

Mandatory Treatment: Pro's and Con's

Presentation by:

Ron Honberg

Director of Policy and Legal Affairs

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**“The basis of a democratic state is
liberty”**

Aristotle, 384 BC

**“The measure of a great society is how it
treats its most vulnerable citizens”**

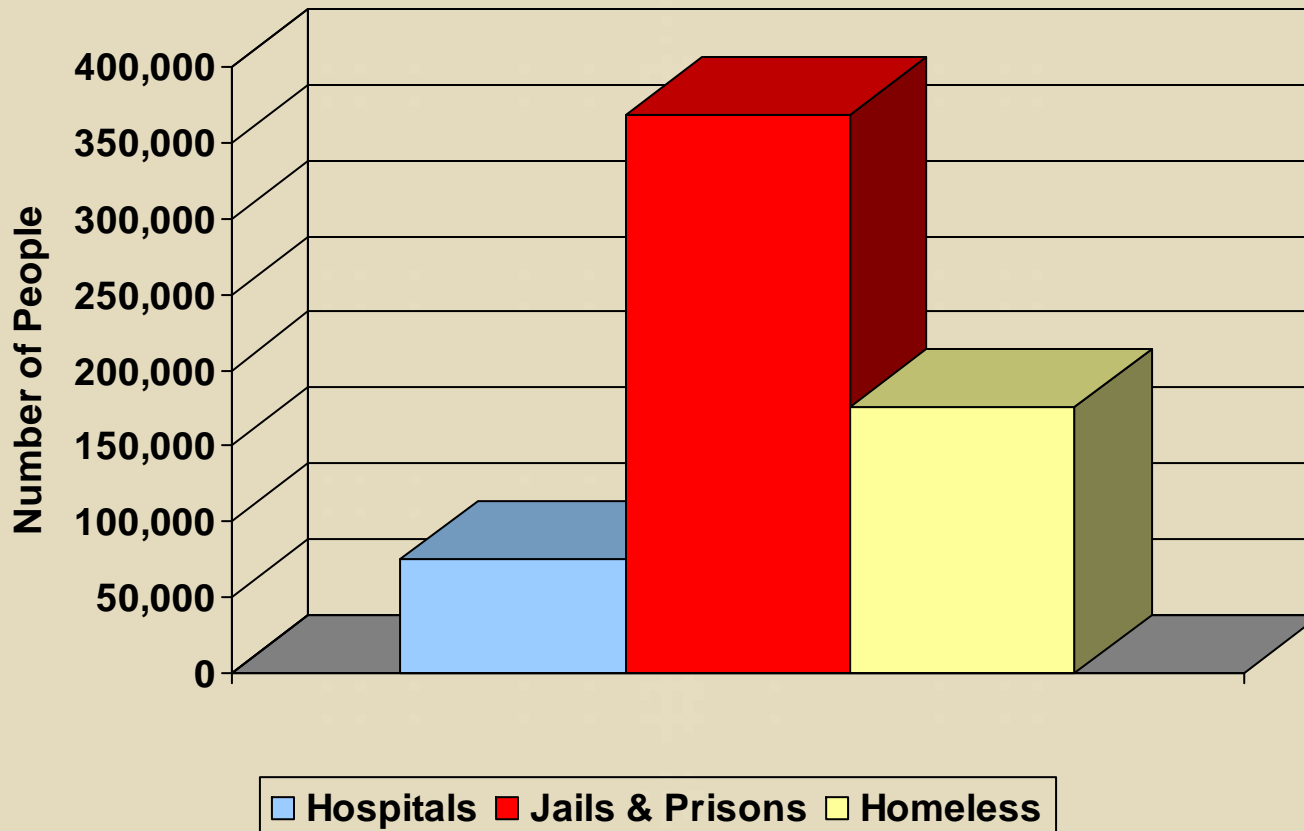
Hubert Humphrey

**“What was I thinking
when I agreed to do a
presentation on this
topic??”**

Ron Honberg, 2009



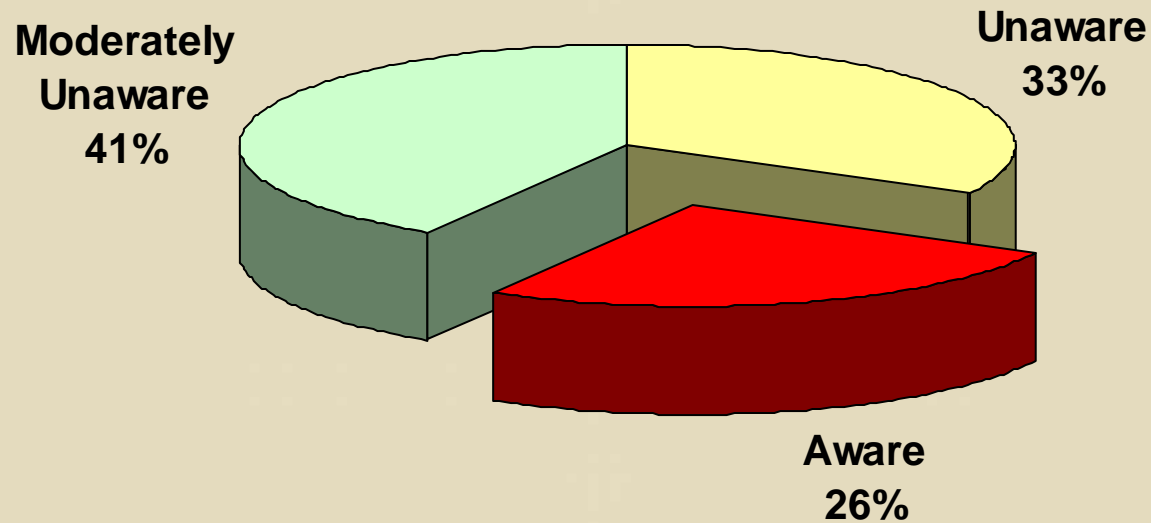
The Tragic Consequences of Lack of Treatment and Services



Court Ordered Treatment: Balancing Civil Rights and Need for Treatment

- Studies suggest that fewer than half of all people with mental illnesses receive minimally adequate treatment.
- Why?
 - In many areas, treatment is not available (particularly in rural areas).
 - Many consumers have had bad experiences with the treatment system.
 - Some people make informed decisions not to receive treatment.
 - Some people lack insight about their illness and need for treatment.

Unawareness of Mental Disorder (Xavier Amador, Ph.D)



N = 221, patients with schizophrenia

Involuntary Treatment in Tennessee

- Emergency involuntary admission to inpatient treatment
 - Title 33, Chapter 6, Part IV, Tennessee code.
- Non-emergency involuntary admission to inpatient treatment (civil commitment).
 - Title 33, Chapter 6, Part V.
- Mandatory outpatient treatment
 - Title 33, Chapter 6, Part VI.

Involuntary Commitment: Legal Criteria

- Mental illness or serious emotional disturbance (SED), and
- Substantial likelihood of serious harm because of mental illness or SED, and
- Need for care, training, or treatment because of mental illness or SED, and
- All available less drastic alternatives to hospital placement are unsuitable to meet needs of person.

“Substantial likelihood of serious harm”

- Tennessee Code, 33-6-502.
 - Threatened or attempted suicide or inflicted serious bodily harm on self, or
 - Threatened or attempted homicide or other violent behavior, or
 - Placed others in reasonable fear of violent behavior and serious physical harm, or
 - Unable to avoid severe impairment or injury from specific risks, and
 - Substantial likelihood that harm will occur unless person placed in involuntary treatment.

Involuntary Commitment and Medications Over Objections

- Involuntary commitment does not necessarily equate with involuntary medication
- Different legal criteria
