

Section seven: The mental health and addiction justice context

Purpose

This section describes the legislation and processes relevant to mental health and addiction services and practitioners which directly interface with the justice sector.

Objectives

At the end of this section you will have an understanding of:

- police involvement with a person experiencing mental health problems and the Mental Health Act (Compulsory Assessment and Treatment) Act 1992 (Mental Health Act)
- police involvement with a person experiencing addiction problems and the Alcoholism and Drug Addiction Act 1966
- what may happen when a person experiencing mental health and/or addiction problems appears to have committed a crime
- what may happen when a person experiencing mental health and/or addiction problems is charged with committing a crime and has been ordered to appear in court
- what may happen when a person experiencing mental health and/or addiction problems is charged with committing a crime and appears in court.

There are a variety of circumstances when people experiencing mental health and/or addiction problems may become involved with the justice system. Each situation may involve different processes and people and enact different legislation. In many circumstances the issues of concern may be resolved without going through a court process and therefore do not lead to the person being sentenced or convicted for a criminal offence.

The Police may end up involved with people who have mental health and/or addiction issues unrelated to offending behaviour. However, because of the presence of the police that person may feel like they have done something wrong. For this reason the first part of this section articulates the role police have with a person who may have a mental health and/or addiction problem but who has not been charged with committing an offence.

7.1 Police involvement with a person experiencing mental health challenges and the Mental Health Act

Police may become involved with a person experiencing mental health problems as they have a statutory role within the Mental Health Act.

The importance of health and justice working together is highlighted by a memorandum of understanding (MOU) between New Zealand Police and the Ministry of Health at a cross government sector level. The MOU provides guidance to police and health professionals administering the provisions of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (Mental Health Act). In addition there are MOUs between the New Zealand Police and local district health boards.

There are four main areas in regard to use of the Mental Health Act where a person experiencing mental health problems may have contact with police.

1. If a person appears to be experiencing mental health challenges in a public place and there is concern about their behaviour the police have powers under the Mental Health Act in relation to a person appearing to be mentally disordered in a public place. The police may take that person to a police station, hospital, or surgery, or to some other appropriate place and arrange for a medical practitioner to examine the person at that place as soon as practicable. This process should be within a six hour time frame.
2. If a person is going through the initial processes of being assessed under the Mental Health Act a duly authorised officer (DAO – who is a health professional) may request police assistance to enable them to undertake an initial assessment and/or to transport a person to a medical practitioner for the purposes of a medical examination.
3. Police may also assist a medical practitioner to administer medication to a person if required during the initial stages of the use of the Mental Health Act.
4. In some circumstances police have the authority to return patients to hospital if they leave without permission or fail to return from leave.

For more information refer to the *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992* which is available at: www.health.govt.nz/publication/guidelines-mental-health-compulsory-assessment-and-treatment-act-1992.

7.2 Police involvement with a person experiencing addiction problems and the Alcoholism and Drug Addiction Act 1966

Police are often the first point of contact for people with addiction problems, e.g. intoxicated people being taken into police custody for the night to provide a safe place for them to sober up. They are also regularly called to incidents in which intoxication and/or gambling has played a part in offending. When a person is arrested or sentenced to a term of imprisonment, the person is likely to be detained for some time in police custody, either until they are bailed to appear in court (for sentencing) or until there is transport to prison (after sentencing). As a consequence police and other staff working in the police custody suites need to be able to recognise and respond to acute substance withdrawal.

The statutory responsibilities of the police as far as the Alcoholism and Drug Addiction Act 1966, currently under review,² are clear but rarely well understood or even called upon.

When someone is being assessed and/or detained under the Alcoholism and Drug Addiction Act the police can be called on to:

1. ensure the person being assessed under the act appears in court
2. detain a person assessed by a judge as being at risk to themselves or others due to their addiction problems in a police station
3. transport the person to a psychiatric hospital and/or certified treatment provider
4. return people to the treatment provider if they leave without permission.

See www.legislation.govt.nz/act/public/1966/0097/latest/DLM380085.html.

Reflection

What values and attitudes to mental health and/or addiction problems could be barriers to police fulfilling these roles?

How could you and/or your service support police to respond appropriately to people with mental health and/or addiction problems?

