Mental Health Courts

An Advocate’s Perspective

The Criminalization of Psychiatric Disabilities

Hundreds of thousands of mental health consumers are locked in U.S. jails and prisons – a crisis often described as the “criminalization of mental illness.” Many of these people are incarcerated because of behavior related to their psychiatric disabilities; all are suffering in institutions where they are likely to be experiencing victimization and abuse, poor treatment, solitary confinement, and worsening of their psychiatric conditions. Both the general public and the mental health community have become increasingly concerned about this crisis, and people are seeking solutions.

Mental Health Courts: The Solution to Criminalization?

One potential solution that many people are very excited about is “mental health courts.” Modeled on drug treatment courts, a mental health court is a special court that is only for people who have been charged with a crime AND have a psychiatric disability. The purpose of the court is to deal with the crime in a way that addresses the person’s mental health needs. Mental health courts are a very popular idea; many mental health courts are being created around the country, and former president Bill Clinton signed a piece of legislation to provide federal funding for mental health courts. Some day there may be a mental health court in most towns and cities in the U.S.

Is this a good thing? As advocates who want to get mental health consumers out of jail and prison, should we fight for more mental health courts? There is no simple answer to this question, because mental health courts can be terrible, or the best thing since sliced bread, depending on your perspective and how a specific court works. Advocates need to understand the potential good and bad things about mental health courts, as well as the limits of what mental health courts can accomplish. The purpose of this factsheet is to give advocates food for thought as they consider whether to advocate for more mental health courts and/or what kind of mental health courts to advocate for.

The Criminal Justice “Marketplace”: A Used Car Lot Analogy

The criminal justice system is a marketplace, like a flea market or a used car lot. That means that while a lot of haggling goes on, and there is some flexibility about prices, there’s also a bottom line – everyone knows the difference between an ‘83 Toyota and a ‘98 Lexus, and everyone has a pretty clear idea about what things are worth. Think of the ‘83 Toyota as a relatively minor offense (e.g. jumping a turnstile, minor drug possession, trespassing, or prostitution) that is worth around 0-30 days in jail, and the ‘98 Lexus as a more serious offense (such as drug sale, or an assault where someone is hurt, for example) that is worth between one and nine years in prison -- and you’ll get the picture.

Mental Health Court: A Cheaper Used Car Lot, or a More Expensive One?

Mental health courts change the criminal justice marketplace. In addition to probation, jail, prison, etc., a mental health court introduces a new option as “punishment” – psychiatric treatment. But mental health courts also change the marketplace in other ways, by raising or lowering the “value” or “price” of particular offenses. To use the car analogy again, a mental health court could double the price of the ‘83 Toyota – or it could get you a good discount on the ‘98 Lexus. There is no set of rules for how a mental health court should change the marketplace – mental health courts are still “an entity with a very brief history, an unclear conceptual model, and unproven effectiveness.”

Mental health courts are, to many people, an appealing response to criminalization. But the mental health courts that exist so far, with very few exceptions, accept only people charged with non-violent low-level offenses. While these courts help some people get services, they do nothing to help mental health consumers facing prison or lengthy jail sentences, and they do not reduce criminalization. If mental health courts increase the “price” of minor offenses, as some undoubtedly do, their effect is actually to expand criminalization, a phenomenon known as “net-widening.”

Advocates need to think carefully about whether to advocate for mental health courts. They should also work with public defenders to make sure that if a mental health court is implemented in their town, it shifts the criminal justice “market” in a way that reduces the criminalization of mental health consumers rather than widening the net of the criminal justice system. This might seem confusing, so let’s try some real life examples...

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Mental Health Courts: Two Possibilities

Angela

Angela has a serious mental illness. Her offense is probably related to her not having received appropriate treatment and services for her illness.

Crime: Minor
Angela is charged with a relatively minor offense. (E.g. minor drug possession, hitting someone but not hurting them, harassing someone, prostitution, panhandling, jumping a turnstile, trespassing, etc.)

Regular Sentence:
In a regular court, Angela would receive a fairly light sentence. She might be sentenced to time served after a night in jail, to community service, to pay a fine, to probation, or to a few days or weeks in jail.

How Mental Health Courts Usually Work

Angela

Mental Health Court Sentence:
Angela gets sent to mental health court, because she is a non-violent misdemeanor. The court has her assessed and a treatment plan prepared and then Angela pleads guilty and her sentence is that she has to comply with the treatment plan. The court monitors her compliance, maybe for a specific period, like a year, for example, or maybe until the judge feels like it’s long enough. If she doesn’t comply, the judge can send her to jail. If that happens, she might go to jail for longer than she would have if she pled guilty in a normal court.

Does this reduce criminalization?
Not necessarily. If Angela “succeeds” in treatment, hopefully she will both serve less jail time on this case and avoid future arrests. If she “fails,” however, the mental health court may lead to Angela serving MORE time in jail, which would increase criminalization.

Is this a good outcome?
From Angela’s perspective – Maybe. Yes, if she gets access to services and support that she didn’t have before and this helps her move toward recovery and stay out of trouble. But if she “fails,” she will go to jail, perhaps for weeks or months longer than she would have in a regular court - not a great outcome for Angela.

