THE COMPETENCY RESTORATION CRISIS AND THE POTENTIAL ALTERNATIVE OF ASSISTED OUTPATIENT TREATMENT (AOT)

TREATMENT ADVOCACY CENTER

COMPETENCY RESTORATION CRISIS

Under the Sixth Amendment of the Constitution, a criminal defendant has the right to understand the nature and consequences of the proceedings against them and to assist in their own defense. When there is reason to question a defendant's competency to exercise these rights -- typically due to mental illness or intellectual disability -- the court will order a competency evaluation.

If the evaluator finds the defendant incompetent to stand trial (IST), the state must restore competency before the case can proceed. If the IST finding is due to mental illness, the defendant is typically committed to a state psychiatric hospital for restoration efforts.

Hospitalization for purposes of competency restoration should not be confused with therapeutic inpatient treatment, as they each serve distinct goals. Inpatient treatment is a vital part of the continuum of psychiatric care and is used to help achieve long-term wellness and recovery from symptoms of mental illness. Along with medication, this involves working with the patient to foster continued engagement with treatment after discharge. Because competency restoration serves the much more limited, short-term goal of preparing the defendant to face trial, restoration "treatment" is usually limited to medication and basic education on the criminal court process. The purpose of the hospitalization is to serve the interests of the criminal justice system -- not the patient.

Most defendants requiring competency restoration have been charged with minor, non-violent offenses.[1] In these cases, it is common for criminal charges to be dismissed when the period of attempted restoration reaches the maximum sentence for the charged offense.

When restoration efforts are unsuccessful, the charges are typically "dismissed without prejudice," meaning the prosecutor reserves the right to re-file the charges in the future. What happens next depends on whether the person is believed to meet the state's legal standards for civil commitment to hospital care. Those who are evaluated and found to meet inpatient criteria are retained in hospitals subject to ordinary civil commitment procedures, while those found not to meet criteria for civil retention are released back into the community – often with little or no monitoring or clinical supports.[2]

In recent years, there has been a dramatic increase in the number of non-violent misdemeanor defendants found to require competency restoration. This has led to more and more state psychiatric beds set aside to serve this population and ever fewer beds available for those in psychiatric crisis who are not criminally-involved.[3]

There are many potential approaches to reversing this worrying trend, and jurisdictions must be open to embracing a number of strategies simultaneously. One approach to consider is "assisted outpatient treatment" (AOT). AOT is a civil court procedure that helps ensure a person with severe mental illness receives treatment while being monitored in the community.

INCREASE IN COMPETENCY RESTORATION CASES

The percentage of forensic admissions at all state hospitals increased from 7.6% in 1983, to 36% in 2012, to approximately 58% in 2014. Competency restoration cases comprise the largest proportion of forensic patients.[4]

POLICY IMPLICATIONS

Using state hospital beds for non-violent misdemeanor defendants greatly hinders the mental health system's ability to treat patients who are not criminally-involved and who may be at risk of harm to themselves or others.

"[T]his situation sets up the paradox that committing a crime creates hospital access closed to individuals in the community who are more ill. This contradiction is not lost on families desperate to intervene in a loved one's deterioration, on law enforcement trying to maintain community order, or on judges faced with profoundly ill citizens for whom few or no other treatment options exist."

---- Emptying the 'New Asylums', Treatment Advocacy Center, 2017

In many jurisdictions, the increasing use of inpatient competency restoration is forcing IST defendants to wait in jail for weeks, months, or even years for beds to open up in state hospitals. This is exacerbating a national jail overcrowding crisis. In 2016, an estimated 90,000 US jail inmates were pretrial defendants

with serious mental illness who had been found IST.[5] Holding mentally ill defendants in jails with inadequate clinical services leads to increased risk for victimization, self-harm and suicide.[6]

COST CONSIDERATIONS
Average cost per day in jail - $85.77[7]
Average cost per day in a hospital - $1,800[8]

STATE RESPONSES TO GROWING CRISIS

Many states are experimenting with alternative responses to the growing number of non-violent misdemeanor defendants found IST. Some are dismissing charges immediately upon an IST finding to avoid the obligation of competency restoration or relying increasingly upon jail or community-based restoration programs rather than the state hospital system.[9]

Others have taken more drastic measures. For instance, Colorado reserves its state hospital beds entirely for the forensic population and places civil patients in private hospitals.[10] Minnesota, by contrast, has turned the responsibility for restoring competency over to the criminal justice system.[11]

ASSISTED OUTPATIENT TREATMENT AS AN ALTERNATIVE IN CERTAIN CASES

Legislation was introduced in Ohio to give prosecutors authority to refer certain cases to civil court for AOT proceedings.[12] Under this proposal, criminal charges would be dismissed or held in abeyance while an application for civil commitment is filed in the probate (civil) court. If the petition is granted, the individual would be discharged to the AOT program for community treatment and monitoring after a short period in the state hospital for stabilization.

ASSISTED OUTPATIENT TREATMENT

AOT -- known by a variety of other names from state to state, including "outpatient civil commitment" and "mandatory outpatient treatment" -- is the practice of providing community-based mental health treatment under civil court commitment, as a means of motivating the person with mental illness who struggles with voluntary treatment adherence to engage fully with his or her treatment plan.

AOT is intended to maximize the safety and well-being of both the participant and the public by averting, or at least diminishing, the consequences of treatment non-adherence, including criminal justice involvement.

When implemented effectively, AOT increases treatment adherence, which translates into reduced use of hospitals, crisis services and jails, improved quality of life for individuals with mental illness, increased public safety and overall reduced costs to society.[13]

POLICY RECOMMENDATIONS

- Incentivize the implementation of effective AOT programs as one alternative to competency restoration for nonviolent offenders.
- Encourage prosecutors to exercise their inherent discretion to dismiss criminal charges and refer non-violent IST cases to civil court for hospitalization or AOT as an alternative to prosecution.
- Require that duration of state psychiatric hospital stays are based on mental health status only and that court education activities be conducted in the community.

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