



Dealing with mentally ill domestic violence perpetrators: A therapeutic jurisprudence judicial model[☆]

Bruce J. Winick^a, Richard Wiener^{a,*}, Anthony Castro^b, Aryn Emmert^c, Leah S. Georges^a

^a University of Nebraska, United States

^b Department of Psychiatry & Behavioral Sciences, University of Miami Miller School of Medicine, United States

^c University of Miami School of Law, United States

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ABSTRACT

People suffering from mental illness are increasingly referred to the domestic violence court. Yet the typical diversion programs available, including batterer's intervention programs, are inappropriate for those with serious mental illness. As a result, the Miami-Dade Domestic Violence Court has developed a new approach for dealing with this population that applies mental health court techniques in domestic violence court. This article will describe and discuss this pioneering model. It also will situate this model within the context of other problem-solving courts and discuss how the court uses principles and approaches of therapeutic jurisprudence. The paper presents some preliminary data that describe the social and legal characteristics of 20 defendants in the Domestic Violence Mental Health Court followed over a two year period between 2005 and 2007.

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1. Introduction

Therapeutic jurisprudence (hereinafter "TJ") is an interdisciplinary method of legal scholarship that aims to reform the law in an effort to improve the psychological and emotional well being of those affected by the legal process (Winick, 2000). By using tools of the behavioral sciences, this method assesses the therapeutic and counter-therapeutic consequences of the law, with the goal of increasing the former and decreasing the latter (Winick, 2000).

The research that developed from this mental health approach to law has since created a foundation for hundreds of "problem-solving" courts that have emerged in the United States. Though varying in their specialization, each of these courts alters the traditional roles of lawyers and judges in the judicial process, and links them with probation officers, social workers, and other justice system partners to develop a treatment team for each individual offender. These teams combine their efforts and attempt to create a strategy that will internally motivate the offender and produce long-lasting effects (Winick, 2000). The hope is to eventually reduce the rate of recidivism, and make the term "revolving door" obsolete.

This article is an examination of a pioneering specialized court that aims to use the methods of TJ to minimize criminal offenses. The Domestic Violence Mental Health Court (DVMHC), located in Miami-Dade County, Florida, is a hybrid of both mental health and domestic

violence courts, with the aim of treating the special problems presented by mentally ill domestic violence perpetrators.

While both mental health courts and domestic violence courts are applications of TJ, domestic violence courts deviate somewhat from the traditional "problem-solving" court model. In mental health courts, the crimes are usually non-violent victimless acts. The system, therefore, takes a non-adversarial approach while working to rehabilitate the offender (Stefan & Winick, 2005). Domestic violence courts, on the other hand, serve offenders who commit violent acts, usually against a victim with whom they have an intimate relationship. These courts are therefore more adversarial and punishment-oriented, and have a zero-tolerance policy with regard to recidivism (Winick, 2000). However, because these courts promote the rehabilitation of the abusers, and assist the victims in receiving the necessary treatment and related services, they are still an application of TJ principles (Winick, 2000).

This article therefore explores not only the derivation of the court, but the challenges it faces in attempting to balance the policies of two competing models, while meeting both the victims' and offenders' needs. Part I analyzes the origin of the court, dating back to the first drug treatment court. It continues by examining the distinct qualities of both the mental health and domestic violence courts, and assesses the various goals and models of each. Part II takes a closer look at the DVMHC and outlines the steps of the legal process these offenders endure. As such, it contrasts the legal status, procedures, and outcomes of offenders who take part in the Pre-trial Diversion program compared to those on probation, and those who undergo conditional release. In addition, this section evaluates the motivational techniques used by the various players in the system by assessing success stories of several offenders. While we acknowledge that these "case studies" are at an

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* Corresponding author.

E-mail address: rwienner2@unl.edu (R. Wiener).

early unquantifiable stage of research, the stories that they tell are, nonetheless, important first steps in understanding the value and special challenges that are part of the DVMHC approach to domestic violence. Part III entails a retrospective study of cases of offenders who participated in DVMHC by comparing them to offenders who pled not guilty, and opted for trial. This study provides some initial data about the need for the DVMHC program and about the types of clients that the court serves. Most importantly, these preliminary data demonstrate the specific types of problems that offenders present in DVMHC in Miami-Dade County, Florida. Finally, Part IV contains some concluding remarks concerning the necessity of future studies, as well as the impact of TJ as a blueprint for developing the DVMHC model. It also addresses some potential problems with the model, and offers suggestions concerning their avoidance or minimization. We propose that the future success of these clients will be, in part, a function of the motivation and emotional focus that court personnel and agency players apply in this non-conventional, TJ approach to the treatment of domestic violence offenders.

2. Origins of the Miami Dade Domestic Violence Mental Health Court

In 2004, the Miami-Dade County domestic violence court, a misdemeanor DV court, initiated a novel judicial model for mentally ill individuals who commit acts of domestic violence. In part, this effort grew out of concern about the increasing number of mentally ill criminal defendants in the jails. Indeed, The Bureau of Justice Statistics has reported that 479,900 inmates of local jails had a mental health problem, representing 64% of jail inmates (James & Glaze, 2006). A subset of this population came to the attention of the Miami Domestic Violence Court. This population had been subject to an informal form of diversion since around 1994 (Judge White-Labora, personal communication, June 5, 2007). Jail overcrowding provided a new impetus for diversion. The program initiated in 2004 was a formalization of this previously informal process in an effort to divert this population from the jail.

