Barriers to mental health diversion from the NSW Children's Court

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Outline

- Rationale
- The Adolescent Court and Community Team
- Diversion into community treatment
- Acute mental illness: diversion to hospital
- Discussion

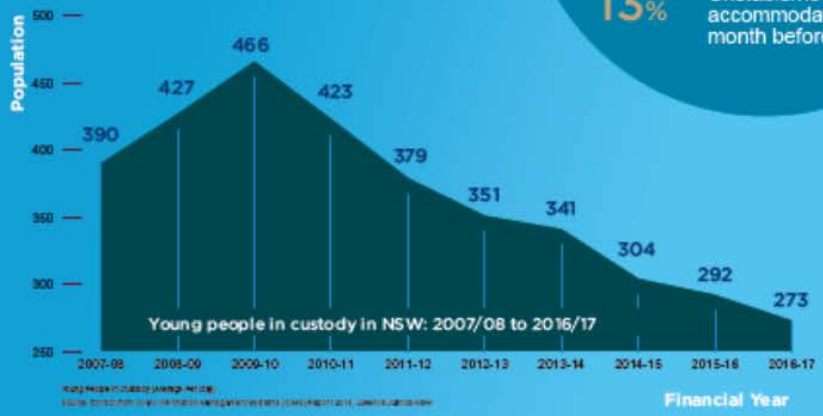
Adolescent Custodial Patient Profile

Our Patients

ADOLESCENTS

- 21% Placed in care before age 16
- 56% Expelled from school
- 82% Previously in juvenile detention
- 68% Experience of childhood abuse or neglect
- 54% Parents ever incarcerated
- 13% Unstable/no fixed accommodation in month before custody

- 46% Overweight or obese
- 27% Ever diagnosed with asthma
- 25% Ever had a head injury resulting in loss of consciousness
- 10% Ever diagnosed with sexually transmitted infection
- 40% Increased cardiometabolic risk (waist-to-height ratio ≥ 0.5)



Young people in custody experience multiple health problems and commonly report experiences of neglect and abuse prior to their detention. One of the challenges of providing health care to this population is their short length of stay.

The over-representation of Aboriginal young people in custody continued in 2016/17, accounting for 51% of the juvenile justice population.

- 98% Risky drinking among participants (i.e. AUDIT score ≥4)
- 82% Daily smoking
- 81% At least weekly use of illicit drugs

- 83% Any psychological disorder
- 59% Any attention and/or Behavioural disorder
- 17% IQ in Extremely Low (intellectual disability) range
- 78% Severe reading comprehension difficulties
- 24% Any anxiety disorder

The above population characteristics were identified in the Network's 2015 *Young People in Custody Health Survey* (YPICHS).

NSW GOVERNMENT Health
Justice Health & Forensic Mental Health Network

Ethical considerations

- Principle of equivalence
- *Standard Minimum Rules for the Treatment of Prisoners*, also known as *The Mandela Rules* (United Nations General Assembly, 2015), the *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* (1991), RANZCP Position statement
- "Return to custody for treatment"...."Bad not Mad"
- Involuntary treatment in custody?
- Criminalisation of mental illness
- Systematic prejudice toward this group of young offenders

The ACCT

- Adolescent Court and Community Team
- Justice Health and Forensic Mental Health Network
- Provides a court diversion program to Children's Courts across NSW
- Redirect young offenders with mental health issues away from the criminal justice system and into treatment
- Diversion under s32 & s33 of the NSW *Mental Health (Forensic Provisions) Act 1990*

ACCT coverage

The court team currently covers the following courts:

- Sydney Metro – Surry Hills, Parramatta & Campbelltown
- South Coast Circuit – Sutherland, Port Kembla & Nowra
- Central Coast – Broadmeadow, Woy Woy, Wyong, Maitland, Raymond Terrace & Cessnock
- Rural Courts – Grafton, Dubbo & Wagga Wagga

