Post-Acquittal Insanity Aftercare

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Insanity Defense in Texas

* Texas Penal Code § 8.01
* Affirmative Defense: At time of criminal act, the defendant, as a result of severe mental disease or defect, did not know his conduct was wrong (i.e., illegal).
* Raised in 1% of all cases and successful 26% of the time.
  * Often stipulated by prosecutor.

Nationwide Data on NGRI

* Estimates: 10,000 + acquittees nationwide
  * California: 1,417 residing in hospitals in 2015
  * Texas: 354 residing in hospitals in 2014
  * Oregon: 530 felony acquittees monitored statewide in 2015
  * Virginia: 127 acquittees on conditional release in 2014
  * Missouri: 1,066 living in hospitals or community in 1999

NGRI Acquittal

* Acquittal limitations
* If acquittee deemed dangerous, judge has continued jurisdiction over defendant following acquittal.
* If acquittee not dangerous, not mentally ill, and not mentally retarded, acquittee may be released following acquittal.

Post-Acquittal Evaluation

* Commitment for 10-60 days for evaluation.
* As long as dangerous and/or mentally ill, commitment continues. Purpose is to restore mental health, not punish.
* Acquittee has a right to treatment in the least restrictive setting.
* Judge may continue to monitor for length of maximum hypothetical sentence.

Texas State Hospitals: Kerrville, Rusk, & Vernon

* Kerrville – in June of 2016, 58% of patients were NGRI acquittees (24 beds in competency restoration unit not included). In 6/16, Kerrville had 95% occupancy.
  * Continual push for fewer beds.
  * Between 2005-2010, 14% nationwide drop in psychiatric beds.
  * 2012: 108,317 beds for 9.6 million individuals in the U.S. with mental illness.
* Kerrville's numbers are always increasing
  * From 2013 – 2015, increase of 20% for admissions

Transitioning from State Hospital to Community Conditional Release

* Hourly passes to enter local community
* Forensic evaluations, outpatient needs assessment, & discharge planning
* Multi-disciplinary committee plans for support post-discharge
* Committee petitions court for discharge
* Social work department follows up post-discharge
* State hospitals serves needs as they arise
* However, there is a “lack of a statewide consolidated post-discharge follow up”

Release Criteria

* Varies depending on training/personal preferences
* Deciding who to release and when is a “daunting task”
* Conditions of release permitted as long as not punitive
  * Mental health treatment, alcohol/drug abstinence, probation-like monitoring, work conditions, living conditions, & commit no new crimes.

Problems with Aftercare and Conditional Release

Problem #1: Too Many Supervisors

* Too many agencies involved
  * No communication
  * Complicated schedules
  * Fractured system
* Example: Harris County
  * Harris Center for Mental Health – ensures patients take medication
  * Group homes – distribute medication
  * Group home is supposed to notify HCMH if acquittee is non-compliant, HCMH is supposed to notify court, but these notifications rarely take place.

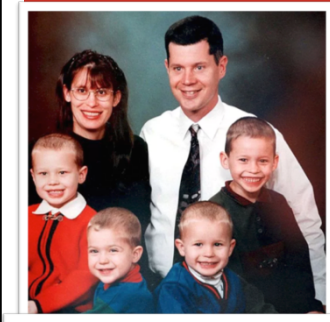
Problem #2: Acquitee Needs (Too Many of Them)

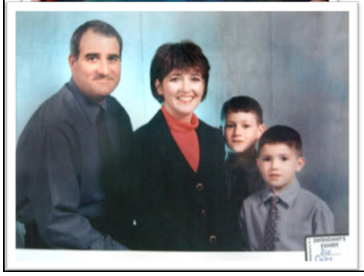
* Considerations
  * **Mental health treatment and decompensation**
  * Dangerousness/violence
  * **Adherence to conditions of release**
  * **Substance abuse**
  * Antisocial behaviors and/or personality disorders
  * Criminogenic factors
    * Criminal thinking and association, excusing past criminal conduct, and engaging in impulsive behavior
  * New criminal activity
  * Living and social conditions
  * Community

Problem #3: Lax Supervision

* Judicial Dockets: out of sight, out of mind
* Compliance entrusted to group homes personnel and social workers
* Lack of communication between these people & courts/lawyers
* Texas has a history of lax supervision among acquittees
* Problematic because
  * Acquittees remain unpredictable in treatment
  * Autonomy may lead to anti-therapeutic choices

2001-2005 NGRI Cases





Clockwise from top center, Nathan Dale Campbell, Kenneth Pierott, Dena Schlosser, Deanna Laney, & Andrea Yates.