7.3 When a person experiencing mental health problems appears to have committed a crime

This section explains what may happen when a person who may be experiencing mental health problems also appears to have committed a crime. Circumstances are unique and not all court systems and personnel are exactly the same. General scenarios are provided to explain what may happen in some circumstances when a person you are working with may have committed a crime.

The mental health of a person who has, or has apparently, committed a crime is considered from the outset. One of the fundamental precepts of common law is that “no person can be tried for a crime unless in a mental state to defend himself or herself” (Broodbanks and Simpson, 2007, p. 157).

² - At time of writing this workbook the Alcoholism and Drug Addiction Act 1966 is under review and any changes are likely to mean substantial differences to this legislation and how it is used.

When a person commits a crime and the police have concerns for that person's mental health they may contact local mental health services for assistance. In most cases this will be a crisis assessment team.

Some police in New Zealand also have access to watch-house nurses who work in the police stations. They are employed to:

“assess and assist in the clinical management of detainees who are experiencing drug, alcohol and mental health related problems while in police custody; reduce the risks of harm to detainees in police custody and custodial staff through the appropriate clinical management of intoxication, withdrawal and mental health disorders; liaise with other service providers, and make referrals of detainees to treatment providers; and provide ongoing education to the police regarding the identification and management of mental health and addiction disorders” (New Zealand Police, 2010, p. 19).

At this time, if the person is engaged with a mental health and/or addiction service, the service may be contacted to provide relevant information. In services where there are electronic clinical records the crisis assessment team may access the necessary information online to inform decision-making.

If a decision is made that the person needs mental health care steps are taken to assess the person's state of mental health. This may include initiating the Mental Health Act. This does not however mean police automatically withdraw the charges against the person.

If a decision is made that the person does not require acute mental health care they may be placed on bail by police and/ordered to appear in court. Some people may be remanded in police custody until they appear in court.

7.4 When a person involved with a mental health and/or addiction service has been ordered to appear in court

Once a person has been charged with committing a crime they will be ordered to appear in court. Appearing in court may be a stressful time for any person and perhaps more so if this is their first court appearance. This is likely to be a time when the person may need extra support.

Some health professionals may not be aware that a person they are working with is appearing in court. The person may choose not to inform their health care team. However once you become aware it is useful to ascertain what the person needs to support them through the court process.

It is not about determining whether or not you think the person committed the crime, it is about supporting the person. Sometimes the nature of the crime may generate some unease for a health professional or raise some other issues for them which could impact on the therapeutic relationship. Accessing your professional supervisor or increasing the frequency of supervision may be useful at this time.

As appearing in court is very stressful, working with a person to enhance their natural supports is useful. If a person experiences any deterioration in their mental health or exacerbation of addiction problems they may require a review of their treatment plan. This may also be a time to reassess a person's risk to themselves or others and take action to reduce or mitigate any risk.

This period may also be very stressful for the person's family or whānau. Therefore, identifying the supports available to family and whānau members is useful.

Adults will initially appear in the District Court. Depending on the seriousness of the crime some people may need to appear in the High Court during the later stages of the court process.

Information for the person you are working with about what to expect during the court process is helpful at this time. This information is available from the court or the person's legal representative.

While a person may be assigned a duty lawyer on the day they appear in court they may not want to wait for this or would prefer to choose their own legal representation. However, they may not know how to do this and you may need to support them through the process of finding a lawyer.

Most courts in New Zealand have a mental health court liaison role in place. In most instances these roles are held by experienced mental health nurses, often referred to as forensic nurses. Their primary role is to provide a service to the courts but they are also a point of contact for health professionals who are working with people who appear in court. The central focus of this role is "to detect people with mental health problems who are in the criminal justice system in order for appropriate referral or diversion into mental health services to take place" (Broodbanks and Simpson, 2007, p. 451). Health professionals working in these roles need to have competence and confidence in their ability to undertake mental health assessments and screen for alcohol or drug use; a sound knowledge of the mental health related legislation and court process; and the ability to build and sustain relationships with justice and mental health and addiction workers (Te Pou, 2013).

"The person in this role can be caught between police who want to make a conviction, the defence lawyers who want charges averted and the judge who wants advice on the mental health status of the defendant and guidance as to where they should be placed" (Broodbanks and Simpson, 2007, p. 460).