The ACCT clinician role

- Mental health assessment where matters can be dealt with in the local court
- Seek collateral information; police facts, discharge summaries, relatives, mental health team, GP
- Formulate a diagnosis and recommendations for the court
- Provide written report to the Magistrate, Solicitor, Police Prosecutor on eligibility for court diversion
- Facilitate referral to hospital if acutely unwell
- Make referrals to mental health services
- Contact mental health team involved in care

Value of the ACCT

- Early intervention for young people at risk of developing mental illness
- Advocating for young people with complex needs
- Young people with serious mental health issues diverted to mental health care away from criminal conviction and/or custody
- Improving outcomes for young people with mental illness who come into contact with the criminal justice system

Referral to Court Liaison

MH Assessment & Report

If not a 'mentally ill or disordered person' but has a diagnosis of mental illness / developmental disability or mental condition

S 32 MH(FP)A ***may*** apply

If considered a ***'mentally ill person'*** or ***'mentally disordered person'*** **under** Mental Health Act (MHA)

S 33 MH(FP)A applies

Community diversion: s32

To be eligible for a Section 32 the defendant has to appear to the Magistrate to be:

(i) developmentally disabled, or

(ii) suffering from a mental illness, or

(iii) suffering from a mental condition for which treatment is available

But is not a mentally ill person or mentally disordered person within the meaning of section 14 or 15 of the Mental Health Act 2007 (not acutely unwell)

Section 32 - Eligibility

In order for a Section 32 treatment plan to be effective a spirit of understanding and cooperation needs to exist between the Court and MH service

Potential stumbling blocks:

- Attitudes of the Court and MH service
- Who should formulate the treatment plan?
- Who monitors compliance and progress?
- What happens if the defendant does not comply with their obligations under the treatment plan?

ACCT Referrals

ACCT Clients	2013-2014	2014-2015
Total referrals	**704**	**718**
Gender (%)		
Male	70%	69%
Female	30%	31%
Average Age (Years)	16.0	16.0
Ethnicity		
Aboriginal	27%	32%
Non-Aboriginal	73%	68%
Concern		
Mental Health	66%	50%
Drug and Alcohol	4%	3%
Comorbidity	29%	45%
Intellectual Disability	18%	18%
Primary Health	1%	3%
Diversions		
Actual Diversions	79%	77%

Acute mental illness: s33

- Used at any time during a hearing of procedures i.e. before or after guilt determined
- Local/summary matters only
- Eligible for bail
- At discretion of magistrate
- Only applied to people suspected to be **Mentally Ill or Disordered** per MHA definition
- 22 orders applied for and granted 2018/2019 FY, however some young people sent on s33 2-3 times

Outcomes: s33 MH(FP)A

- 33 (1) (a) detain in hospital for assessment (Should not be returned to court, discharged to community care as arranged by LHD)
- 33 (1) (b) detain for assessment and if found not to be a mentally ill person or mentally disordered person under the MHA be brought back before a Magistrate (they come back to court but not necessarily remanded in custody – community follow up as per LHD discharge plan)
- 33 (1) (c) discharge the defendant unconditionally or with conditions, to care of a responsible person (no provision to breach)
- Section 33 1A- allows the Magistrate to also make a community treatment order (CTO) if Magistrate is satisfied all the requirements in the Act have been met (usual CTO provisions must be met)

"Not mentally ill, return to custody"

- Anxiety, bed pressure and role confusion - psychiatry as the arbiter of justice?
- "Alleged offences not related to mental illness" - NO requirement for nexus between MI and offending
- "Admitted guilt and fit for prison"
- "Too dangerous/aggressive for hospital"
- "Non compliant with medication"
- "Deemed to be a mentally ill person but have no beds"
- "No fixed abode"
- "Mentally ill but able to be treated in prison"
- "She's one of yours, we don't want her"

Discussion

- How to better advocate for this marginalised, at-risk group?
- Scarce public health resources
- Large geographical distances
- Siloed services within NSW Health
- Increasing coverage – AVL assessments, screening
- Relationship building
- Exposure to forensic psychiatry in basic registrar training
- Forensic CAMHS with active management

Thankyou