 - Dangerousness/severe impairment (commitment)
 - Lack of capacity (medication over objection)
- Medication over objection may be administered under emergency circumstances for up to 36 hours.
- Individuals determined to lack capacity by clinical professional may be administered medication for up to 72 hours.
- After 72 hours, review by multi-disciplinary “Treatment Review Team” (TRC) is required.
- If person does not lack capacity, only TRC has authority to order medication over objection.

Mandatory Outpatient Treatment in Tennessee (“Conditional Discharge”)

- Only an option upon release from hospitalization.
- Available only if hospital staff concludes that:
 - Person is unlikely to participate in outpatient treatment voluntarily;
 - Person’s condition likely to deteriorate rapidly to point of likelihood of serious harm unless treatment continues;
 - Mandatory outpatient treatment is the less restrictive alternative.

What is Outpatient Commitment?

- Also known as Assisted Outpatient Treatment (“AOT”).
- Court order compelling person to participate in treatment in the community
- 43 states currently authorize AOT
- The option of AOT is rarely used in a number of states.
- Some states (e.g. Wisconsin, New York, Ohio and North Carolina) use it frequently.

NAMI Public Policy Platform

“Court-ordered outpatient treatment should be considered as a less restrictive, more beneficial, and less costly treatment alternative to involuntary inpatient treatment.” (Sect. 8.2.13)

- Related policy considerations.
 - Voluntary treatment is always preferable. (8.2.1)
 - Involuntary inpatient and outpatient treatment should be a last resort. (8.2.6)
 - Good community treatment will diminish the need for court-ordered treatment. (8.2.3)

Characteristics of a Typical AOT Law

- Time limited court orders (90 or 180) days.
- Renewable based on court determination of continuing need.
- Criteria include:
 - Diagnosis of a mental illness
 - History of non-compliance to treatment which has led to hospitalization, incarceration or dangerousness to self or others.

Characteristics, cont.

- Criteria, cont.
 - Physician's determination that individual is unlikely to participate voluntarily in treatment.
 - Physician's determination that individual is likely to benefit from AOT.
- Right to counsel, right to notice of court hearing, right to present evidence and to cross-examine adverse witnesses.
- State laws vary concerning consequences of non-compliance with treatment plans.

