

Re-offending by forensic patients released from secure hospitals compared to offenders with psychotic illness released from prison

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Summary

There is a high level of community anxiety about the release of mentally ill offenders whose offences have been found to be due to the effects of severe mental illness, and who have been committed to secure hospitals (Forensic Patients), especially those who have committed homicide offences. However, there is less concern about the potential for further offending of mentally ill people sentenced to terms of imprisonment for violent offences (Mentally ill offenders).

In this paper the outcome of Forensic Patients granted either conditional or unconditional release in NSW is compared to the 8-10 year outcome of a cohort of people with psychotic illness who were found guilty of serious non-lethal violent offences in the years 2006 and 2007 and sentenced by the District Courts of NSW. In summary, the rates of re-offending by the 197 forensic patients granted conditional or unconditional release were very low, whereas more than half of those with psychotic illness dealt with by the NSW District Courts returned to prison, and sooner and for longer than those who did not have mental illness. The findings should reassure the courts and members of the public about the release of Forensic Patients, but raise concerns about the efficacy of the current system for rehabilitating the many prisoners with psychotic illness. The findings would seem to justify the cost of secure hospital care and suggest the potential to reduce both harms and financial costs by enhanced rehabilitation of offenders with psychotic illness, similar to that provided to forensic patients.

Introduction

Most advanced countries have legal mechanisms for referring those found to have committed serious offences because of the effect of mental illness to secure hospitals rather than to prison. In New South Wales (NSW) the standard for referring people to secure hospital care after a finding that they were not guilty of the offence because of mental illness (NGMI) is a common law standard derived from the M'Naughten Rules, expanded following *R v Porter*. Those found NGMI become Forensic Patients who can remain so indefinitely, or until granted unconditional release by the Mental Health Review Tribunal (MHRT).

The association between schizophrenia and violent offending has been demonstrated by studies that link criminal convictions with medical records,¹ studies of the number of people in prison who are found to have schizophrenia,² and studies of medical examinations of offenders.³ Offenders with schizophrenia also have a higher rate of re-offending, including violent reoffending.⁴ Substance use and non-adherence to treatment increase the probability of violent recidivism among people with schizophrenia.⁵ Two recent large studies have highlighted the increased risk of violence after non-adherence, including a study from British Columbia, which showed low adherence to antipsychotic medication was linked to violent and other recidivism,⁶ and one from Sweden, which showed that adherence to antipsychotic medication halved violent recidivism.⁷

A disproportionate number of all offenders, especially violent offenders, are known to have psychotic illness.¹ The main reasons for the higher rates of violent offending by people with psychosis appear to be the role of acute symptoms of psychosis in triggering violent behavior, and the greater vulnerability of people with mental illness to the social factors that determine the rates of violent offending.⁸ Acute episodes of psychotic illness are often marked by the emergence of frightening persecutory beliefs usually as a result of hallucinated voices or the misinterpretation of events in the person's surroundings. For example, about half of the homicides during psychotic illness in NSW are committed in response to the delusional belief that the actions have been committed in self defence because the victim of the offence was a direct threat to the offender.⁹ Psychotic illnesses such as schizophrenia are also now known to be neuropathies mainly affecting the frontal lobes of the brain, which are important in logical thinking, complex decision-making, emotional regulation, planning and impulse control. Hence those illnesses convey an increased vulnerability to violence in certain situations, especially in

the presence of disinhibiting substances. Moreover, people with psychotic illness are more likely to find themselves in settings in which violence is more common, such as living in the open or public housing estates, which explains why people with mental illness are also far more likely to be the victims of violent crimes.

Outcome of Forensic Patients in NSW

We examined the outcome of all the Forensic Patients found NGMI in NSW in the 21 years between 1 January, 1990 and 31 December 2010, and who were subsequently granted conditional or unconditional release, initially at the recommendation of the MHRT and approved by the Minister of Health, and then by the MHRT itself.¹⁰ In that period 364 offenders received an NGMI verdict and were placed under the supervision of the MHRT, and 197 were released into the community, including 85 who were granted unconditional release. About half of those returned to hospital at least once, and about a quarter had their conditional release revoked on at least one occasion. In a follow up period averaging 8.4 years, 29 (18%) of the conditionally released patients were charged with a further offence, including 14 (8.7%) charged with a further violent offence. Of these, 5 were convicted and 5 received a further NGMI verdict, including one homicide offender who killed a fellow Forensic Patient in hospital after his conditional release was revoked.

The rates of re-offending by the unconditionally released forensic patients in an average follow up period of 7.4 years was even lower, as 12.5% were charged with an offence, including 6.3% charged with a violent offence, and 9.4% were convicted, including 4.7% convicted of a violent offence. However, none of the unconditionally released patients receiving a further term of imprisonment and there were no further NGMI verdicts. The results were similar to the outcomes reported in recent studies from other high income countries with good systems of post hospital mental health care. Homicide recidivism by released forensic patients is very rare or unknown.¹¹

Outcome of people with psychotic illness convicted of serious violent offences in NSW

In a review of the files of 661 people charged with serious non-lethal violent (SNLV) offences and dealt with in the District Courts of NSW in the years 2006 and 2007, 366 were found to

have reports by a mental health professional, usually a psychiatrist or psychologist. The reports showed that 74 (11% of the total sample) were diagnosed with a psychotic illness, of whom 7 (10% of the psychotic offenders and about 1% of the overall sample) were found NGMI.¹² The remaining 67 were sentenced by the courts, two thirds to terms of imprisonment, with a mean duration of 24 months.