2005 Legislative Changes

* Increase judicial supervision to maximum hypothetical sentence of acquittee

* Gave judges ability to commit acquittee to inpatient or outpatient care if dangerousness or decompensation becomes an issue

Examples of Lax Supervision

* "Martin Smith"
* Kenneth Pierott

Lax Supervision: Outpatient Care

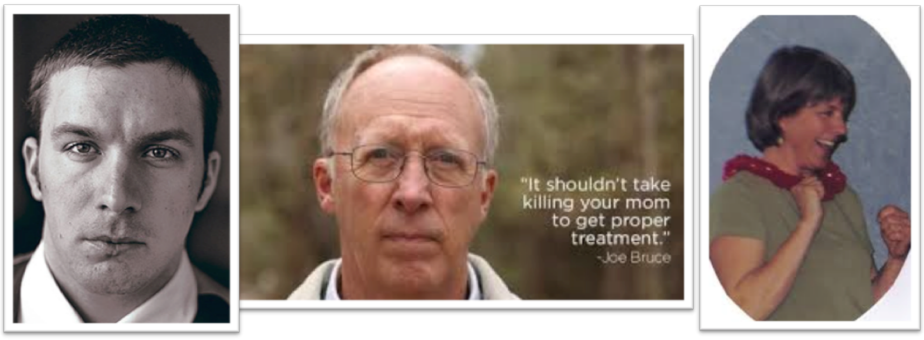
* Acquittee lives with person who assumes responsibility or in a group home.
* Group homes are privately-owned, for-profit businesses
* Interest in keeping costs down. Reflected in hiring decisions.
* Curfews in place, but no way to restrict acquittee's coming/ going.
* Most don't provide adequate safety measures.
* Distribute medication, but not responsible for ensuring acquittee takes it.
* Historically, they fail to notify court/authorities about infractions.

Problem #4: Rough Transitions

* Inpatient care is highly structured
  * Kerrville schedules
* Outpatient care is rarely structured at all.
* Little, if any, transition between highly structured environment and unstructured community living
* Lack of education and employment skills, along with criminal history, mental health, cognitive function, make it unlikely that acquittee can transition effectively to community living.

Example of a Rough Transition

* William Bruce of Caratunk, Maine



Creating a Better Conditional Release

Insanity Aftercare and Conditional Release

* States began implementing in 1980s and 1990s.
* Haven't changed much since then.
* Mental health research and understanding greatly improved after this time.
* Solutions: take effective non-NGRI mental health models and graft them into current aftercare/conditional release models.
  * Purpose: to reduce recidivism, increase mental health, and prolong conditional release.

Non-NGRI Models

* Mental Health Courts Approach
  * It's strengths are conditional release weaknesses
  * Oregon's Psychiatric Review Board
    * 99.08% live in community; .02% recidivism
    * Meets twice a month
* Assertive Care Treatment (ACT or FACT)
  * Cleveland, Ohio study
    * Lowered revocation rate: 14%
    * Re-arrest rate: 1.4%
    * Acquittees lived in community 83% of time while on conditional release
    * Other studies: only 7-11% reoffended due to illness; the majority reoffended due to criminogenic risk factors

Other Possible Solutions

* Mandated annual review of NGRI acquittees
  * If not in court, then with a board tasked with this responsibility
* Better group home accountability
* Better communication between agencies/supervisors
* Continuity of care in transition from inpatient to outpatient care
* More grace with acquittee condition violations

Conclusion

* Conditional release impacts
  * Acquittees
  * Victims
  * Communities
  * Public Safety
  * Civil rights
  * Taxpayers
  * Mental health care funding
  * Psychiatric Beds
  * Public perceptions about mental illness
  * Merits of the Insanity Defense

Resources

* ***New Frontiers for Conditional Release*, 34 BEHAV. SCI. & L. 407 (2016).**
* ***Improving Insanity Aftercare,* 42 MITCHELL HAMLINE L. REV. 564 (2016).**
* ***Resource Problem Solving in Therapeutic Courts*, 2 MENTAL HEALTH L. & POLICY J. 117 (2013).**
* ***Lawyers Who Break the Law: What Congress Can Do to Prevent Mental Health Patient Advocates from Violating Federal Legislation*, 89 OR. L. REV. 133 (2010).**