Many courts in New Zealand also have experienced addiction practitioners working in a forensic role, providing brief assessments and acting as a liaison with local and national addiction services. Their primary role is to arrange access to pre-sentence comprehensive assessments and to provide advice to judges about the impact of substance use on offending and also possible treatment options and pathways as an alternative to, or as part of, sentencing.

The forensic nurse or addiction practitioner may be contacted if you have any questions prior to the person going to court. Remember, at this stage of the process it is only alleged that they have committed the crime. A person may need to appear in court more than once in relation to the same charges until a decision is made. This really depends on the seriousness of the offence and on how they plead in relation to the offence.

Prior to a person appearing in court you may be contacted by the forensic nurse or addiction practitioner to provide information about the service you were or are providing to the person. This will enable the nurse or addiction practitioner to present relevant information about the person's contact and engagement with mental health and/or addiction services to the judge when they first appear in court.

You may be invited by the person to attend court with them. In some cases it is possible that the judge may ask you to comment on the services you are providing to the person.

If you are aware that the person is appearing in court and you are not attending, you could contact the forensic nurse or addiction practitioner and they may make contact with and, if needed, support that person when they appear in court.

Reflection

What do you think are some of the specific attitudes, knowledge and skills needed to be a forensic nurse or addiction practitioner in this setting?

What information would be useful to share with a forensic nurse or addiction practitioner if you have been working with the person they are seeing?

7.5 When a person experiencing mental health problems is charged with committing a crime and appears in court

As mentioned previously, the circumstances of a person who has offended are unique and not all court systems and personnel are exactly the same. Generalised scenarios are provided to explain what may happen in some circumstances if a person you are working with has been ordered to appear in court.

The legislation that relates to this scenario is the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act). In addition sections of the CPMIP Act, which are applied by the judge, may also interface with the Mental Health (Compulsory Assessment and Treatment) Act 1992 (Mental Health Act), the Intellectual Disability Compulsory Care and Rehabilitation Act 2003 (IDCCR Act) and the Crimes Act 1961.

Forensic nurses will have an in-depth knowledge about how these Acts interface and can advise health professionals supporting a person who is appearing in court.

7.5.1 Legal definitions related to a person's state of mental health

What is important to note is that there are different legal definitions that describe mental health problems which are not clinical diagnoses. Reports from psychiatrists and psychologists can be ordered by the Judge to provide information about the persons' mental health from a clinical perspective.

The Mental Health Act (Ministry of Health, 2012, p.14) states that mental disorder

“...in relation to any person, means an abnormal state of mind (whether of a continuous or an intermittent nature), characterised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it (a) poses a serious danger to the health or safety of that person or of others; or (b) seriously diminishes the capacity of that person to take care of himself or herself”.

The Crimes Act 1961 (Section 23) provides a legal definition for insanity.

1. Everyone shall be presumed to be sane at the time of doing or omitting any act until the contrary is proved.
2. No person shall be convicted of an offence by reason of an act done or omitted by him or her when labouring under natural imbecility or disease of the mind to such an extent as to render him or her incapable —
 - a. of understanding the nature and quality of the act or omission; or
 - b. of knowing that the act or omission was morally wrong, having regard to the commonly accepted standards of right and wrong.
3. Insanity before or after the time when he or she did or omitted the act, and insane delusions, though only partial, may be evidence that the offender was, at the time when he or she did or omitted the act, in such a condition of mind as to render him or her irresponsible for the act or omission.

See www.legislation.govt.nz/act/public/1961/0043/latest/DLM328219.html.

In essence, being assessed as being insane either before or after offending is considered grounds for not being convicted because the person was unable to understand what they were doing or what was wrong about their actions or inactions.

7.5.2 Identifying mental health issues that impact on the person's ability to follow the court process

The focus at this stage is to identify whether there are any mental health issues that impact on the person's ability to follow the court process or which relate to the offending.

Prior to appearing before the judge a forensic nurse, who may have been approached by the lawyer or police, may have interviewed the person to assess their mental health.

The forensic nurse may also be instructed by the judge to assess the state of the person's mental health if they have concerns about the person's fitness to plead. Remember, the judge is gathering information from many sources to inform his or her decision about what is the best course of action to take.