From Angela’s family’s perspective – Maybe. Yes, if she succeeds; no if she fails and goes to jail for longer as a result.

From the judge and the prosecutor and the general public’s perspectives – Yes. Angela gets treatment and if she benefits from it, that’s great. But if she doesn’t succeed in treatment, no one has risked being on the front page of the paper by releasing a “dangerous” person who would otherwise have been incarcerated. The people who would normally be in jail are still in jail, and some people like Angela who would normally have received little or no jail time are coerced into mental health treatment.

Zachary

Zachary has a serious mental illness. His offense is probably related to his not having received appropriate treatment and services for his illness.

Crime: Serious
Zachary is charged with a relatively serious offense. (E.g. selling a small quantity of drugs, hitting someone and hurting them, lighting a fire, taking property from someone, breaking into a house, violating order of protection, etc.)

Regular Sentence:
In a regular court, Zachary would receive a fairly severe sentence, particularly if he had been in trouble before. He might be sentenced to anywhere from a year in jail to 10 years or more in prison.

Does this reduce criminalization?
No.

Is this a good outcome?
From Zachary’s perspective – No.

From Zachary’s family’s perspective – No.

From the judge and the prosecutor and the general public’s perspectives – Maybe. They may feel that Zachary’s crime warrants, and public safety requires, that Zachary be incarcerated, rather than being released to treatment. A judge and prosecutor are likely to be uncomfortable agreeing to release a “serious criminal” like Zachary; in particular, they will worry about harm to the community and bad press if Zachary commits another crime. Recidivism rates for people leaving jail and prison are extremely high, however, so if Zachary and other people like him succeed in treatment and do not re-offend, this option will come to be viewed as conducive to public safety.
An Alternative Worth Fighting For?
A Mental Health Court That Fights Criminalization

Angela

Mental Health Court Sentence:
Angela gets assessed and someone works with her to create a great treatment plan. Then the court dismisses the charges against her and assigns a social worker or peer advocate with a very small case load to spend lots of time with Angela helping her get services she needs and/or encouraging her to accept services.

Does this reduce criminalization?
Definitely. The charges against Angela are dismissed, so she doesn’t have a conviction. Hopefully she avoids some jail time. She gets services, and hopefully these services will help her avoid future arrests.

Is this a good outcome?
From Angela’s perspective -- Probably, unless she feels that coercion by the court would be helpful to her.
From Angela’s family’s perspective -- Maybe. It depends on whether they believe that Angela needs coercion.
From the judge and the prosecutor and the general public’s perspectives -- Not necessarily. They might feel like Angela “got away with” a crime because she has a psychiatric disability, and they might be afraid that she is dangerous. Hopefully, though, if enough people like Angela are engaged in treatment as a result and avoid future arrests, this will seem like a good outcome.

Zachary

Mental Health Court Sentence:
Zachary gets sent to mental health court. The court has him assessed and a treatment plan prepared and then if Zachary chooses, he is either released to a treatment program while his case is adjourned, or he pleads guilty and his sentence is that he has to comply with the treatment plan. The court monitors his compliance for a specific period that is no longer than the prison time he would have been sentenced to in a normal court. If he doesn’t comply, the judge can send him to prison, but the sentence cannot be longer than what he would otherwise have received.

Does this reduce criminalization?
Hopefully. If Zachary “succeeds” in treatment, he will have saved himself several years in prison. If he “fails,” he will be in no worse shape than he would have been without the mental health court.

Is this a good outcome?
From Zachary’s perspective -- Yes, unless he has such negative feelings about mental health treatment that he would rather go to prison.
From Zachary’s family’s perspective -- Yes, since he’ll be avoiding prison and getting treatment.
From the judge and the prosecutor and the general public’s perspective -- Not necessarily. They might feel like Zachary “got away with” a crime because he has a psychiatric disability and they might be afraid that he is dangerous. Hopefully, however, if Zachary and others do well in treatment, especially if their crimes related to their illnesses, this will eventually be perceived as a good outcome.

Can Mental Health Courts End Criminalization?

No. N. O. N-O.

The criminalization of mental illness is one result of the over-use of incarceration in the U.S. (the U.S. has the world’s highest rate of incarceration, higher than Russia or China; 2 million people are incarcerated in the U.S., two-thirds for non-violent offenses). But the other great tragedy for mental health consumers is that we do not have a mental health system. Many of the mental health consumers who are in U.S. jails and prisons would not be there if we had a system that made high quality, client-centered mental health services, public benefits, and housing available to every consumer who needs them.

Mental health courts can help a few consumers obtain access to services, and perhaps they can divert some people out of jail or prison if they are carefully designed and implemented with that as their purpose. They may also draw public attention to the need for more and better mental health services. But mental health courts will not fix the mental health system; in fact, their efficacy will be limited and undermined by the deficits of the mental health system. We must understand the limits of “tidy” solutions like mental health courts; to end criminalization, we will need to fight for a real mental health system.