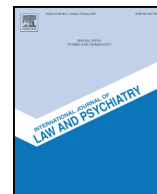




Contents lists available at ScienceDirect

International Journal of Law and Psychiatry



Public health system and psychiatry in the treatment of ‘dangerous’ young offenders in Brazil

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ARTICLE INFO

Available online xxxx

Keywords:

Mental health
Justice
Young offenders
Civil commitment
Treatment

ABSTRACT

We describe the Experimental Health Unit, a special forensic mental health facility in Brazil, created by court order and administered by the São Paulo Department of Health. It was designed for young offenders receiving compulsory inpatient treatment for severe personality disorders. All nine patients admitted to date came from Foundation CASA (a socio-educational centre of assistance for adolescents, the juvenile correctional centres managed by the São Paulo state Department of Justice). The court decision is questionable, relying on a new interpretation of the Child and Adolescent Statute and the law that regulates psychiatric treatment in Brazil. The public health system and psychiatry have been supporting the isolation of some individuals from society, based on the seriousness of their crimes and possession of particular personality characteristics. The decision to commit and send a small group of personality disordered individuals to this unit as inpatients is an unfair decision, since jails and correctional centres hold a high number of psychopathic who have also committed barbaric crimes. The central mental health issue is the role that the public health system should play in the custody of dangerous people; the cost-effectiveness of this model, the accuracy of risk assessment and tractability of people with severe personality disorders are also debatable. From a legal perspective, the operation of this facility raises questions about age of legal majority, the maximum period of incarceration of young offenders and use of whole-life sentences for certain types of crimes and criminals in Brazil.

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1. Introduction

The Experimental Health Unit (*Unidade Experimental de Saúde*), in its current form, was created in Brazil by a São Paulo state decree. Originally designed as a Winicott-oriented special unit for very young offenders with relational problems, to be operated in partnership with the Federal University of São Paulo and Foundation CASA (the São Paulo correctional centre for young offenders), its original purpose has changed. Decree nb 53427/08 reads:

“[The Governor of São Paulo state] considering the orders from the Judiciary to the Executive to admit as inpatients in psychiatric facilities, under restriction, adolescents and young adults who have committed serious offences, have a diagnosis of personality disorder,

are considered highly dangerous persons, and had their ‘social and educational internment’ commuted to a ‘protective measure’, ... decrees hereby as follows:

1st Article – It is hereby created, within the state Department of Health, directly under the Chief of Staff’s administration, the Experimental Health Unit.

2nd Article – The purposes of the Experimental Health Unit are:

I Admit highly dangerous adolescents and young adults diagnosed as personality disordered, exclusively sent by courts, for psychiatric treatment under restriction:

- a) discharged from Foundation CASA [a socio-educational centre of assistance for adolescents, one of the juvenile correctional centres managed by the São Paulo state Department of Justice]
- b) civilly committed by family courts;

II Provide to the inmates human treatment, according to the principles laid down in the Federal Law nb 89/90, from July 13th

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1990, which establishes the Child and Adolescent Statute, and upcoming amendments.¹

All aspects of the legal treatment of minors (those under 18 years old, also referred to as ‘juveniles’ in the context of the penal system) in Brazil is regulated by the Child and Adolescent Statute (ECA), namely Federal Law nb 8069/90 cited above (all Brazilian legislation is available at: www.lexml.gov.br). Crimes and contraventions are considered ‘infractions’ (Article 103), and severe and violent infractions can be punished with internment in correctional centres, up to a maximum period of 3 years. Liberation before the 21st birthday is mandatory. Article 121 of the ECA reads:

“The internment constitutes deprivation of liberty, and is under the principles of briefness, exceptionality and respect for the developing person.

§ 3rd the maximum imprisonment term will not exceed the period of 3 years in any circumstances;

§ 4th On reaching the limits established on the previous paragraph, the adolescent must be placed at liberty, or on a ‘semi-liberty’ or ‘assisted liberty’ regimen.

§ 5th Liberation before the 21st birthday is mandatory.”

As the extract above demonstrates, subjective issues such as risk, severity of crime or criminal profile cannot override the chronological criteria, meaning that every single juvenile offender must be released after three years of internment or on his or her 21st birthday, whichever comes first. The criteria are very straightforward and do not differentiate occasional offenders and recidivists, petty criminals, offenders with mental disorders or severely aggressive and violent young offenders; even serial killers and serial rapists are subject to these provisions.

