Understanding Montana Mental Disease and Disorder

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Mental Disease and Disorder as it relates to Criminal Matters

Montana Chapter 14. Mental Competency of Accused

- Criminal code as opposed to Civil
- Applies to the areas of:
  - Fitness (can the defendant move forward with the proceedings)
  - Not Guilty by reason of Mental disease or Disorder (lack of knowledge and purpose)
  - Guilty but mentally ill (lack of appreciation or conformity) – sentencing option, not a defense

Different Stages Evaluation can occur

- Criminal Process
  - Stages of a Criminal Process where a fitness or MSO evaluation can occur
    - After Detention (Fitness)
    - After The Initial Hearing(Fitness)
    - At State Hospital for second opinion or for Restoration(Fitness)
    - Possibly again in Detention if inmate will not take medications and decompensate(Fitness)
    - Plea Negotiations, If defendant choses to represent themselves (Fitness)
    - Trial (Not Guilty by Reason of Mental Disease or Disorder Disposition: Sentencing and commitment
    - Sentencing (Guilty but mentally ill)
    - Collateral Attack (Writ of Habeas Corpus- Illegal Confinement) (Competency to be sentenced or executed)
    - Posts sentence treatment Hearings (before transfer from prison to hospital) (request to be placed in the community)

Criminal Competencies

Fitness to Proceed

46-14-101 Mental Disease or Defect – Purpose – Definition

- It is: An Organic, Mental, or Emotional Disorder that is manifested by a substantial disturbance in behavior, feeling, thinking or judgement to such an extent that the person requires care, treatment, and rehabilitation.
- Does not include but may co-occur with:
  - Abnormality manifested solely by repeated Criminal or Antisocial behavior
  - A Developmental Disability *
  - Drug or Alcohol intoxication or addiction

46-14-103 Fitness to Proceed Evaluations

- A person who, as a result of MDD, is unable to understand the proceedings against the person or to assist in the person's own defense may not be tried, convicted , or sentenced for the commission of an offense so long as the incapacity endures.
- Montana Code Wording differs from Dusky however State V Garner 2001 indicates we defer to Dusky standard

46-14-202 Examination of the defendant

- If the issue of (MDD by defendant or counsel) or (fitness by court, prosecution, or counsel) is raised, the court shall appoint **at least one qualified Psychiatrist, Licensed Psychologist, or Advanced Practice Registered Nurse** or request Superintendent to examine and report upon the defendants mental condition.
- The court **can order commitment not exceeding 60 days for evaluation**. Defense can retain an expert to witness and participate in the examination.

The evaluation requires: Simply Put

- The evaluator must (In sequence):
  - First Evaluate for a MDD
  - Then Evaluate Functional Deficits as defined by law
  - Then Determine if, and be able to articulate the relationship between the Mental Disease or Disorder and the functional deficits.

Mental State at the time of the alleged offense

MSO

Not Guilty by reason of Mental Disease or Disorder

Or

Guilty but Mentally Ill

How often is the Insanity Plea made?

- Studies conducted in 70's and 80's suggested only raised .1-.5% of the time
- California has gone from 1% in 1979 to .3% in 1984; Georgia went from 1.5% in 1976 to 2.5% in 1985
- Favorable opinion in only 12% of 1,710
- Mostly due to Mental Health Professionals not supporting the data

How often is the plea successful?

- Nationally about 1 out of every 4 times it is posed
- Nationally only 8.1% of the 1,971 in 1978 were found NGRI (.3%)
- 70% of these did not face a jury and went through a plea or quasi – plea
- 60-90% of those acquitted continued to be diagnosed as "psychotic after acquittal"

Montana's MDD

- Montana abolished the insanity defense in 1979
- We now have A Knowledge and Purpose standard
- As well as a Guilty but Mentally Ill sentencing option

Consequences of Abolishing

- Henry Steadman 1993 compared data from the periods pre (1976-1979) and post (1980-1985)
- Found the number of defendants adjudicated as Incompetent to Stand Trial increased significantly after Abolition
- Conclusion suggested the MT system responded in this way to the phenomenon of severely mentally ill individuals who violated the law and who were not considered criminally blame worthy.

