

Network on Mental Health and the Law

Objectives

Mental health law has undergone major developments in recent years, including landmark judicial decisions, dramatic legislative initiatives, and the publication of professional standards and guidelines. All of these developments, however, have been predicated on untested assumptions about the mentally ill, the service delivery system, and the law.

The Network on Mental Health and the Law was established to build an empirical foundation for the next generation of mental health laws — laws that will assure the rights and the safety of individuals and of society. The Network had two primary mandates: to develop new knowledge about the relationships between mental health and the law, and to turn that understanding into improved tools and criteria for evaluating individuals and making decisions that affect their lives.

Approach

The Network included experts from the fields of clinical, developmental, and social psychology; sociology; psychiatry; law; and mental health administration and policy. Members also worked with legal and mental health scholars and practitioners, national and state policymakers, and lay groups of former mental patients and family members.

The Network's studies focused primarily on three pivotal issues: the competence of mentally disordered people to make autonomous decisions in civil law (treatment competence) and criminal law (adjudicative competence); the violence risk that sometimes accompanies mental disorder; and the coercion that often characterizes interventions to redress incompetence or reduce risk.

Competence. Society has come to realize that mental disorder does not necessarily lead to incompetence. Even when it does, the ability to make some decisions — regarding one's own treatment, or in the criminal process — may remain intact. But which disordered individuals are competent to make what kinds of decisions? The Network developed conceptual frameworks and instruments for measuring the competence of mentally disordered individuals to understand information presented to them, appreciate its implications, and use this information to make rational decisions.

Risk. Although assessing the risk of violence plays a central role in mental health law, we don't yet have the knowledge to make accurate risk assessments. The Network sought to improve the ability to assess risk and, ultimately, to enhance risk management. Research included a prospective, multi-site study of potential markers for increased risk of violence by released mental patients.

Coercion. The state’s use of its coercive power to assure that disordered people are hospitalized and treated has long been controversial. The Network’s research focused not only on what is done to an individual (for example, the use of force or persuasion in involuntary hospitalization) but on the process by which the decision is reached and the action is carried out — including the importance of the prospective patient’s role in the process and his or her perception of its fairness.

Major Findings and Implications

Treatment competence. The Network found that mental illness alone — even serious mental illness — does not necessarily impair a person’s ability to make treatment decisions; most impairments are partial, temporary, and improve with treatment. On the other hand, a substantial percentage of hospitalized patients do show high levels of impairment. Future policy must take both findings into account. The Network developed a simple interview that can identify patients who need help with decision making.

Adjudicative competence. The findings here closely paralleled those for treatment competence — including the development of a user-friendly assessment tool. In addition, the Network found that several different capacities are necessary to competently participate in criminal proceedings, and that competence in one capacity doesn’t imply full adjudicative competence. Furthermore, a person may be competent for some legal purposes but not for others. Most importantly, the empirical evidence is now available to inform judges and legislators in setting standards for adjudicative competence.

Risk assessment. The Network developed a new, significantly more accurate approach to assessing the risk of violence among patients hospitalized in acute care psychiatric facilities. The instrument measures a wide variety of factors, from prior violence and antisocial behavior to substance abuse, anger, and childhood experience of abuse. Overall, the Network found that people discharged from a psychiatric hospital are generally at the same risk of violence as others in their community, but that substance abuse greatly increases their risk of violent behavior.

Coercion. The Network found that “voluntary” and “involuntary” hospitalization often did not correlate with whether or not a patient experienced the process as coercive. The researchers developed valid instruments for measuring the experience of coercion, and found that it is strongly associated with the patient’s beliefs about the justice of the process: Those who believe they had a voice in the process and were treated with respect and good faith are less likely to feel coerced, even if they were involuntarily hospitalized.

Network Web page: <http://macarthur.virginia.edu/mentalthome.html>. For additional information, contact the Program Administrator, Program on Human and Community Development, (312) 726-8000 or 4answers@macfound.org. Also see our Web page: www.macfound.org.

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Established 1988. Ended 2000.