

Oral presentation

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Mental health courts – a human rights perspective

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This presentation analyzes specialised mental health courts (MHCs), as one solution to the long-standing, growing challenge of dealing fairly and justly with persons with mental illness (PMIs) coming before the criminal justice system, from a human rights (HR) perspective. MHCs have garnered professional and political support in North America. Redefining their primary purpose from the determination of fault and the imposition of punishment to the provision of treatment and the enhancement of well-being, to date little consideration has been given to whether the costs of MHCs in terms of de-individualised justice are worth their benefits. As Harris points out, 'sometimes wise policies and practices can have unintended side effects'. And as Thomas Jefferson reminds us, 'the price of liberty is eternal vigilance'. Thus, addressing the HR implications of MHCs should rank highly on its advocates' agendas. Potential HR concerns, arising from MHCs and relating to PMIs essential dignity rights as well as their rights to non-degrading treatment, autonomy, privacy, due process and non-discrimination, will be assessed. Like other writers, the presenter urges that only through respecting PMIs' rights to services and fulfilling society's duty to provide same, and not through MHCs, will PMIs be afforded the full rights that democratic states ought to provide their citizens. The manner in which MDOs are managed (or not) by the multiple services and systems they typically encounter creates a broad measure of dissatisfaction that goes beyond any single jurisdiction or country. Moreover, the sufficient issue overlaps and fundamental commonalities in approaches to the problems faced by MDOs provide a general societal and judicial context for an analysis of MHCs and a related HR discussion, notwithstanding the presenter references the provisions of the European Convention on Human Rights (ECHR) (1950) for her HR analysis.