

State Hospitals and the Future of Forensic Services

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The Problem

- Forensic “Creep”: Increasing Number/ Percentage of Forensic Beds
- Forensic Waiting Lists
- Contempt

Explanations

- More Criminal Justice Clientele
- Greater Share with Mental Disorders (?)
- Increased Public Sensitivity
- Decreased Tolerance for Risk (Esp Sex Offenders)

Remedies

- Diversion, Community-Based Services
- Improved Services in Corrections
- Alternative Risk “Containment” Strategies
- Civil Remedies (Prevention)

Brief History of Forensic Services

Pre-1980

- Security Hospitals in Remote Settings
- Lifetime Commitment; Jackson v Indiana

1980's

- ABA Criminal Justice/Mental Health Standards
- Growing Professionalism
 - University Programs
 - Fellowship Training Programs
 - Evaluator Training
 - Research
 - NASMHPD

1980's, con't

- Systems Changes
 - Structured Evaluations
 - Outpatient Evaluations
 - Forensic Review Boards
 - Conditional Release
- Impact of Hinckley
 - Tightening of Insanity Defense Criteria
 - Restrictions on Expert Testimony
 - Advent of Guilty But Mentally Ill Laws
- Foucha v Louisiana: Dangerousness Due to Mental Disorder

1990's

- Risk Assessment Technologies
- Sex Offender Commitment Laws
- Juvenile Competency

2000's

- Case of Russell Weston
- Broadening the Scope of Forensic Services
 - Diversion
 - Mental Health Courts
- Criminal Justice/Mental Health Consensus Project; GAINS Center

Incarceration Trends in the U.S.

Jails and Prisons

1980
503,586

1990
1,148,702

2006
2,193,798

Prisons Alone

1972
196,092

1982
394,374

1992
846,277

2006
1,446,269

Number of Patients in State Psychiatric Beds

1955

559,000

1995

69,000

1983

132,000

Today

<50,000

Prevalence of Mental Illness in Jails & Prisons (U.S. Dept. Justice)

State Prisons: 16.2%

Federal Prisons: 7.4%

Jails: 16.3%

Overall: 15.7%

Note: Other Studies Estimate 7.5-16%

DOJ (2006): > 50% With “Symptoms”

Mental Disorder and Crime

- Public Perception: Seung-Hui Cho
- Reality: Mental Disorder and Violence Weakly Correlated (MacArthur Research Network)
- MI Inmates' Crimes Rarely Associated With Inmates' Symptoms (Junginger, "Psychiatric Services," June 2006)
- Indirect Influences: Substances; Poverty

Use of Drugs or Alcohol at Time of Offense (U.S. Dept. of Justice)

State Prisons: 59%

Federal Prisons: 47%

Jails: 65%

Major Source of Referrals: Competency to Stand Trial (Evaluation, Restoration)

- Evaluations Mostly Outpatient; Restoration Mostly Inpatient
- Outpatient Restoration: Fix or Folly?
- Challenge: Rapid Restoration, Return to Court
- Implications of US v Sell

Competency to Stand Trial in Juvenile Court

■ The Early Juvenile Court (1899 – 1965)

- Informal

- Best Interests

- For Children Too Immature for Trial or Punishment as Adults

- CST Not Relevant

■ The Juvenile Court Today

- Procedural Rights

- Balanced and Restorative Justice: Services and Accountability

- CST, Relevant

- Rates of IST (Grisso)
 - 1/5 of 14-15 year olds
 - 1/3 of 11-13 year olds

- Restoring/Establishing CST
 - Education, Maturation
 - Adult Model Inapplicable

- Jackson v Indiana Considerations
 - Release from Commitment if Not Restorable in “Foreseeable Future”
 - Wait the Kid Out

Sex Offender Civil Commitment

- I. “Sexually Violent Predators:” Sex Offenders About to Be Released from Confinement Who:
 - A. Have A Mental Abnormality* or Personality Disorder
 - B. Are Likely to Engage in Predatory Acts of Sexual Violence (Serious Difficulty Controlling Behavior)

***Mental Abnormality: “Congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.”**

II. 20 States With SVP Laws (Since 1990)

A. PA: for aging children only; TX: outpatient only

B. 3449 Inpatients; 159 Supervised or Transitional Release

C. Average Cost/Year: \$96,000 Inpatient; \$66,000 Outpatient (Range: \$40,000 to \$237,000 Inpatient; \$14,000 to \$125,000 Outpatient)

History of Sex Offender Commitment in U.S.

