



# Research in Practice

TIPSHEET No. 20 June 2011

## Court-based mental health diversion programs

Research suggests that individuals with a mental illness and/or intellectual disability are over-represented at all stages in the criminal justice system (Butler & Alnutt 2003). As such, it appears that traditional criminal justice responses may not be as effective with this offender group. Alternative criminal justice processes that have attracted the attention of policymakers are specialist mental health courts and diversion programs. 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: 18). As such, they seek to address the underlying causes of criminal behaviour exhibited by offenders with a mental

illness and/or intellectual disability by referring them to treatment services such as drug and alcohol counselling.

A recent review of mental health courts conducted by Sarteschi, Vaughn and Kim (2011) suggested that mental health courts:

- link clients to mental health services;
- reduce reoffending rates; and
- have some positive cost-reduction effect.

However, the authors also argued that the effectiveness of mental health courts is affected by a number of issues. For instance, an eligibility

### Principles of an effective court-based mental health diversion program

Integrated services	Multidisciplinary approach that integrates mental health and social services with the criminal justice system
Regular meetings of key agency representatives	Administrative meetings that deal with the operation of the program and funding, and meetings between service providers and stakeholders about individualised treatment plans
Strong leadership	Program director/co-ordinator who has excellent communication skills and an awareness and understanding of all elements of the mental health court or diversion program
Clearly defined and realistic target population	Clear eligibility criterion that takes the treatment capacity of the community and offender circumstances into account
Clear terms of participation	The terms of program participation are made clear to clients and individualised to suit the needs and circumstances of the offender
Participant informed consent	The decision to participate in a program should be consensual and made only once the offender is fully informed about the process and the consequences of participation. This can be facilitated through rigorous legal representation, specially trained case managers and/or the presence of an advocate <sup>a</sup>
Client confidentiality	Although there are reporting requirements for case managers regarding client progress in treatment, confidentiality and privacy of clients must be preserved
Dedicated court team	Development of a team of court staff who are trained in the identification and management of a broad range of mental health issues
Early identification	The identification of suitable clients should be made as early as possible in their interactions with the criminal justice system
Judicial monitoring	Client program engagement is closely monitored by the court and subject to sanctions and rewards
Sustainability	Formalisation and institutionalisation of the program to ensure long-term sustainability

a: Informed consent may not possible for an offender with a severe mental illness and/or intellectual disability. As a general rule, offenders who are unwilling or incapable of consenting to participate in a court-based mental health diversion program are referred to mainstream, or other alternative court processes

Source: Steadman, Morris & Dennis 1995; Thompson, Oasher & Tomasini-Joshi 2007

requirement of many court-based mental health diversion programs is that the offender pleads guilty to the charges against them. A guilty plea may result in offenders receiving a criminal record, which could negatively impact on their ability to find employment and housing, and their access to social services.

Evaluating court-based mental health diversion programs has proved difficult, partly because these schemes are, by design, responsive to a variety of internal and external pressures and as such, are structurally quite fluid. However, some commentators, most notably Steadman, Morris and Dennis (1995), and Thompson, Osher and Tomasini-Joshi (2007) have attempted to devise a best practice guide for jurisdictions seeking to implement a successful court-based mental health diversion program. The Table presents an integration of these two frameworks into 11 elements of successful mental health court and diversion programs.

## References

All URLs correct at May 2011

Butler T & Allnut S 2003. *Mental illness among New South Wales prisoners*. Matraville, NSW: NSW Corrections Health Services

Graham H 2007. *A foot in the (revolving) door? A preliminary evaluation of Tasmania's mental health diversion list*. Hobart: University of Tasmania. [http://eprints.utas.edu.au/7186/1/MHCT\\_Thesis\\_MC\\_Report\\_Version.pdf](http://eprints.utas.edu.au/7186/1/MHCT_Thesis_MC_Report_Version.pdf)

Sarteschi C, Vaughn M & Kim K 2011. Assessing the effectiveness of mental health courts: A quantitative review. *Journal of Criminal Justice* 39(1): 12–20

Steadman H, Morris S & Dennis D 1995. The diversion of mentally ill persons from jails to community-based services: A profile of programs. *American Journal of Public Health* 85(12): 1630–1635

Thompson M, Osher F & Tomasini-Joshi D 2007. *Improving responses to people with mental illnesses: Essential elements of a mental health court*. New York: Council of State Governments Justice Centre