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Outpatient Commitment: A Competency Based Justification

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De-Institutionalization/ Criminalization

- States with Assisted Outpatient Treatment (AOT) Standards
- Number of 24-Hour Hospital and Residual Treatment Beds in U.S.
- Number of Mental Health Organizations in U.S. with 24-hour Hospital or Residual Treatment Care

Outpatient Commitment

Albert J. Grudzinskas, Jr., J.D., Jeffrey Geller, M.D., M.P.H., Jonathan Clayfield, M.A., LMHC, William H. Fisher, Ph.D.

Compliance-Based Medicalization Model

- Competency-Based Approach to Outpatient Treatment
- A recent survey of state statutes for outpatient commitment (Torrey and Kaplan, 1995) indicates that while thirty-five states and the District of Columbia have laws permitting outpatient commitment, Massachusetts is not one of them. Rather, Massachusetts uses a competency-based, substituted-decision-making model for the involuntary administration of medications in the community. To appreciate the Massachusetts model, it is important to understand how this court-ordered involuntary outpatient treatment fits into the overall scheme of outpatient commitment and how it is structured.

- A review of involuntary outpatient treatment (IOT) literature indicates that it is prudent to distinguish between outpatient commitment, conditional release, and conservatorship-guardianship (Torrey and Kaplan, 1995). Two states whose IOT is based on the guardianship process and is described in the literature are California and New Mexico. Lamb and Weinberger (1992, 1993) have discussed California’s use of guardians for the gravely disabled psychiatric outpatient, and Schneider-Blum (1986) has presented a single case report from New Mexico.

- Method

This study continues work from an earlier study on the same group of patients (Geller and others, forthcoming). In the previous study, both the pre-treatment and post-treatment periods were six months long. In this study, we have extended the post-treatment period to two years. These two years are divided into four six-month segments. Within each six-month period we computed the number of inpatient admissions and days for each patient.

The data used for analysis come from the Massachusetts Department of Mental Health (DMH) client tracking system (CTS). This data set contains information on demographic, clinical, and service utilization for case-managed clients statewide, beginning July 1, 1991. We first compared the IOT patients during the pre-treatment period with their own post-treatment data. Second, we compared the IOT patients with patients matched on demographic variables.

Finally, we compared the IOT patients with patients matched on inpatient service use.

“Outpatient commitment is one of the most vexing and controversial issues in the area of criminal law. It is the subject of much debate and litigation, and its proper place in the criminal justice system continues to be a source of disagreement.” (Sutherland, 1950).

Source: S. Phillips 2006

"It is old news that the field of mental health law is especially susceptible to these pendulum-like swings... a "...tendency to lurch from one positional extreme to the other." (Brakel, S.J. & Cavanaugh, J.L. (2000). Of Psychopaths and Pendulums: Legal and Psychiatric Treatment of Sex Offenders in the United States. American Journal of Psychiatry, 56, 142-148.)

"Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.” (Brakel, S.J. & Cavanaugh, J.L. (2000). Of Psychopaths and Pendulums: Legal and Psychiatric Treatment of Sex Offenders in the United States. American Journal of Psychiatry, 56, 142-148.)

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