

Chapter 16 – Mental Health and The Law

- a) Civil commitment: forcing a person into a mental health facility against his or her will
- b) Need for treatment: legal criterion operationalized as a signed certificate between two physicians stating that a person requires treatment but will not agree to it voluntarily; formerly a sufficient cause to hospitalize there person involuntarily and force him or her to undergo treatment
- c) Most states now mandate that persons being considered for involuntary commitment have the right to a public hearing, the right to counsel, the right to call/confront witnesses, the right to appeal decisions, and the right to be placed in the least restrictive treatment setting
- d) **Criteria for civil commitment** (In US and many other countries individuals must be judged to meet one of the following criteria)
 - a. 1. Grave disability
 - b. 2. Dangerous to self
 - c. 3. Dangerous to others
 - i. Most states also require that the *Danger posed to themselves or others must be *imminent* – if they are not immediately incarcerated they or someone else will likely be harmed in the very near future
- e) Grave disability: criterion requires that people be so incapacitated by mental disorders that they cannot provide for the basic needs of food, clothing, and shelter
 - a. Parens patriae (sovereign as parent): to have mentally ill homeless people taken to mental health facilities
 - b. Elderly ill are especially likely to be committed for grave disability
- f) Dangerousness to self
 - a. Most often invoked when it is believed that the person is imminently suicidal
- g) Dangerousness to others
 - a. If the person with a mental disorder is going to hurt another person if set free, then society has claimed the right to protect itself
 - b. If clinicians believe that an individual may harm another person, they have a duty to warn that person, even if this violates a client's confidentiality
 - i. In case of Tarasoff v. Regents of the University of California
- h) Violence and People with Mental Disorders
 - a. Disorders carry a moderately increased risk of violence
 - b. The likelihood that the former patients would commit a violent act was strongly related to their specific diagnosis and whether they had a substance abuse problem
 - c. Patients are most likely to commit a violent act in the first couple of months following their discharge and less likely to do so as the year wore on
 - i. Reasoning
 1. Perhaps patients are still in crisis shortly after their hospitalization
 2. It may take months for their social support systems and treatment to begin affecting their behavior
 - d. In the study, by the end of the year the patients were no more likely to commit a violent act than were people in the community comparison group
 - e. The patients targets of violence were most often family members, followed by friends and acquaintances

- i. Less likely than the non mentally ill comparison group to commit a violent act against strangers
 - f. Violence by mentally ill women tends to be underestimated by clinicians
 - i. Mentally ill women and mentally ill men are equally likely to commit violent acts towards others
 - g. No difference in ethnic groups in rates of violence among mentally ill people
- i) Prevalence of Involuntary Commitment
 - a. 25% of admissions to patient psychiatric facilities in the US are involuntary
 - b. Involuntary estimate is probably an underestimate
 - i. Nearly 50% of the adults admitted voluntarily to inpatient psychiatric facilities said that someone other than themselves had initiated their going to the hospital
 - ii. People are also coerced into mental health care treatment, because parents and legal guardians often “volunteer” a protesting child or incompetent adult
- j) Patients’ rights: people committed to mental health institutions retain most of their civil rights – also have certain additional rights
 - a. Right to treatment: fundamental right of involuntarily committed people to receive active treatment for their disorders rather than shelter alone
 - i. “Wyatt Standards”
 1. They must be provided with humane psychological and physical environment
 2. There must be qualified and sufficient staff for the administration of treatment
 3. There must be individualized treatment plans
 4. Restrictions of patient freedoms must be kept to a minimum
 - b. Right to refuse treatment: right, not recognized by all states, of involuntarily committed people to refuse drugs or other treatment
 - i. *Can be overruled in many circumstances
 - ii. Informed consent: means that a patient accepts treatment after receiving a full and understandable explanation for the treatment being offered and making a decision based on his or her judgment of the risks and benefits of the treatment
- k) Competence to Stand Trial
 - a. In order to stand trial, accused individuals must have a rational understanding of both the charges against them and the proceedings of the trial and must be able to participate in their defense
 - b. Incompetent to stand trial: people who do not have an understanding of what is happening to them in a courtroom and who cannot participate in their defense
 - c. Judges value the testimony of the mental health experts concerning defendants’ competence and rarely rule against these experts recommendations
 - d. Defendants referred for competence evaluations tend to have less education and to be poor, unemployed, unmarried and many have a long history of psychiatric problems
 - e. Women are more likely than men to be ruled incompetent, and members of ethnic groups are more likely than European Americans

- i. This may be because these groups are more likely to have severe psychological problems
 - ii. OR that evaluators have lower thresholds for judging these two groups
- l) The Insanity Defense
 - a. Insanity: a legal term rather than a psychological or medical term
 - b. Insanity defense: based on belief that people cannot be held fully responsible for illegal acts if they were so mentally incapacitated at the time of committing the acts that they could not conform to the rules of society
 - c. Do not have to be chronically insane for the insanity defense to apply
 - d. This defense is used much less often than the public tends to think
 - e. Men and whites are more likely to succeed in pleading the insanity defense
 - i. Reason is unclear, may be because they have greater access to competent attorneys who can effectively argue the defense
 - f. These people are usually still not set free
 - i. Of those people acquitted because of insanity about 85% are sent to mental health hospitals, and all but 1% are put under some type of supervision and care
- m) Insanity Defense Rules (Over the years): 5 rules have been used in determining whether an individual was insane at the time he or she committed a crime and therefore whether he or she should not be held responsible for the crime
 - a. M’Naghten Rule: At the time of the crime, the individual was so affected by a disease of the mind that he or she did not know the nature of the act he or she was committing or did not know it was wrong (*Absence of understanding*)
 - i. Problems with rule
 - 1. Determining what is meant by a “disease of the mind”
 - 2. Requires that a person not know right from wrong at the time of the crime in order to be judged not guilty, this is difficult judgment to make in retrospective
 - b. Irresistible Impulse Rule: Even if a person knew the act he or she was committing was wrong the person could be absolved of responsibility for performing the act if he or she was driven by irresistible impulse to perform the act or had a diminished capacity to resist performing it
 - c. Durham Rule: insanity defense could be accepted for any crimes that were the “product of mental disease or mental defect”
 - i. Presence of any disorder recognized by mental health professionals could be the “cause” of their crimes
 - ii. Rule did not require that the defendants be incapacitated by their disorders or did not understand that their acts were illegal
 - iii. Dropped by almost all jurisdictions
 - d. ALI Rule: At the time of the crime, as a result of a mental disease or defect, the person *lacked* substantial capacity either to appreciate the criminality (wrongfulness) of the act or to conform his or her conduct to the law (*lack of appreciation*)
 - i. Mental disease or defect did not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct