Criminality of Discharged Insanity Acquittees: Fifteen Year Experience in Maryland Reviewed

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In the wake of the insanity acquittal of a would-be presidential assassin, there have been several recommendations directed toward limiting or abolishing the defense of insanity for criminal charges.[1,2,3] In Maryland, the Governor appointed a task force to study the issue and to advise the community of whether reform of existing law should be undertaken.[4,5] While there is some data on the follow-up of insanity acquittees, most studies reflect a relatively brief period of aftercare. Pasewark *et al.*[6] compared forty-two men and eight women who had been found not guilty by reason of insanity (NGBRI) with a demographically matched group of incarcerated felons to study length of time of institutional detention and rearrests over a five-year period after their discharge. Morrow *et al.*[7] also have reported a five-year follow-up of mentally disordered offenders. A review of the literature, however, has failed to reveal a longer-term follow-up study of the arrests and convictions of discharged insanity acquittees. This lack of reported experience about the fate of discharged insanity acquittees over a substantial period of time in the community is a problem faced not only by the Governor's Task Force but also by other policy-making and advisory groups. The youth of most insanity acquittees, the seriousness of their original charges, and the potential chronicity of their mental illnesses suggest the need for study of their criminal experience over longer periods of time than has been done so far.

The objective of the present study was to report a compilation of the arrests, convictions,and incarcerations of a large cohort of insanity acquittees in Maryland over a fifteen-year period after discharge from the hospital. The study also attempted to assess the seriousness of the new offenses in relation to the potential for physical harm to members of the community and to assess the adequacy of the five-year time frame for aftercare currently recommended by statute. Such data may assist the Governor's Task Force in its deliberations on the future of the insanity defense in Maryland.

Clifton T. Perkins Hospital Center (CTPHC) is a 246-bed security hospital that provides pretrial psychiatric examinations for men accused of felonies in all judicial circuits and a comprehensive treatment program for men adjudicated NGBRI of violent offenses. The average length of inpatient treatment for insanity

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acquittees at CTPHC is more than two years.[8] At the time of their release, insanity acquittees are placed on a "five-year conditional release" as set forth in the Annotated Code of Maryland.[9]

Conditional release provides the Mental Hygiene Administration with a legal mandate to monitor an insanity acquittee's compliance with certain treatment-oriented conditions imposed by court order when the patient is discharged. Specific requirements of each conditional release are developed over a period of several months by the treatment team in conjunction not only with the patient himself but also with family and any involved community support systems. A typical conditional release protocol incorporated in a judicial order[10] includes such items as place of residence, location of outpatient treatment, prohibitions against substance abuse, and limitations on travel outside the state.

Maryland's conditional release statute also includes a procedure to rehospitalize a patient for evaluation should he or she fail to comply with the conditions of release. Following such evaluation, the conditional release may be reinstated, modified, or revoked at a judicial hearing. These statutory provisions facilitate the identification of patients whose conditional releases had begun fifteen years ago. Review of their long-term experiences with the criminal justice system forms the subject of this study.

Methods

The names of all insanity acquittees who had been discharged from inpatient treatment at CTPHC between August 1967 and June 1976 were gathered from the records maintained by the hospital. At the time of the study's inception, all these patients had been discharged from CTPHC and were in the community for at least five years. All had participated in and completed the conditional release program. An exhaustive investigation of the fate of these individuals was then carried out. Data collection led to a compilation of numbers of arrests, criminal charges, convictions, incarcerations, and insanity acquittals of the group until the defined study termination date of June 30, 1982.

For each patient, the arrest records maintained by the Federal Bureau of Investigation were requested. Additionally, arrest records maintained by the Maryland State Police were investigated. Data were sought on arrests and convictions from the various State's Attorneys offices, families, follow-up therapists, and the office of the Public Defender. Assisting in the data collection were representatives from the mental health division of the public defender's office and from the office of the State's Attorney for Baltimore City. Incarceration records were checked with the Division of Corrections of the Department of Public Safety of Maryland. All data were tabulated by the authors and wherever possible cross-checked against reports obtained from independent sources. The study was entirely retrospective. No central computerized data collection facility exists in Maryland that encompasses the material sought, and therefore much of the data was pursued on an individual case-by-case basis.

Table 1. Arrest Records of the 86 Discharged Patients

	Study Cohort Totals	Group Arrested After NGBRI	Group not Again Arrested
Number of patients	86	48	38
Percent of total group	100	56	44
Number arrests before NGBRI	340	239	101
Percent of total group	100	70	30
Arrests per pt before NGBRI	4	5	2.7
Number arrests after NGBRI	130	130	0
Percent of total group	100	100	0
Arrests per pt after NGBRI	1.5	2.7	0

Results

The CTPHC receives virtually all men who are adjudicated NGBRI after felony charges in Maryland. Ninety-one were found to have been discharged from inpatient treatment between August 1967 and June 1976. At the conclusion of the data collection in mid 1982, 60 were between five and ten years postdischarge and 31 were between ten and fifteen years postdischarge from the hospital. The median of the group had been in the community for 9.5 years. Of the originally identified group, reliable data was found concerning 86 patients. Eighty-one of them originally had been found NGBRI for offenses presenting a clear potential for physical harm to others in the community.

Arrests Table 1 presents a summary of the arrests recorded for the entire study cohort of 86 patients. The two groups identified reflect a difference in reported arrests after their discharge from the hospital. One group appears not to have been arrested at all, while the other reflects an accumulation of 130 arrests. The entire cohort shows substantially fewer arrests following discharge from the hospital than are reported prior to the original admission.

Charges Criminal charges brought against the 86 insanity acquittees after their discharge from the hospital total 170 over the entire fifteen-year study period. Therefore, many arrests resulted in multiple criminal charges. In summary, of 86 patients, 48 are reported to have been arrested on 130 occasions and to have accumulated a total of 170 criminal charges during a fifteen year continuous period of time following discharge from hospitalization secondary to insanity acquittal. Of the 170 criminal charges, 100 (59 percent) occurred within the first five years after discharge, 66 (39 percent) during the next five years, and 4 (2 percent) from the eleventh until the fifteenth year.

Disposition of the Individuals The 86 patients concerning whom reliable data was found represent 94.5 percent of the total of 91 insanity acquittees identified (no data was discoverable in reference to five patients). Four were again found NGBRI. The remaining 82 patients fell into the two categories of convicted (26 patients or 28.6 percent) and not convicted (56 patients or 61.5 percent).

Disposition of Criminal Charges A detailed account of the disposition of the 170

Table 2. Disposition of all Criminal Charges (170) Brought against the 86 Discharged Insanity Acquittees

Disposition	Subtotal	Total	Percent
Not convicted		86	51
Stet	14		
Nolle pros	24		
Dismissed	21		
Not guilty	9		
NGBRI	5		
Probation before verdict	9		
Investigated & released	1		
No contest, adjudication waived	1		
Abated by death	1		
Abated	1		
Convicted		80	47
Probation	30		
Fine	17		
Incarceration	32		
Unknown	1		
Not yet identified		4	2
Total number of charges	170	170	100

criminal charges is presented in Table 2. The data reflect all dispositions recorded for charges incurred during the entire fifteen-year study period. Thirty-two charges resulted in incarceration. In all, 11 patients were incarcerated as a result of these 32 charges. More than half the charges did not result in criminal conviction.

Convictions The 26 patients who were convicted of crimes during the fifteen-year period accumulated 80 convictions. The range of frequency of convictions extends from one to a total of ten per individual. Table 3 (page 378) presents a detailed tabulation of all convictions recorded for the entire 86 patients. The data indicate a total of 32 incarcerations of 11 individuals in the group. Nine were incarcerated on multiple occasions. The proportion of the study group incarcerated was 12.8 percent (11 of 86) and not incarcerated was 87.2 percent (75 of 86).

In the Graph, the incidence of new convictions over time is illustrated. The number of convictions per year appears relatively constant for the first eight years.

Insanity Acquittal In Table 4 (page 380), recurrent insanity acquittals are tabulated.

Potential for Physical Harm An examination of the seriousness of the subsequent charges is facilitated by Table 5 (page 380), which extracts from Table 3 all convictions assessed by the authors to have clear potential for physical harm to others. In all cases except numbers 1, 10, and 12, the subsequent convictions were for less serious offenses with less potential for physical harm than the original offense resulting in insanity acquittal.

Graph. Incidence of New Convictions against the 86 Discharged Insanity Acquittees

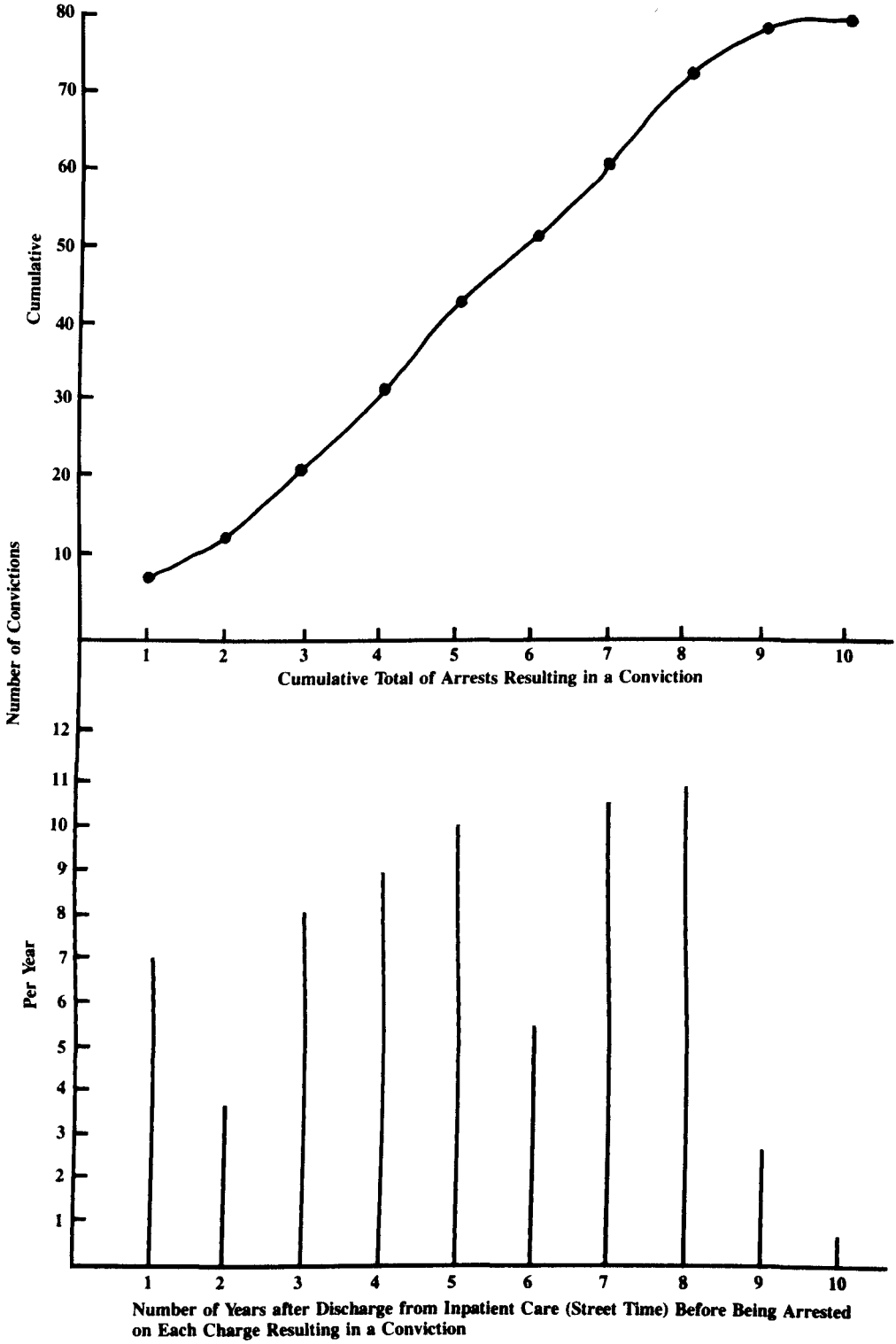

Table 3. Convictions against the 86 Discharged Insanity Acquittees

Original NGBRI	Subsequent Charge	Disposition	Number of Years from Discharge to each Conviction
Murder	Card game	Probation	3
Murder	Expired license	Fine	8
Murder	Drinking in public &	Probation	6
	resisting arrest	Probation	6
	Attempted theft	Incarceration	9
Rape/kidnapping	Possession of Marijuana	Fine	6
Rape/A & B (NGBRI) (over hospitals' objection)	Murder & rape	Incarceration	1
Rape	Shoplifting	Fine	1
Rape	Forgery	Probation	1
Rape/sodomy	Disorderly conduct	Fine	8
Assault W/I murder	Nonsupport	Probation	5
Assault W/I murder	Resisting arrest	Fine	5
	Assault	Fine	5
	Failure to pay fine	Incarceration	5
	Disorderly conduct	Fine	6
	Assault	Incarceration	6
	Possession of marijuana	Fine	7
	Violation of probation	Fine	7
	Urinating in public	Fine	7
	Possession narcotic paraphernalia	Incarceration	7
	Resisting arrest	Incarceration	7
Assault W/I murder	Shoplifting	Probation	5
Assault W/I murder	Breaking & entering	Incarceration	5
	Malicious destruction	Incarceration	6
Handgun violation	Larceny	Incarceration	1
	Telephone misuse	Incarceration	1
	Larceny	Probation	3
	Handgun violation	Incarceration	4
	Malicious destruction	Probation	6
	Disorderly conduct	Fine	6
	Violation of probation	Incarceration	4
	Assault of guard	Incarceration	4
Armed robbery	Disorderly conduct	Fine	2
	Disorderly conduct	Incarceration	7
	Assault	Incarceration	7
	Disorderly conduct	Incarceration	7
	Assault (common)	Incarceration	7
Armed robbery	Assault	Fine	2
	Larceny	Probation	9
	False pretences	Probation	9
Armed robbery	3° sex offense	Incarceration	6

Discussion

A cohort of 86 insanity acquittees, all of whom had been discharged from the hospital at least five (and in some cases as long as fifteen) years, has been reviewed from many perspectives. This group was all the men found NGBRI in connection with felony charges in Maryland between mid-1967 and mid-1976. A comprehensive collation and review of their criminal records from time of discharges until mid-1982 was the goal of the data collection.

One disadvantage of a retrospective study is the possibility that the data search failed to reveal all infractions perpetrated in all jurisdictions by individuals in the

Table 3. continued

Original NGBRI	Subsequent Charge	Disposition	Number of Years from Discharge to each Conviction
