

**The Bill Blackwood  
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**Mental Health Courts**

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**A Leadership White Paper  
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## **ABSTRACT**

The law enforcement community has to actively look where it can improve the everyday criminal justice system. This allows for innovation in the law enforcement practice. It is vital to progressively look at the revolving door of the mentally ill coming in and out of the jail system and determine a solution. Mental health research is large in mass and has several approaches for success. One of those areas of approach is development and practice of the mental health courts (MHC). Throughout this paper examples will be provided that prove mental health courts can be effective and reduce recidivism. A large proportion of the jail population suffers from mental illness (Kesten et al., 2012). The MHC can provide avenues and options to divert some offenders from jail. This is not to say some do not belong in jail. It is simply an option for the professionals of the criminal justice system to evaluate the jail population and mentally ill at the same time. The research provided will show that these courts will reduce recidivism among the mentally ill, all while providing treatment for betterment of the offender.

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## INTRODUCTION

In today's world, more now than ever, law enforcement needs to look at how they can better manage people suffering from mental health issues. With the Veterans returning from war and with the revolving doors at the jail, society needs to come together and determine a solution. The findings show a majority of states suffer from overcrowding in prisons but believe that half the inmates are suffering from mental health issues (Kesten et al., 2012). This creates a problem when prisons and state jails get proclamations to lower their population and began releasing people.

Inside the confined walls of the jail, inmates receive care and their illnesses are managed with medication. However, once that same inmate is released out into the community they are expected to survive and manage their own health. In most cases this same inmate is also battling some type of substance abuse issue. This just simply compounds the issue and the person becomes a chronic offender. It comes into question to determine if the offender is acting with criminal intent, or if he is simply an untreated mental health patient. An individual who is suffering from a mental illness that does not have the capacity to care for themselves may be in all sense a true victim.

The research in this paper determines if an untreated mental health patient is better off and/or safer in prison where they receive proper care on their own. Mental health is the one area this country has not figured out. The law allows a Judge in a probate court, which handles mental health warrants, the full authority to find help for the mentally ill; however the logistics and funding of such facilities can be very limited. This brings an entirely different list of issues, which includes the hospitals themselves

and the lack of beds available. Just like anything else, American history has either paved the road for success or led to failure.

The Quakers in Philadelphia were the first to establish a hospital for the insane in 1752 (Disease, 2017). Before there were any hospitals, the mentally ill were typically treated by their families. The mentally ill were looked upon as evil and were shunned from society. The National Library of Medicine reports that as the population grew, the mentally ill became a problem in society (Disease, 2017). This is when the Quakers developed a hospital to care for the mentally ill. This was a new development and there was not enough research on this issue. As time went on and the needs increased, the hospital could not keep up with the demand. Several years later, other communities were having issues with the mentally ill causing a problem within the community and needed a place for them. That's when Virginia decided to invest in a state hospital for the mentally ill (Disease, 2017). Other states began to follow Virginia several years later by building state hospitals. By the 1890's every state had established a mental health program that served the mentally ill.

The criminal justice system has come a long way since the conception of the first hospital serving now and treating nearly 500,000 patients (Kesten et al., 2012). To add to the hospital care, doctors were coming up with proper ways and medication to help with mental illness. Although it seems the states may have had a handle on the issue, these facilities did not have the greatest reputation. The issue started when the criminal justice system began handling the problems on the streets. The hospitals had inhumane ways of treating the patients and in some cases punished them for acting a certain way. As issues began to arise in this health care system, each state began pulling their

funding from the hospitals. Without funding and support, the hospitals began releasing the patients and placing them on the street. The arrest rate for the mentally ill rose to new heights as law enforcement had no other option in the field (Lurigio & Snowden, 2009). Hospitals went from handling 100,000 patients a year to 30,000 (Disease, 2017). This is a drastic number that can cause a concern to society and more importantly the patients themselves. The criminal justice system looked to the mental health court (MHC) to help with the mentally ill. The criminal justice system should use the mental health courts.

## **POSITION**

In the 1990's the United States decided to reduce the recidivism rate of the mentally ill by developing the MHCs (Michalski, 2017). The effectiveness of the courts greatly improved the overall quality of life of the mentally ill and provided them with options. This court assisted the mentally ill, with the understanding that the individuals in which they are seeing could not organize or care for themselves. Once these people were on the street and not being treated, they began breaking the law. This left the criminal justice system to handle the issue. The MHCs provide another avenue away from the criminal justice system, which directs them into the mental health system. This reduces the overall recidivism rate (Lurigio & Snowden, 2009). The closing of hospitals and the reduction of patients per year affected the criminal justice system in a big way. It became very clear that the lack of funds in the mental health arena in this country created a trans institutionalization of the mentally ill, which was a result of them receiving better care in a jail system than on the streets (Council of State Government, 2002).