Potential Benefits of AOT

- Continuity of care (if properly structured).
- Less restrictive placement (remain in community).
- Less expensive than inpatient treatment.
- Therapeutically more beneficial than inpatient commitment (which is frequently a short-term emergency response).
- Less stigma than hospitalization.
- Places responsibility on mh system and providers to deliver services.

Concerns Raised about AOT

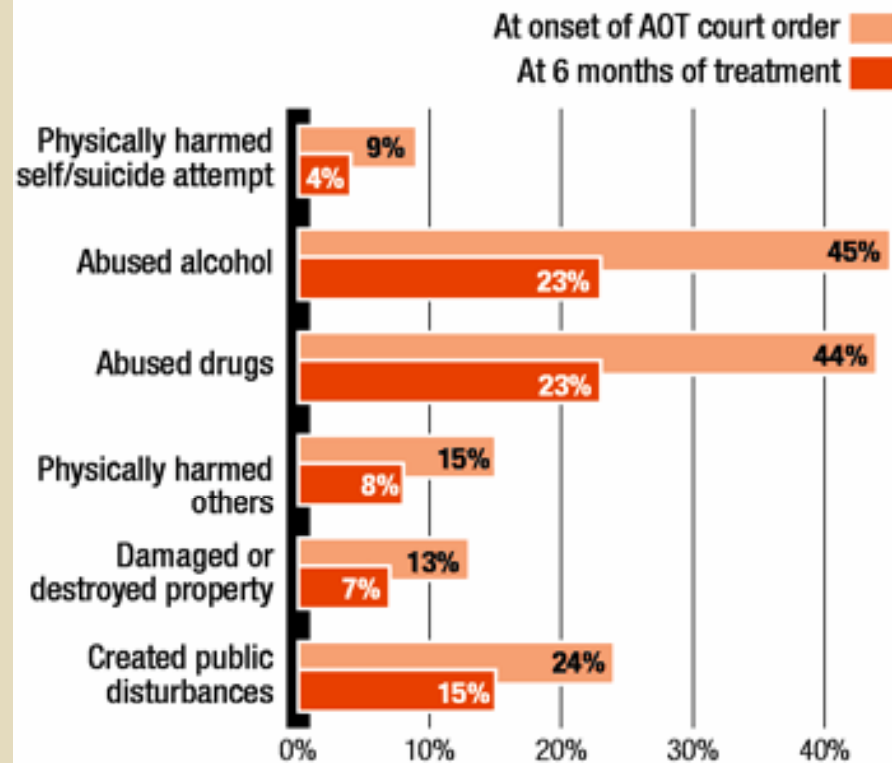
- Need adequate infrastructure of community MH services and supports.
- Effective implementation requires immediate resources.
- What happens if person does not adhere to order?
- What happens if mental health system does not adhere to order?
- Some concern that engagement in treatment lasts only for duration of order.
- Divides advocates along ideological lines.

Does AOT Work?

- Studies are mixed, but majority suggest that outpatient commitment can be effective in:
 - Reducing hospitalizations
 - Reducing lengths of stays when re-hospitalizations do occur
 - Enhancing participation in community services
- Length of order may improve outcomes
- Are positive outcomes attributable to court orders or enhanced services?
- Consumer perceptions of coercion may be influenced as much by the treatment experience as the “voluntary” or “involuntary” nature of the engagement in treatment.
 - “Voluntary” treatment can be highly coercive and “involuntary” treatment can be non-coercive.

Harmful Behaviors Decline Under Kendra's Law

Researchers at the New York Office of Mental Health analyzed data it collected on approximately 2,700 people who had received assisted outpatient treatment (AOT) under Kendra's Law since 1999. They found a significant decline in the percentage of people who reported harmful behaviors after receiving six months of AOT.



Source: New York State Office of Mental Health, March 2005

Other treatment engagement options

Assertive Community Treatment (ACT) – proven effectiveness in helping people most at risk of “falling through the cracks.”

Psychiatric Advance Directives – opportunities for consumers to state treatment preferences, assign substitute decision-makers, when competent.

Peer services and supports – although limited research, mutual support, shared experiences, may lead to good outcomes.

Conservatorships/ treatment guardianships - See Tennessee Code, Title 34.

AOT: Information and Resources

- Treatment Advocacy Center, strong supporters of AOT, www.psychlaws.org
- Bazelon Center for Mental Health Law, strong opponents of AOT, www.bazelon.org
- New York State Office of Mental Health, Section on Kendra's Law, http://www.omh.state.ny.us/omhweb/Kendra_web/KHome.htm
- NAMI public policy platform, section 8 (legal issues including court ordered treatment), http://www.nami.org/template.cfm?section=NAMI_Policy_Platform&Template=/ContentManagement/ContentDisplay.cfm&ContentID=38253

Thank You!

Ron Honberg
703-524-7600
RonH@nami.org