

Enrollment in Mental Health Courts: Voluntariness, Knowingness, and Adjudicative Competence

Allison D. Redlich · Steven Hoover ·
Alicia Summers · Henry J. Steadman

Published online: 31 December 2008

© American Psychology-Law Society/Division 41 of the American Psychological Association 2008

Abstract Mental health courts (MHCs) are rapidly expanding as a form of diversion from jails and prisons for persons with mental illness charged with crimes. Although intended to be voluntary, little is known about this aspect of the courts. We examined perceptions of voluntariness, and levels of knowingness and legal competence among 200 newly enrolled clients of MHCs at two courts. Although most clients claimed to have chosen to enroll, at the same time, most claimed not to have been told the court was voluntary or told of the requirements prior to entering. The majority knew the “basics” of the courts, but fewer knew more nuanced information. A minority also were found to have impairments in legal competence. Implications are discussed.

Keywords Mental health courts · Competence · Mandated treatment

Mental health courts (MHCs) are appearing with increasing frequency across the United States (Redlich, Steadman, Robbins, Monahan, & Petrila, 2006). The number of courts has grown from two in 1997 to approximately 150 in 2008 (Council of State Governments, 2008; National GAINS Center, 2008). MHCs are specialty criminal courts for persons with mental illness who have been arrested (Griffin, Steadman, & Petrila, 2002) that fall under the

rubrics of problem-solving courts and diversion programs. Problem-solving courts, such as Drug Treatment Courts, Domestic Violence Courts, and Homelessness Courts, are courts that focus on a category of offenders or criminal charges (thereby becoming better equipped to handle common issues that arise across cases), and that tend to take a therapeutic approach (see Odegaard, 2007; Winick & Wexler, 2003). These courts are often considered a new way of doing justice; courts that stand apart from traditional adversarial approaches. Diversion programs are formalized efforts often for persons with serious mental illness (but not exclusive to them) that attempt to identify and enroll eligible individuals into outpatient treatment programs (Petrila & Redlich, 2008; Redlich, 2007). Diversion is *from* the criminal justice system (either from being charged or being incarcerated) *into* community mental health and substance use treatment.

Mental health courts tend to be diverse, with varying requirements and procedures (Erickson, Campbell, & Lamberti, 2006; Wolff & Pogorzelski, 2005). However, there is one mainstay across all the courts: MHCs are intended to be voluntary (Redlich, 2005). Persons referred and deemed eligible theoretically have the choice to take their case to the MHC or to keep their case in regular criminal court processing. The purpose of this study was to determine whether newly enrolled clients of MHCs were aware they had a choice, and whether their enrollment was knowing and intelligent, as well as voluntary. In addition, because the decision to enroll in a MHC is a legal decision that is often accompanied by a mandatory guilty plea, a further purpose was to examine levels of legal competence in newly enrolled clients of MHCs. As the Supreme Court decided in *Godinez v. Moran* (1993), competence to stand trial is an adequate measure of competence to plead guilty. Finally, we were interested in determining the

A. D. Redlich (✉) · H. J. Steadman
Policy Research Associates, Delmar, NY, USA
e-mail: aredlich@albany.edu

S. Hoover
John Jay College of Criminal Justice, New York, NY, USA

A. Summers
University of Nevada, Reno, Reno, NV, USA