terrific. He was really good. He was understanding of me (sic) mental illness and how I’d become to get mentally ill and he was very supportive actually.’
- ‘He referred to things so that (my daughter) understood why she was there. And when you are on medication you get a bit hazy about things that have happened, so it was good that he mentioned things like that.’

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Collaboration & Cooperation

- In the initial period between referral and appearance informal discussions take place between the FMHCLO, prosecutors and defence counsel.
- Once the FMHCLO's recommendation of eligibility/suitability confirmed by the Magistrate, and the appropriate order made, the quality and integrity of the health interventions are maintained by the role of the FMHCLO.
- Monthly case management meetings between the FMHCLO, prosecution and lawyers to review progress.

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Selected Results - May 07- Dec 09

Acceptance/Completion

- 154 referrals
- 126 participants accepted onto/completed MHDL: 16 active cases and 110 completed
- 28 non-completions – reasons for non-completion - no mental illness or otherwise unsuitable, program non-compliance or withdrawal of consent - referred back to the general list

Of the 126 participants

56% - 1-2 criminal charges

44% - 3 or more criminal charges

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Results continued

- Referrals received from:
  - 43% lawyers
  - 33% FMHS/MHS staff
  - 18% Magistrates
  - 1% Police
  - 5% Other

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Results continued

Representation

64% Legal Aid
27% Private lawyer
9% Unrepresented

Finalisations

- 110 of the 126 completed (May 07 – Dec 09) – 135 sentences recorded:
  - 74 (55%) Conditional release order – 16 with conviction recorded & 58 without conviction recorded
  - 16 (12%) Charges dismissed
  - 13 (9%) Tender No evidence
  - 12 (9%) Suspended sentence
  - 20 (15%) Other including license disqual., community service order, recognisance

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Results continued

Appearances

The average number of appearances prior to finalisation was 2.8:

- 79 of the 110 finalised cases being disposed of in 1-3 hearings, and
- 27 cases involving 4-5 hearings before disposition.

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Results continued

- Diagnosis of participants:
  - 44% schizophrenia
  - 15% bi-polar disorder
  - 9% depression
  - 8% post traumatic stress disorder
  - 6% personality disorder
  - 6% psychosis not otherwise specified
  - 3% obsessive-compulsive disorder
  - 9% other

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Results continued

- Treatment provider:

  67% Forensic Mental Health Services / Mental Health Services
  12% Private psychiatrists
  11% Private psychologists
  8% GPs
  2% Other

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Evaluation (May 2009) -

Early Recidivism Data

- Results show a reduction in the number of MHDL participants who offended post-program compared to pre-program as well as a reduction in the actual number of incidents charged against these offenders.
- From a sample* of 52 MHDL participants who completed their program:
  - 82.7% were found to have committed an offence in the six months **prior** to their participation, compared with just 7.7% in the six months **after** participation.
  - 78.8% of these participants had reduced their offending level post-participation (i.e. they recorded fewer incidents)
  - 5.8% exhibited an increase in the number of offences they committed post-participation.

* Small sample size prevents the statistical significance of the data being calculated

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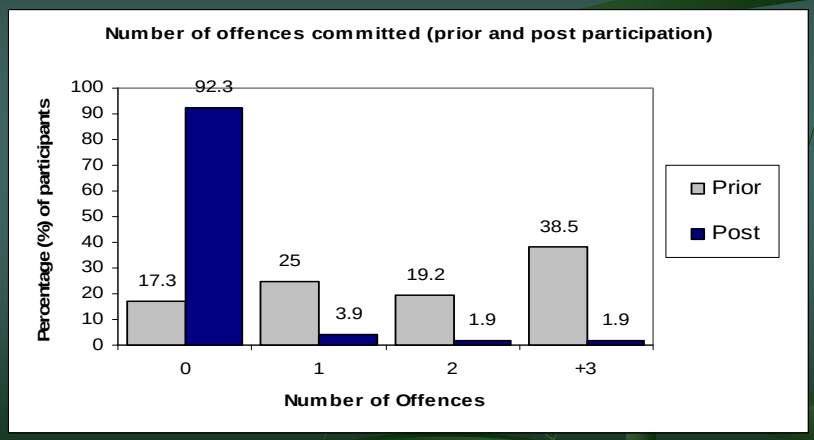
Comparison of number of offences committed pre- and post-participation by participants who have successfully completed the MHDL.



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Evaluation - Case Study - "Aaron"

- 43 y.o. male diagnosed with delusional disorder
- Firearm & property offences + one count of stalking
- Before participating on the List Aaron kept his mental health issues "all bottled up"
- He understands about 70% of what goes on in the courtroom and the rest is explained to him afterwards
- Finds that having the Mag. talk to him directly and give him encouragement helps him feel more relaxed
- Has been able to continue his work and has started to re-engage in social activities

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Evaluation - Case Study – “Isabel”

- 45 y.o. mother of four with bi-polar disorder
- When unmanaged her BPD causes her to be abusive to others, esp. her family
- Charged with breaching restraint orders taken out by mother & children
- Repeat appearances in normal court lists caused pain & anguish that could have been avoided if she was referred to the List earlier
- Since being on the List Isabel has received proper care and follow–up – her medication has been re-assessed & changed, her memory has improved and she is motivated to get out of bed
- Has started to repair relationships with her children and other family members
- Being in the MHDL meant she felt more at ease in court and was not worried about what the Mag. was going to say to her

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The Future

- Extension of the List to other court registries
- Rotation of Magistrates through the List
- Improved level of data collection
- Continued monitoring of the resource impact
- Re-consider eligibility criteria.

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Thank you for your interest today.

http://www.magistratescourt.tas.gov.au/divisions/criminal__and__general/mental_health_diversion

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