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THE INSANITY DEFENSE IN MASSACHUSETTS

EXECUTIVE SUMMARY

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Since John Hinckley's attempt to assassinate President Reagan and subsequent acquittal by reason of insanity, there have been numerous public and legislative outcries for reform or abolishment of the insanity defense. Such dramatic and controversial events contribute to the belief that there is widespread abuse of the insanity defense. Mental health, legal and law enforcement professionals, as well as the general public, appear to greatly overestimate the frequency and success with which the insanity defense is used (Pasewark, 1981). The small number of studies which have been done have found that only a small percentage of criminal defendants use the insanity plea and only a minority of these use it successfully (Pasewark, 1981; Cooke, 1974; Criss, 1980).

In Massachusetts, the Hinckley verdict provided added impetus to the existing controversy over the release of potentially dangerous mental patients. Extensive media coverage of previously hospitalized mental patients who later committed homicide brought about concerns for public safety. During 1983 Massachusetts House Minority Leader, William Robinson proposed legislation that would, among other things, extend civil commitment periods, place the burden of proof in commitment hearings and not guilty by reason of insanity (NGI) cases on the defense, extend the observation period for insanity acquittees from forty days to one year, and impose a mandatory five year period of court supervision for released acquittees. (See H343-H350, 1983). A similar bill (H2107) has been proposed for consideration during 1984.

The present study focused on factors associated with length of stay for NGI acquittees in Massachusetts and a comparable group of offenders sentenced to state and county correctional facilities.

The key purposes of this study were as follows:

- To determine the lengths of stay for persons committed to Bridgewater and DMH state hospitals after being found NGI;
- To determine whether those lengths of stay are influenced by the type of criminal offense and other factors;
- To determine whether those lengths of stay are similar to lengths of stay for persons found guilty of similar offenses and sentenced to state and county correctional facilities;
- To determine the frequency with which persons found not guilty by reason of insanity become involved in the criminal justice system or with mental health hospitals following release;

In order to address these issues, data were obtained from individual records from three primary sources: the Department of Mental Health, the Department of Correction, and the Department of Probation. We also requested some summary information from each of the Commonwealth's district attorneys. The study focused upon three recent years, 1978, 1980, and 1982. These years were selected in order to represent fairly the recent use of the insanity defense while keeping the data collection effort within reasonable bounds.

Information for those years was obtained regarding 166 persons who were found not guilty by reason of insanity of criminal charges and subsequently hospitalized, 522 persons who were found guilty of one of four major offenses (homicide, attempted homicide, assault and battery, and arson) and were sentenced to a Department of Correction facility, and 203 persons who were found guilty of one of the same offenses and sentenced

to a county house of correction. A more detailed description of the methodology of this study is included in Appendix I of the full report.

Key Findings

1. There were a total of 166 persons found not guilty by reason of insanity and subsequently hospitalized in Massachusetts during the three sample years; 48 in 1978, 62 in 1980 and 56 in 1982. Sixty-five percent of these were charged with violent crimes.
2. There were eight persons adjudicated NGI on homicide charges during the three sample years. This represents 4.8 percent of the total number of persons found NGI for the sample years. Thus, there is no basis in fact to support the public perception that insanity acquittees are typically "crazed murderers".
3. Persons found not guilty by reason of insanity for murder represented 2.4 percent of the total number of persons known to have committed murder and who were subsequently institutionalized (in a hospital or jail) during the three sample years. A disposition of NGI is less likely in regards to other crimes. Less than one percent (.74) of those institutionalized for any crime during the sample years were found NGI. If one takes into account the large numbers of persons found guilty and receiving probation or suspended sentences, this percentage would decrease substantially.
4. Persons charged with assault and battery and found NGI are hospitalized for shorter lengths of stay than those found

guilty of the same charge and sent to state prisons but they stay longer than those sent to county correctional facilities. When county and state prisoners are combined, a comparison with NGIs shows longer lengths of stay for the NGI group. The NGIs were hospitalized an average of 351.5 days (n=46) while the prisoner group was institutionalized for an average of 168 days (n=1118). Eleven and one half percent of the NGIs remain hospitalized while 7.4 percent of the prisoners remain institutionalized. Assault and battery was the only criminal charge for which enough data were available to make reliable comparisons between the NGI and prisoner groups.