The rate of re-imprisonment and the amount of time spent in custody in the 8 to 10 years up to 31 December, 2015 of the 67 people with a diagnosis of psychotic illness were compared to the re-imprisonment of those diagnosed with brain injury or intellectual disability, and other offenders, after a period of follow up of between 8 and 10 years. Of the 67 people diagnosed with psychotic illness, 54.3% spent time in prison in the follow up period, including 5 of the 23 who received a non-custodial sentence for the initial offence. The mean duration of imprisonment of those who returned to custody was 466 days, and 617 days for those who received an initial custodial sentence, and 66 days for those who received an initial non-custodial sentence, mainly served by the one offender. The rate of re-imprisonment among those with diagnosed intellectual disability (ID) or acquired brain injury (ABI) was similar, at 52.1%, 7 of 20 who received non-custodial sentences returned to custody, they spent an average of 323 days in custody, with a similar difference between those who received an initial custodial versus non-custodial sentence (415 versus 73 days). For those with no diagnosis of either psychotic illness or ID/ABI, the overall rate of re-imprisonment was 44.7%, including 53 of the 229 who received non-custodial sentences, and the mean number of days spent in custody in the follow up period was 348 days, 499 for those who had an initial custodial sentence and 87 for those who received a non-custodial sentence for the initial offence.

Those diagnosed with psychotic illness and with ABI or ID returned to custody sooner than those without either diagnosis. However, the difference was not statistically significant, possibly because the numbers were not great enough to show a difference.

Discussion

The main finding of this comparison is that whereas only a small proportion of conditionally released forensic patients re-offend, and there was no serious recidivism by those granted unconditional release in the NSW study, the rate of serious re-offending, as measured by the proportion who returned to custody and the number of days spent in custody among offenders

with mental illness, and also those with ID or ABI, is high. More than half of the offenders with those conditions returned to prison during the follow up period, and many of them spent long periods in custody.

The reasons for the low rate of recidivism among released forensic patients is obvious. They are not released until they are well and arrangements have been made for appropriate accommodation and the continuation of care. Their release is generally graded, with gradually increased amounts of leave and community access. They have fairly stringent supervision, including supervision of abstinence from alcohol and drugs. Most of all, they are generally only released into situations in which they can be relied on to continue treatment.

In once sense, the forensic patients are the “lucky few”, as they receive high quality care and rehabilitation for the duration of their supervision by the MHRT. The larger number of mentally ill prisoners are not so fortunate. The best estimate of the number of prisoners in NSW with psychotic illness is between 5% and 7%, which translates to between 600 and 800 inmates with psychotic illness at any one time, making the prison system by far the largest single mental health service in the state. Moreover, the treatment of patients with psychosis in prisons is quite inefficient. Prisoners with psychosis are usually identified and treated in the period after reception, and have the opportunity to be housed in one of the mental health areas of the NSW prison system, where there is comparatively little access to drugs, there is comparatively little in the way of psychosocial treatments, and prisoners with mental illness are often released from low security prisons in remote locations with no arrangement for further mental health care, including adherence to antipsychotic medication, other than conditions of parole. A significant proportion are released with no arrangement for accommodation and find themselves homeless.

The findings of the SNLV offender study suggest that the offenders who did not receive a custodial sentence were less likely to return to custody, which raises the possibility that imprisonment itself increases the likelihood of reoffending in this sample. However, the selection biases and the absence of any kind of control group makes this almost impossible to prove, and there would be no ethical way of conducting a study in which an arm of the study might be harmful. A Campbell review of 27 studies by Villettaz and associates¹³ found contradictory results, with 11/27 studies suggesting an increased risk of re-imprisonment after an initial custodial sentence, 2/27 finding a decreased risk, and 14/27 showing no difference. However, the authors noted the methodological difficulties in comparing those studies, especially in the threshold for imprisonment in the jurisdictions studied, and the impossibility of randomizing the

outcome in cases that had to be decided on their merits. The observed finding in the SNLV follow up study might reflect the less serious nature of the offences of those who were given non-custodial sentences. It might also reflect the skill of judges in identifying offenders who were suitable for non-custodial sentences.

The approximate cost to the community of the time spent in custody alone for the SNLV offenders with psychosis was in the order of about \$150,000 per inmate. This does not include the costs of investigation, court costs and legal costs, or any costs to victims generated by preventable criminal offences. Given that most offences by people with mental illness are committed while not adherent to antipsychotic medication, and while affected by substances,¹² two conditions that conditional release have been successful in controlling, a regime similar to conditional release for all psychotic offenders might reduce the incidence of re-offending and re-imprisonment among SNLV offenders with psychotic illness.

This comparison has a number of limitations. Firstly, the NSW Forensic Patient study was a retrospective analysis that examined a period in which the process of obtaining conditional release faced a number of administrative and political hurdles, creating a high threshold for release. A further study of the period since the power to grant release was given to the MHRT might have a different outcome. However, there is no reason to believe the process is less rigorous or that the conditions of release are less onerous. Secondly, the psychiatric diagnoses were taken from the subset of the 661 offenders for whom a professional report was available. It is likely that some of the remainder had undetected or emerging psychotic illness, or ABI, and the results understated the potential benefit of interventions. Thirdly, although the court outcomes recorded whether there was a custodial or non-custodial sentences, we did not have data on the amount of time spent on remand, and hence were unable to say whether the period of remand influenced the outcome. Moreover, we did not seek data on the types of offences committed in the follow up period, only the fact of time in custody.

With these and other limitations in mind, the comparison shows the superiority of the comprehensive rehabilitation offered to forensic patients, and the potential of a similar system of rehabilitation to reduce re-offending and re-imprisonment among prisoners with psychotic illness, paid for by reduced costs to the system as a whole.

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