As the development of the mental health courts (MHC) evolved, the criminal justice system began handling the patients just like they do everyone else. They would place them in treatment homes or facilities. Another positive to the MHC was the discharge and follow-up process. In the early 1900's, the criminal justice system was not prepared to handle the mentally ill and needed to work out some issues. With that they found identifying the individual was just as important as treating them. Along with identifying the individual, it was imperative that the court develop a follow up procedure that would ensure success.

Along with the issues at hand, the courts and jail system began to worry about over-crowding in jails. The mental health concerns in the prison system and providing a service to the mentally ill only compound the issue (Kesten et al., 2012). With the mentally ill coming out of prison and going typically to homeless shelters, another concern the MHC was faced with was the substance abuse these individuals may be suffering from. The courts understood that without an adequate follow-up program, the individual will likely not care for themselves and fall back into the trap of substance abuse. The MHCs created programs and diverted the offenders away from criminal law.

The effectiveness of the program is based on the completion of the process. The studies show that if the program is completed and followed through properly it can reduce the overall recidivism rate (Sarteschi, Vaughn, & Kim, 2011). It is imperative that the offender completes the programs with all the required follow-ups to be successful. The discharge and follow-up program developed for the offender is crucial for its success and is also the only way it can be measured. The success relies on a team effort. This includes the judge, treatment facilities, public defenders and the jail system.

The courts understand that the follow-up and placement of the mentally ill is crucial to the success of the program and more importantly the patients themselves.

The Criminal Justice System needs to understand that the mental health issue quickly shifted from the hospitals to law enforcement. The evidence of treating the mentally ill compared to re-arresting them will be exposed in the next position of this paper. The mentally ill are more susceptible to being re-arrested than any other offender (Ostermann & Matejkowski, 2014). Treatment will immensely reduce the recidivism rate among the mentally ill offenders and save the tax payers money (Ostermann & Matejkowski, 2014).

The US Mental Health Courts have developed and deployed treatment plans and a management approach to monitor the success of the offenders (Michalski, 2017). The concept of the MHC and the diversion it deploys can be successful with the completion of the program. This handling of treatment and the assistance of treatment programs will reduce the overall cost and better serve the individual.

The MHC has been such a success in the US that it has paved the road for other countries. Prisons started off pretty rough with the mentally ill. In the early years, inmates suffering from mental illness were the targets and or victims to crimes within the jail (Disease, 2017). Other inmates would exploit them, abuse them, and sometimes rape them. In the early years, the prison would just maintain the mentally ill just as if they were like any other inmate. The inmates suffering from mental illness were not being treated, evaluated, or protected if needed. In some cases, the mentally ill would be segregated from other inmates, not to protect them, but because no one knew how to handle them.



In the 1990's, Boward County, Florida Judges Speicer and Lerner-Wren developed the MHCs to combat these issues and created a diversion from the criminal justice system for the mentally ill (Stefan, Winick, & Redlich, 2005). This paved the road for other countries having the same issues. Canada found their mental health population in the hospital was declining while their jail population was growing (Michalski, 2017). This created concern for the country and they leaned on the US for assistance. Canada has developed a pre-release program modeled after the US to reduce its recidivism among the mentally ill (Canada 2016).

### **COUNTER ARGUMENTS**

As the MHC continues to provide a service to the mentally ill, some critics suggest it is simply too expensive to operate. The critics suggest that the cost effectiveness of the MHC outweighs the results they provide (Lowder, Desmarais, & Baucom, 2016). The critics believe the cost associated with the treatment, the doctor visits, and the follow-ups are much too expensive. The critics believe the jail is capable of and responsible for providing better care for the mentally ill.

Around the 1970's, the prison system decided they needed to start treating the mentally ill (Disease, 2017). This was still very new to them, but, by this time a majority of the mentally ill were being incarcerated in prison other than being treated in a hospital. A 2005 study shows approximately 56% of people in the jail system are suffering from some type of mental illness (Ostermann & Matejkowsk, 2014).