5. Of the eight persons found not guilty by reason of insanity of murder, two died while hospitalized, three have been released and three remain hospitalized. Because only three have been released, there are not enough data to make reliable comparisons between those found NGI of murder and those sentenced to correctional facilities.
6. Ninety-two percent of the NGIs were diagnosed as having serious mental disorders. Seventy percent of those found NGI had been previously hospitalized in a state operated in-patient unit. Thirty-two percent were rehospitalized after release from the NGI hospitalization.
7. Less than half of the NGI sample had an arrest history for violent charges prior to the arrest resulting in the NGI disposition. Eighteen percent were subsequently rearrested on at least one violent charge and 36 percent on at least one non-violent charge.

8. As of August 1, 1983, 56.4 percent of the 1978 NGI sample who had been released had been rearrested. The figures for the 1980 and 1982 samples were 42 percent and 35.1 percent respectively.
9. Approximately 57 percent of those found NGI were initially committed to the maximum security facility at Bridgewater. Of those discharged from Bridgewater, 59 percent were transferred to DMH facilities. Since there are no facilities for women at Bridgewater all female NGIs are initially committed to DMH facilities.
10. NGIs transferred from Bridgewater to DMH facilities have a median length of stay of 159 days compared to a median of 17 days for state hospital patients in general.
11. In comparison to other states where the insanity defense has been studied, Massachusetts ranks lowest in the proportion found NGI for murder and among the highest in the proportion found NGI for minor offenses.
12. In addition to the research described above, we conducted a one day survey of all persons in state operated facilities who were currently confined under the not guilty by reason of insanity statutes (Massachusetts General Laws C. 123 § 16A, 16B, or 16C). The results are described below and in Appendix II of the full report. As of August 1, 1983 there were 89 insanity acquittees hospitalized in state facilities (including the maximum security facility at Bridgewater). Fifty-eight percent of these individuals were in Bridgewater while the remaining 42 percent were in DMH facilities. Twenty-five of these NGIs were charged with homicide. Six of

these 25 are in DMH facilities. Nine of these 25 have been hospitalized over five years.

Policy Implications

A frequent argument of those advocating the abolition or restriction of the insanity defense has been that persons found not guilty by reason of insanity are allowed to "get away with murder." Our results indicate that this is not the case for murder or any other crimes. Although the sample sizes for most crimes are too small to allow definitive comparisons of length of stay, the results suggest that lengths of stay are comparable in most cases and in some, persons found NGI spend more time institutionalized than prisoners. While this finding may be reassuring to the public in general, it must be remembered that the insanity defense is designed to be genuinely exculpatory of those who are found not to be criminally responsible at the time of their offense (Gutheil, 1983). The recent Supreme Court decision in Jones v. U.S. indicates that the length of sentence for a particular offense should not be used as a basis for retention of insanity acquittees.

Recent proposed legislation includes an extension of the post trial observation period for insanity acquittees from a maximum of 40 days to a mandatory one year (H346, 1983 and H2107, 1984), and replacement of the term "not guilty by reason of insanity" with "guilty but insane" (H347, 1983 and H1946, 1984). Arguments advanced favoring these changes in the law assume that judges, psychiatrists, prosecutors, and others involved in these cases are allowing substantial abuse and/or misuse of the insanity defense. The present study has shown no indication of this. Thus, there is

no reason to believe that these changes would result in an improved system of adjudicating the insanity defense.

Another change proposed by the Legislature (S1108, 1984) would require a mandatory follow-up period (similar to probation) for all persons found NGI for major felonies. Although the need for this change was not directly examined during the current study, the fact that 56 percent of the 1978 sample were rearrested within five years of their release suggests that such a concern may be warranted. However, the law must give judges sufficient latitude to tailor the follow-up to suit the seriousness of the charge and the clinical needs of each individual case. It must also be kept in mind that a program designed to follow persons found not guilty by reason of insanity will reach only a small proportion of mentally ill offenders. The vast majority of mentally disordered offenders who come before the court do not invoke the insanity defense. Additional attention and future research should be focused on this population in order to learn more about the clinical needs of the violent mentally ill offender and what triggers that violence, and the complex interface of the criminal justice and mental health systems.

In conclusion this research has shown no indication that the insanity defense is abused or misused in Massachusetts. On the contrary, it appears that the Courts, the Department of Corrections and the Department of Mental Health are consistently handling those few individuals found not guilty by reason of insanity. While the moral and ethical debates over the insanity defense will undoubtedly continue, there is no empirical evidence that would justify altering or eliminating the defense at this time.

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