During this stage of the process if a person appears to have an addiction problem, or the offending is clearly related to substance use or gambling, the judge may request an addiction practitioner who is based in the court (if available in that area) to do an initial assessment. The forensic court liaison nurse may have also identified this as an area requiring further assessment and may liaise with the addiction practitioner.

7.5.3 When the judge finds there are no mental health issues related to the offending

If the judge is satisfied the person has no mental health issues related to the offending they are likely to proceed with the court process. Outcomes can vary and can include the person being discharged without conviction, being convicted and discharged with or without a fine and convicted and sentenced. The person may receive a community sentence as discussed in section six of this workbook.

If a person receives a prison sentence, prison staff will be advised by the forensic nurse or addiction practitioner that the person has mental health and/or addiction problems and what if any services are involved with that person's care. Prisoners are also screened for mental health and addiction problems on their arrival at prison. Acute problems such as substance withdrawal and mood disorders that are identified at this stage are usually managed by prison health staff. If the person is on medication, including opioid substitution treatment, their medication regime may be reviewed and can be maintained to support the person with their recovery while in prison.

As a health professional you may be contacted for information about the person by prison nurses or forensic prison liaison health professionals who may provide support while they are in prison.

Once a person has been sentenced to prison, if they have previously been under the Mental Health Act, this no longer applies. A prisoner's engagement with mental health services therefore becomes voluntary. There are, however, provisions in the Mental Health Act for a prisoner to be transferred to a secure mental health facility for care and treatment if they become acutely unwell in prison.

When a judge is satisfied there are mental health issues that impact on the persons' ability to follow the court process or which relate to their offending they can order a court report from a psychiatrist or psychologist. This assessment can happen in the community or in prison if the person is remanded in custody.

During this stage of the process if a person appears to have an addiction problem a judge may request an addiction practitioner to do a comprehensive assessment in order to ascertain whether their substance use or gambling was related to their offending.

You may be approached to provide information to the health professional completing these court reports. What is important here is that the person fully understands the purpose of any assessment of their mental health and/or addiction problems. It is the responsibility of the assessor to advise the person being assessed of the purpose of any assessment carried out.

The judge will be guided by the outcomes of these reports in determining the next course of action. This may include issuing a community treatment order under the Criminal Procedure (Mentally Impaired Person) Act 2003 or a person being found not guilty of a crime by reason of insanity as defined under the Crimes Act 1961.

The subsequent processes are outside the scope of this workbook. For information please refer to *Psychiatry and the Law* (Broodbanks and Simpson, 2007). While significant mental health problems may be considered adequate reason for a person to be considered unfit to plead or not guilty due to insanity this is not the case for addiction problems.

Reflection

How can mental health and/or addiction problems contribute to offending?

Considering these factors and the stages of the court process above, what information could you provide a judge or other health professional that could help explain a person's offending?

What risks are you aware of for people with mental health and/or addiction problems who are sent to prison?

How could these risks be managed?

7.6 References

- Brookbanks, W. J., and Simpson, A. I. F. (2007). *Psychiatry and the Law*. LexisNexis: Wellington.
- Ministry of Health. (2012). *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992*. Wellington: Ministry of Health. Retrieved from www.health.govt.nz/publication/guidelines-mental-health-compulsory-assessment-and-treatment-act-1992
- New Zealand Police. (2010). *Evaluation of the Mental Health/Alcohol and Other Drug Watch-house Nurse*. Wellington: New Zealand Police. Retrieved from www.police.govt.nz/sites/default/files/publications/evaluation-watch-house-nurse-pilot-initiative-2010.pdf
- Te Pou. (2013). *Handover*, 23. Retrieved from www.tepou.co.nz/library/tepou/handover-issue-23---autumn-2013
- Wexler, D. B. (1996). Therapeutic jurisprudence in clinical practice. *American Journal of Psychiatry*, 153(4), 453-455.

Notes page

What has been my key learning in relation to this module?

1

2

3

4

5

What level of knowledge or skills about this section did I have before I read it?

What gaps in my knowledge or practice have I identified?

What do I plan to do from here to increase my level of skill or knowledge?
(supervision, support, cultural advice/support, further training).