With this influx of patients, jails needed to figure out something to save them money. This became terribly expensive for the jails to operate like this. In relation to the MHCs, the availability of social and fiscal resources require an analysis of the

relationship between the programs and its cost to effectively run (Kubiak, Roddy, Comartin, & Tillander, 2015).

The cost of the ineffectiveness simply is not a viable claim. The majority of research done on this topic is weak and not credible (Lurigio & Snowden, 2009). The claims of the critics is inconsistent with the research. When the housing, feeding, care, medical and medication is compiled while someone is in jail, the punitive cost simply outweighs the cost of the courts. This is why the criminal justice system in the US and other countries use the MHCs. One of the explicit goals of the MHC is to save money for the tax payers (Kubiak et al., 2015). To accomplish this is to provide treatment under the program and to reduce the recidivism rate.

The biggest reason some are against the MHC is the overall treatment and the rights of the individuals. Some believe the MHC violates a person's 6th Amendment to receive a fair trial and the 14<sup>th</sup> Amendment for equal protection rights (Stafford & Wygant, 2005). The MHC is a voluntary system that the offender must agree to before being processed. The argument suggests that the offender does not know the program is voluntary and the offender was coerced or pressured to join. One argues that to make a voluntary and informed decision on whether or not to precede with the MHCs, the offender must know the outcome of the criminal proceedings (Stafford & Wygant, 2005). This same study believes the offenders who are approached by this voluntary option are not competent enough to make an informed decision or to stand trial (Stafford & Wygant, 2005). This argument answers its own questions on the basis that a person is not competent to stand trial. One would agree that if someone is not competent to stand trial, they may be suffering from a mental illness that may need treatment.

These courts do not have any reason to coerce someone in the program. These types of courts are very busy and have a full docket; they are not looking for more work. The courts were developed to provide another avenue for the mentally ill as opposed to placing them in jail. The joint decision between the offender and the courts are in the best interest of the offender. The offender agrees to follow the treatment set forth by the courts and to be monitored during the program (McNiel & Binder, 2007). These courts take a more humane approach by providing mental health and social services to the ones that need it. The program of the MHCs is always being assessed to better serve the offender. They are in the business of freeing offenders more than they are jailing them.

## **RECOMMENDATION**

In today's world, the criminal justice system will have to look at solutions to these problems. The United States has the largest jail population in the world and 56% of the inmates are considered mentally ill in some facet (Ostermann & Matejkoski, 2014). This is a huge population, and the criminal justice system can look at and evaluate the situation for everyone's best interests. Mental health courts should be utilized and if utilized properly, the MHC can create an avenue of choices on a voluntary basis, which diverts individuals away from criminal charges to mental health treatment (McNiel & Binder, 2007).

This system is designed to provide a service to those who see the criminal justice system simply as a revolving door. The offender has a right to be treated with empathy and respect. A majority of the offenders would prefer the option of being treated and placed on the correct medication, versus feeling out of control. The offenders explain

that they want to be normal or feel normal, and the only way to achieve this is to be treated. They fear that once they are released they will not get the care they need and are confident they cannot do it themselves. If law enforcement continues to release the mentally ill onto the streets or back to a homeless shelter, they will only make the revolving door much larger. The law enforcement officials need to focus on the release and the after-care program. Proper training for the law enforcement officers on the street would be beneficial so they could better identify someone suffering from any type of mental illness.

In today's world of law enforcement, the officers are getting a good amount of training to handle the mentally ill. Officers are receiving training annually from mental health professionals and doctors. Some, if not a majority of the agencies have officers assigned specifically to mental health evaluations. These particular officers are getting additional training and are sometimes assigned to different shifts or units.

A mental health officer is a great asset to the officers answering calls. If an officer believes or sees indications that the individual they are dealing with might be suffering from some type of mental illness, they would call the mental health officer to respond and evaluate the situation for the best outcome. Not only do these officers respond to calls, they go to the local jails to evaluate inmates. If they determine someone needs further help, they would then get them assigned to a hospital for help. The MHCs can assist and be a resource to the officers on the street. Law enforcement has to understand that some people just might not be able to provide for themselves or even care for themselves.

If the courts see someone who repeatedly enters the jail and is diagnosed with a mental illness this is where they need the support of the MHCs. The understanding that some mentally ill subjects belong behind bars is true, however, an understanding some do not is a reality. The ones that do belong there should be cared for. However, the individuals that are not criminals, however commit crimes while not medicated is a different issue. Mental health has been an issue since the late 1700's and law enforcement and the courts are making ground, however far from being perfect.

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