

Third Study Commission

Questionnaire for 2006

The way criminal systems deal with those who are mentally ill or mentally handicapped

How does your criminal system deal with those people who are mentally ill or mentally handicapped but who are charged with a criminal offence? In particular,

1. Are there rules which provide that someone who has a very serious mental illness or handicap cannot be tried by the ordinary criminal court process? If so, is the decision that he cannot be so tried, made by doctors or judges? What is the test to be applied when considering that question? What happens to a person who commits a serious crime but cannot be tried by an ordinary criminal court? Is there any court procedure available for deciding if the accused person did the act alleged?
2. Assume that a mentally ill or mentally handicapped person is not so ill that he cannot be tried in an ordinary court and is found to be guilty. What powers does your system have for sending him for treatment in hospital or in the community for his illness rather than punishing him by sending him to prison? What evidence is required for such an order? If such a criminal is sent to hospital rather than to prison, for how long is he detained in hospital? Is his release decided by doctors or judges? If his mental health recovers, can he then stand trial in the ordinary court process?
3. Are there any schemes to divert mentally ill or mentally handicapped people who offend from the criminal court process? If so how do they operate?
4. What happens to a criminal serving a sentence of imprisonment who becomes seriously mentally ill or handicapped whilst in prison?