In 2007 there was strong and consistent pressure from the São Paulo Juvenile Courts (DEJJ) on the state Departments of Health and Justice, demanding that the state Department of Health admit and treat young offenders with severe personality disorders, particularly sociopaths and psychopaths whose sentence (the so called ‘socio-educational measures’) had expired, and who therefore had to be released from confinement. This movement was triggered by a well-known and high profile case, that of a rapist and murderer who was about to be set free under the law described above. There was popular commotion and pressure despite the fact that many other cases of similar or even greater severity are released by juvenile courts every day, out of the spotlight, under the ECA. The purpose of this article is to discuss the role of the public health system in treating individuals with personality disorders and psychopaths, discussing what is possible, what is not, and what kind of risks and costs are worth taking, given the current scientific and statistical evidence.

This is a fundamentally an essay about Brazilian legislation and public policies which affect a specific population, namely juvenile offenders (minors) in São Paulo state whose custody in a secure facility was based on their mental health status. We have analysed critically the pertinent laws (i.e., ECA, Penal Code and Federal Law 10,216/2001), state administrative decrees and court sentences in order to initiate academic debate over this unusual situation, which has gained national and international attention.

¹ All São Paulo state decrees and court sentences are available at: www.imprensaoficial.com.br.

2. Pathway to the Experimental Health Unit

All nine inmates/patients sent to the Experimental Health Unit by court order since 2007 were assessed by official state institutions, either the Institute for Social Medicine and Criminology of São Paulo state (IMESC) or the Legal Medicine Institute of São Paulo (IML), and/or by qualified doctors from the Institute of Psychiatry at the Clinics Hospital, University of São Paulo School of Medicine (Ipq-HC-FMUSP); and received a diagnosis and recommendations for treatment. This is a standard procedure, and hundreds of inmates undergo psychological and psychiatric assessments when admitted to Foundation CASA, the juvenile correctional centre in São Paulo. Whenever a psychiatric disorder is diagnosed, treatment is started promptly in loco, by a trained multi-disciplinary mental health team. Personality disorders, in Brazilian forensic psychiatry, are not considered incapacitating mental illnesses of the same order as schizophrenia and bipolar disorder. The mainstream view is that most of these individuals can understand right and wrong (cognitive capacity), but might have some problems with impulse control (volitional capacity) (Morana & Camara, 2006). However, there is not usually a consensus on a diagnosis of impulse control impairment in these cases. Liability to stand trial thus depends on the expert opinion and understanding of the case, and the criminal context. In adult criminal justice, there is a statutory requirement to take into account both cognitive and volitional capacity, as well as the role of the disorder in offending (causal relationship) (Morana & Camara, 2006). Cognitive and volitional capacity are important considerations in the appraisal of mental capacity to stand trial as adults; this opens the way for individuals with personality disorder to plead ‘diminished capacity’ or ‘diminished responsibility’ and paradoxically, receive a less severe sentence. The great majority of the Experimental Health Unit’s patients would be considered fully responsible if they were subject to these criteria. However, these concepts in Brazilian penal law do not apply to juvenile offenders (those under 18 years old), who are judged under the ECA principles. In Brazil, juvenile offenders cannot be sent to forensic hospitals, which are part of the adult penal system.

For these individuals sent to the Experimental Health Unit, psychiatric assessments provided the technical basis for an innovative initiative. Having no legal means to keep these adolescents in a correctional facility beyond their 21st birthday, or after a three-year period of imprisonment, treatment for a mental disorder emerged as the only pretext for responding to society’s demand that they not be released. In Brazil, the Federal Constitution strictly forbids whole-life sentences and there is no capital punishment. The age of majority for criminal punishment is 18 years, this is controversial and has been debated by every sector of society: lay people, the media, human rights activists, Congress and legal professionals. From a legal perspective the decision to commute internment in a juvenile correctional facility to detainment in a forensic mental health unit when there is no evidence that the individual is suffering from an acute mental illness is questionable, being neither provided for nor regulated by the ECA. Strong social pressure and pressure from within the justice system to keep certain kinds of individuals apart from society permanently, on the basis of their intrinsic personality characteristics, the seriousness of their offences, and the risk of recidivism, was behind the majority of the nine compulsory admission orders received by the unit. These decisions were well accepted by the Brazilian society. Regardless of the merits, it seems that psychiatry and the public health system are being used to justify the increases in the length of sentences and compulsory inpatient treatment, without precise rules. The sentences have been variously justified on the grounds of treatment, public protection, safety and popular demand. The legal argument used was Federal Law nb 10,216/01, which regulates psychiatric treatment in Brazil (Ministry of Health, 2004). According to this law, compulsory admissions are those determined by court order, and cannot occur without well justified medical request. The 4th Article states: “inpatient treatment, of any kind, will

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