According to Judge Deborah White-Labora (personal communication, June 5, 2007), the principal architect of this new program, the court was based on a drug treatment court model and incorporated concepts of therapeutic jurisprudence (Hora, Schema, & Rosenthal, 1999). Drug treatment court, and a number of other innovative “problem solving court” models that it spawned, grew out of the recognition that traditional judicial models for dealing with people with a variety of psychosocial problems had failed (Hora et al., 1999). Individuals with these problems had recycled through the courts, leading to the conclusion that a new judicial approach was needed. These new models can be seen as applications of therapeutic jurisprudence (“TJ”) (Hora et al., 1999; Winick & Wexler, 2003). TJ is a field of interdisciplinary legal scholarship that studies the impact of law and how the application of law impacts the psychological well being of those affected. It seeks to reshape law and legal processes to diminish laws anti-therapeutic effects and maximize its therapeutic potential (Winick & Wexler, 2003). TJ is the “philosophic foundation” for the hundreds of problem solving courts that have emerged since the early 1990s (Petrilla, 2007).

2.1. Drug treatment court

The first specialized drug treatment court was established in Miami-Dade County Florida in 1989 and since has spread across the country with more than 2300 such courts now in existence (National Drug Court Institute, 2009). Drug related arrests in the early 1980s threatened to overwhelm the legal system, and traditional judicial approaches had little impact on drug supply or demand (Kondo, 2001; Roman et al., 2003). The purpose of these courts was to reduce recidivism and rehabilitate the offender through judicially supervised drug treatment in which the judge, functioning as a member of the treatment team, plays an important role in motivation and compli-

ance, thereby acting as a behavior change agent (Roman et al., 2003; Winick & Wexler, 2003). Although there are a variety of models, they all seem to have 5 common elements: (1) immediate intervention, (2) a non-adversarial process, (3) intensive judge/offender interaction, (4) interdisciplinary team approach, and (5) clearly defined rules and goals, often specified in a behavioral contract (Watson, Hanrahan, Luchins, & Lurigio, 2001). Evaluation studies show that these programs have been highly successful in reducing recidivism (Belenko, 1998, 2001; United States Government Accountability Office, 2005). Drug courts provide closer, more comprehensive supervision and much more frequent drug testing and monitoring during the program than other forms of community supervision (Belenko, 1998; 2001). Drug use and criminal behavior are substantially reduced while offenders are participating in drug court and well after program completion (Belenko, 1998; 2001, United States Government Accountability Office, 2005). These courts coordinate the efforts of the judiciary, prosecution, defense bar, probation, law enforcement, mental health, social service, and treatment communities to actively and forcefully intervene and break the cycle of substance abuse, addiction, and crime (Huddleston et al., 2008). In addition, a number of studies have shown that drug treatment courts are a highly cost effective alternative to traditional courts because they decrease crime rates, criminal justice costs, and costs to victims (Huddleston et al., 2008).

2.2. Domestic Violence court

The success of the drug treatment court has led to the development of other problem solving courts, including Domestic Violence Court, Mental Health Court, and Hybrid versions of these (Winick & Wexler, 2003). Currently there are over 300 Domestic Violence courts (Littel, 2003). Domestic Violence is unique in that it occurs between intimates rather than strangers, and the violence is typically progressive (Conference of Chief Justices and Conference of State Courts Administrators, 2000; Littel, 2003). Courts initially were hesitant to handle these cases because domestic violence was considered a private issue (Mazur & Aldrich, 2003). Some argued that it was a waste of resources to face this problem because most victims dropped the charges and went back into the arms of the accused batterer anyway (Mazur & Aldrich, 2003). In addition, police officers, overwhelmingly male, often did not take domestic violence seriously, and made arrests only in cases of serious violence (Conference of Chief Justices and Conference of State Courts Administrators, 2000; Winick, 2000). However, awareness of the extent and seriousness of domestic violence increased in the 1990s as reports at that time suggested that one million women are battered by an intimate partner annually (Kaye & Knipps, 2000) and that almost one-third of all female homicide victims in the United States were killed by their intimate partner (Catalano, 2007).

Domestic Violence Courts are specialized courts dealing exclusively with intimate violence that combine criminal and civil jurisdiction, allowing both adjudication and punishment of offenders and the issuance of protective restraining orders and services to victims and their families (Conference of Chief Justices and Conference of State Courts Administrators, 2000; Winick, 2000). They seek to ensure batterer accountability through criminal punishment and encourage behavior change through batterers intervention programs that offenders are mandated or encouraged to participate in as a condition of bail, pretrial diversion, or probation (Jeremiah, 2010). The efficacy of Batterer’s Intervention programs in preventing recidivism is in question (Littel, 2003). These courts increase coordination and continuity of case processing, information gathering, consistency of monitoring of perpetrators, and victim support (Sack, 2002). Domestic Violence courts represent a revolutionary change from the traditional criminal court model in that these specialized courts involve greater judicial and staff expertise and an

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