I. 1930's – 1960's

A. Rehabilitative Ideal

B. Indeterminate Sentencing

C. MDSO Laws Flourished
(26 States)

D. Treatment as Alternative to Prison

II. 1970's – 1980's

A. Rehabilitative Ideal Wanes

B. Determinate Sentencing

C. Disillusionment with Treatment (GAP Report)

D. Special Commitment Laws Repealed

III. 1990's

A. Hard Realities of Determinate Sentencing

B. Advent of SVP Commitment:
Treatment Not as an Alternative to Prison
but as a Basis for Continued Confinement

Legal Reaction

- I. Early State Cases Inconsistent
- II. Kansas v. Hendricks (U.S.S. Ct., 1997)
 - A. Constitutional
 - B. Tie-Breaking Vote Suggests Limits
- III. Seling V. Young (2001)
 - A. Rejects “As Applied” Challenge
 - B. Remedy: Sue the State

Legal Reaction Continued

IV. Kansas v. Crane (U.S.S. Ct., 2002)

A. Commitment Requires Showing of
“Serious Difficulty Controlling Behavior”

B. Opinion Suggested Dangerousness Due
to ASPD May Be Insufficient Basis for
Civil Commitment: Law Must
Differentiate Patients from Prisoners

Professional Reaction

I. APA

A. Task Force 1994 – 2000

B. Conclusion –SVP statutes:

1. “Establish a non-medical definition of what purports to be a clinical condition without regard to scientific and clinical knowledge”
2. “Distort the traditional meaning of civil commitment, misallocate psychiatric facilities and resources, and constitute an abuse of psychiatry”

II. NASMHPD (1997)

A. Caution – Laws:

1. Disrupt the State's Ability to Provide Services for People with Treatable Psychiatric Illnesses
2. Undermine the Mission and Integrity of the Public Mental Health System
3. Divert Scarce Resources from People with a Mental Illness and Need for Treatment
4. Endanger the Safety of Others in Facilities Who Have Treatable Illnesses

B. Guidelines for Legislation (NASMHPD, Cont.)

1. Distinct from ordinary commitment laws
2. Separate facilities
3. Funded / administered outside SMHA
4. If SMHA responsible, SMHA should determine committability, treatment, LOS
5. Statutes should be narrowly drawn to select for offenders most in need of inpatient treatment
6. Treatment should begin before release from prison

States and Dates

Arizona	1997	Nebraska	2006
California	1996	New Hampshire	2006
District of Columbia	1948	New York	2007
Florida	1999	North Dakota	1997
Illinois	1999	New Jersey	1999
Iowa	1998	Pennsylvania (Kids)	2004
Kansas	1994	South Carolina	1998
Massachusetts	1999	Texas (Out - P)	1999
Minnesota	1939/1994	Virginia	2001
Missouri	1999	Washington	1990
		Wisconsin	1994

Populations

STATE	# INPATIENT	# SUPERVISED/ TRANSITIONAL RELEASE
AZ	24	59
CA	603	4
DC	4	0
FL	544	0
IL (2005 #'s)	239	15
IA	62	2
KS	147	7
MA	326	0
MN	350	0

STATE	# INPATIENT	# Supervised/ Transitional Release
MO	119	0
(NOT YET IMPLEMENTED) NE & NH		
ND	48	0
NJ	344	10
PA	9	
SC	70	0
TX	N/A	32 (2003)
VA	30	4
WA (2005 #'S)	225	10
WI	349	16
TOTAL	3493	159

Diagnosis of Committed SVP's (2002 Survey)

Serious Mental Illness: 12%

Mental Retardation: 4%

Any Paraphilia: 85%

Pedophilia: 49%

Any Personality Disorder: 75%

Antisocial Personality disorder: 50%

Adam Walsh Child Protection and Safety Act: July 27, 2006

- A. National Sex Offender Registry and Website
- B. Federal “Sexually Dangerous Persons” Commitment Law
 1. Federal offenders leaving confinement
 2. Commitment to US Attorney General
 3. AG to make “reasonable efforts to cause State to assume responsibility for custody, care, and treatment”
- C. Grants to States that “Establish, Enhance, or Operate” Special Sex Offender Commitment Programs: \$10 million/year for 4 years

Actuarial Risk Assessment and the Role of “Dangerousness” in Psychiatric Hospitalization

- All the Rage (HCR-20, PCL-R, Etc)
- The Bright Side
 - Evidence Based (Product of Studies)
 - Exposes False Assumptions
 - Informs Aftercare Planning
- The Dark Side (Misuse)
 - Quantifying Risk Without Regard For Containment Strategies
 - Influencing Commitment/Release Decision-making
 - >>History of Civil Commitment
 - >>Role of “Dangerousness”
 - >>Relevance of Dangerousness Unrelated to Serious MI
 - >>Bastardization of Civil Commitment

Service Initiatives That May Relieve Bed Pressures

■ Pre-Booking Diversion

- Special Police Units (CIT)

- Mental Health Crisis Response Services

■ Post-Booking Diversion

- Jail-based Diversion

- Mental Health Courts

- Improved Services During Incarceration
 - “Deliberate Indifference to Serious Medical Needs”
 - Intake Screening and Evaluation
 - In-house Services
 - “Civil” Hospitalization
- Re-entry
 - Transition Planning
 - Information Sharing
 - Entitlements/Access
 - Mental Health Probation/Parole

Civil Efforts to Prevent Offending: “Mandated Community Treatment”

- Outpatient Civil Commitment
- Advance Directives
- Assertive Community Treatment
- Money and Housing as Leverage