Established Principles

1. Forensic treatment should address clinical symptomology and functional deficits and should be structured according to the legal status of the patient.
2. Shorter term, focused clinical and psycho-educational interventions should be used with defendants who are hospitalized as incompetent to stand trial or transferred from correctional facilities for emergency treatment.
3. Longer term, multimodal interventions should be used with NGBRMDD and GBMI) who will return to the community following their release form secure hospitalization

Continued

5. Communication is essential for success. Such communication must encompass individuals within the mental health and criminal justice systems. (From inpatient through to outpatient…. Not just a document).
6. It is helpful to use a demonstration model in assessing risk of aggression toward others and treatability in the community. The treatment plan should demonstrate a logical connection between the risk factors for target behavior classes (i.e. aggression), the pattern of clinical symptoms, and the interventions delivered. (* Risk Assessment should Guide long term treatment)
7. Clarify the legal requirements in areas such as confidentiality and duty to protect, specific reporting demands and malpractice
8. Set, Practice, and monitor sound risk management procedures
9. Practice principles promoting health care adherence (Make the targets visible)

Emerging Principles

1. Hiring of qualified mental health staff in jails and prisons must be increased
2. Need studies of the populations to serve to establish programs
3. The use of contemporary forms of treatment should be expanded (DBT)
4. The task of lowering violence/sexual risk through treatment should be considered a separate treatment goal for forensic patients who will return to the community for discharge, yet the most important as these variables predict recidivism… not the mental health variables.
5. Use of a review board and other administrative review mechanisms should improve decision making regarding privileging and release
6. Conditional release, stages of security and forensic aftercare are necessary elements that balance public safety and individual liberty considerations, and the importance of treatment compliance, upon release from a secure setting into the community. *** Different than traditional parole ****

Policy

- Several implications

1. Standards to contain and release from forensic treatment programs (whether contained in statute or administrative code) should be structured according to the legal status of the patient. This establishes a precedent for the structuring of a forensic treatment program within the larger forensic system and reflects the importance of relevant legal considerations in setting goals.
2. The balance between individual rights, treatment needs, and public safety considerations should be made as explicit as possible. A greater degree of uniformity is needed with explicit standards for each or the system will weaken.

Continued

- It is Important to clarify the legal requirements and associated policy in relevant areas for treatment agents and programs.

1. First, assessment, treatment and decision making associated with the risk of patients' violence toward others should be primary elements of a treatment program
2. Second, the failure to anticipate the possibility that a discharged patient may, despite all efforts to the contrary, be involved in an incident in which someone is seriously hurt- is to increase the prospect that a forensic program or system will be dismantled in the event of such a disaster.
3. Third, Forensic treatment programs should be leaders in development and implementation of sound risk management procedures through the use of administrative review boards, conditional release, and the proactive awareness of and compliance with professional risk management standards.

Practice

- There is no Single ideal Forensic treatment Program!!!

- The legal status of the patient (s) entering should influence the structure

- Promote effective/ongoing communication across the continuum

Practice Continued

- Compliance

- A system's implementation of principles promoting health care compliance can help to achieve this goal.
- Use a Full Range of Treatment Modalities
- Focus on up to date and relevant treatments developed in the last decade

The Demonstration Model

- The best-integrated and most defensible approach to integrating risk reduction and treatment is a demonstration model. When programs allow patients to demonstrate improvements in symptoms, treatment compliance, and responsible, nonviolent behavior across a series of decreasing restrictive sets of conditions, then these results present on the best arguments for risk reduction. Moreover, the duration and size of each step can be controlled by the design of the program and the individualized judgment of the treatment team and the review board