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COURT DIVERSION IN NSW FOR PEOPLE WITH MENTAL HEALTH PROBLEMS AND DISORDERS

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There are significantly higher prevalence rates of complex and severe mental health problems and disorders in correctional centres, both Australia-wide and internationally, compared to the general population. Recent evidence from the literature suggest that, in the United States, 6–15 per cent of people in remand prisons and 10–15 per cent in state prisons have a serious mental disorder.¹ Comparable figures are reported for the United Kingdom, with prevalence rates of 5–10 per cent among those on remand,² and up to 14 per cent among those who have been sentenced.³ Similar prevalence estimates have been quoted in studies in Australia and New Zealand.⁴

During 1996–97, the Corrections Health Service and the NSW Department of Health undertook a detailed study of the health status of inmates in NSW correctional centres. Among inmates, it was reported that approximately one third of males and half of females had a history of mental health assessment and/or treatment by a psychiatrist or a psychologist.

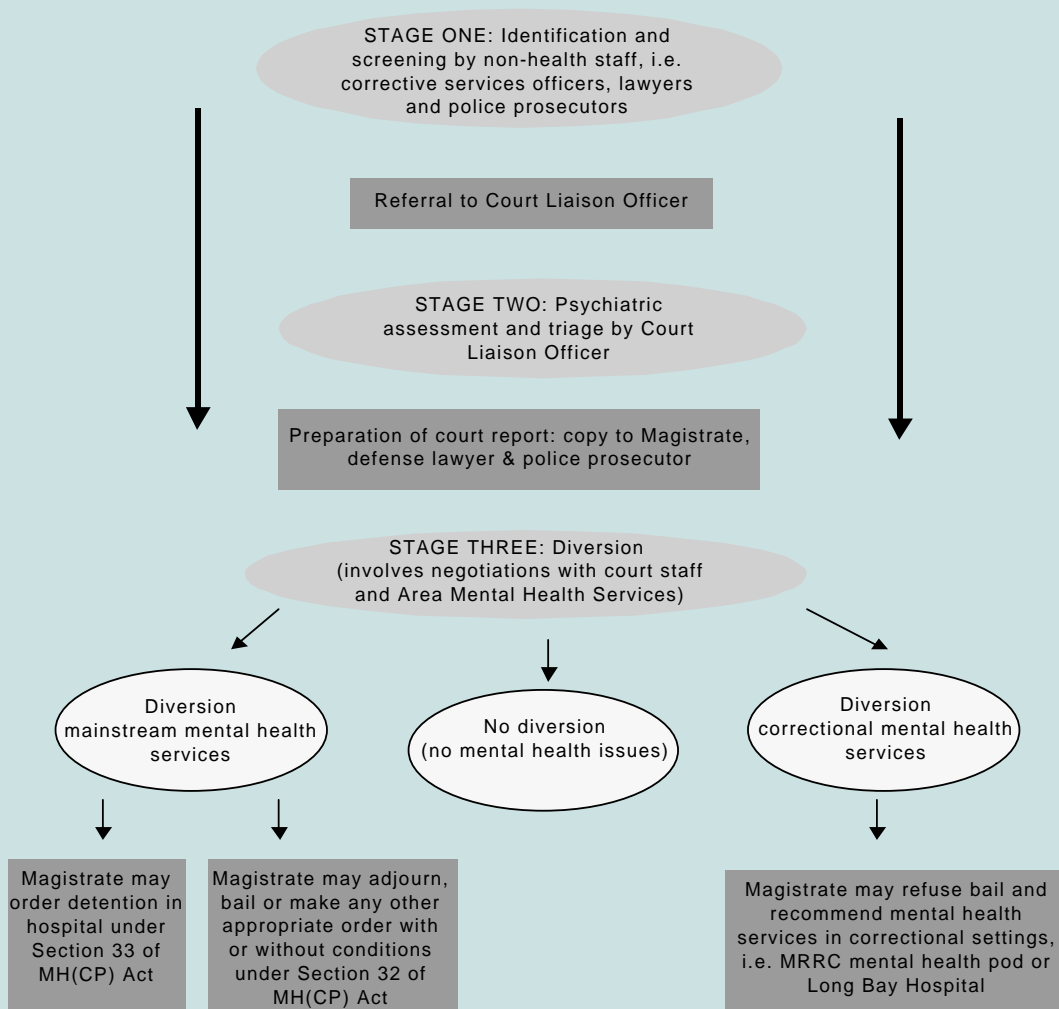
Difficulties in delivering mental health services in a prison environment have lead to calls for improved solutions to the delivery of psychiatric services. One possible alternative comes from an international trend to develop court-based liaison programs for individuals with psychiatric disorders. These programs divert individuals with mental health problems and disorders from court settings. This article describes the NSW Statewide Community and Court Liaison Service (SCCS), which is a new initiative in court liaison and diversion based on international trends in the development of forensic psychiatric services.

NSW STATEWIDE COMMUNITY AND COURT LIAISON SERVICE

The SCCS is available to those who are charged with minor offences, where the process of prosecution has begun (that is, pre-trial), and who appear at the local Magistrate's Courts. Currently, the SCCS operates in seven metropolitan and rural courts in NSW; it is envisaged that the service will expand to include a further five courts at the end of 2002.

FIGURE 1

MECHANISMS AND PROCESSES FOR COURT DIVERSION



Source: Greenberg and Davies.⁶

The SCCS is under the jurisdiction of Corrections Health Service; it is centrally managed by a clinical director, a senior project officer, and an administrative assistant. A steering committee with broad representation oversees the service. Mental health services within some local areas also operate court liaison services in Newcastle, Wollongong, and Port Macquarie–Kempsey.

DEFINING COURT DIVERSION

Court diversion means diversion from the criminal justice system towards treatment in mental health facilities. Although diversion can occur at any stage of a court process, most cases are dealt with before conviction. To assist the courts in making better-informed decisions about mental health matters, the SCCS provides mental health assessment and psychiatric triage in the courts and in holding cells.

By referring clients to appropriate mental health services, out of custody, and towards community and hospital

settings, clinical nurse consultants assist magistrates, solicitors, police prosecutors, and other court staff, with the diversion of people with mental health problems and disorders. Where diversion is not possible, clients will be referred to mental health services within the prison system.

Contrary to the belief of many, court diversion does not equate with discontinuation of criminal prosecution; it allows for the two systems of diversion and prosecution to co-exist in a collaborative manner. Court diversion to mental health services allows the judiciary to get on with the job of processing individuals through the courts.

In keeping with the *National Mental Health Strategy*, which is the key commonwealth policy framework for the delivery of mental health services in Australia, and *Towards a National Mental Health Approach to Forensic Mental Health*,⁵ court diversion forms a key component in the development of a model ‘forensic mental health’ system.

THE MECHANISMS AND PROCESSES FOR COURT DIVERSION

The characteristics of diversion in NSW are:

- the identification or screening of detainees with suspected severe mental health problems and disorders, usually by 'non-health' staff such as police, solicitors, and corrective services officers;
- psychiatric assessment and triage by a mental health professional, who is either a mental health nurse or psychiatrist;
- diversion ordered by the magistrate to mental health services, which involves negotiation with the courts and the integration of the individual into the care by appropriate mental health services that can deliver an alternative to prisons. Where this is not possible, the court liaison officer will ensure continuity of care through the correctional system.

The process of diversion may involve relevant sections of the *NSW Mental Health (Criminal Procedures) Act 1990*. A request for psychiatric assessment is made under sections 32 and 33 of the Act. The court cannot mandate psychiatric treatment under the Act, but the court can order the individual either to be detained in a hospital, or to be placed under condition to attend a hospital-mental health clinic or care of responsible persons.

All decisions about psychiatric treatment are mandated under the *NSW Mental Health Act 1990*. The primary advantage of the presence of the clinical nurse consultant in the courts is to provide psychiatric assessment and triage so that inappropriate or unnecessary requests made under section 33—for hospital admission to the area mental health services—are minimised. The area mental health services remain the 'gatekeepers' for the provision of local mental health services for detainees. Figure 1 is a diagrammatical illustration of the evidence-based framework for the provision of court liaison services.⁶

EFFECTIVENESS OF MENTAL HEALTH—COURT DIVERSION PROGRAMS

There is some evidence to support the effectiveness of court diversion programs for mentally disordered detainees. A number of studies have identified positive health outcomes on a range of indicators, such as changes in mental state, response to treatment, compliance, and contact with community clinics after discharge.^{7,8} Reduction of different stages of court processing time with court diversion schemes has also been reported.^{9,10} There are also studies that have indicated that court diversion has been successful in getting mentally ill individuals admitted into hospital, where this is appropriate.¹¹ However, there is conflicting research on whether court diversion schemes reduce re-arrest or re-conviction rates.^{11,12}

FUTURE DIRECTIONS

Mental health consumers who have had contact with the judicial system need to be integrated into general health and psychiatric services. The vast majority of individuals with mental health problems are seen in local courts; and, therefore, are not charged with serious offences. Linking them to existing general and mental health services better serves their health needs. While court diversion services have attracted increasing attention, resources, and funding, little has been done to fully evaluate the effectiveness of these services in terms of longer-term outcomes such as recidivism and re-hospitalisation. Future research needs to be promoted to ensure evidence-based best practice methods for efficient and effective court diversion programs.

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