Robbery/deadly weapon (followed out-of-state)	Poss of handgun	Incarceration	1
	Larceny	Probation	1
	Narcotics	Incarceration	1
	Dangerous drugs	Unknown	2
	Narcotics	Probation	3
	Narcotics	Probation	3
	Obstruction of justice	Incarceration	4
Arson and assault	Malicious destruction	Incarceration	1
	Poss marijuana	Probation	2
	Disorderly conduct	Incarceration	2
	Assault	Fine	5
	Assault on police	Probation	7
	Driving intoxicated	Probation	7
	Driving W/O license	Fine	7
Assault/robbery	Gambling	Probation	3
Assault/robbery	Auto theft	Incarceration	2
	Auto theft	Incarceration	2
	Escape	Incarceration	4
Assault/robbery	Poss marijuana (GA)	Fine	1
	Disorderly conduct	Probation	3
	Possession marijuana	Probation	3
Assault	Larceny	Probation	6
	Theft	Probation	8
	Deadly weapon	Probation	9
Assault/robbery	Disorderly conduct	Fine	7
	Shoplifting	Probation	7
	Violation of probation	Probation	8
Assault	Assault and battery	Probation	3
	Disorderly conduct	Probation	3
	Assault and battery	Probation	3
Breaking and entering/ grand larceny	Assault W/I rape	Probation	1
	Breaking & entering	Incarceration	4
	Larceny	Incarceration	4
	Burglary	Incarceration	4
	Breaking & entering	Incarceration	5
	Grand larceny	Incarceration	5
Housebreaking	Unauthorized use	Probation	2
	Violation of probation	Probation	1
Murder	Arson	NGRI	9
Murder	Assault (by slapping pedestrian)	NGRI	6
Intent to rape/burglary	Breach of peace (Connecticut)	NGRI	1
Destruction of property	Assault and battery	NGRI	7
	Discharge of firearm	NGRI	7

cohort. Every effort was made toward a complete accounting of all arrests, charges, convictions, and incarcerations. The authors believe that few if any significant convictions escaped identification. Moreover, the retrospective approach enabled a relatively rapid compilation of a long-term experience at a time when representatives of the medical and the political communities are particularly in need of data on which to base both sound practice and sensible legislation.

Many questions are not addressed in the present study, and some suggest the

Table 4. New Insanity Acquittals

Original NGRBI	Subsequent Charge	Disposition	Number of Years from Discharge to Conviction
Murder	Arson	NGRI	9
Murder	Assault (by slapping pedestrian)	NGRI	6
Intent to rape/burglary	Breach of peace (Connecticut)	NGRI	1
Destruction of property	Assault and battery	NGRI	7
	Discharge of firearm	NGRI	7

Table 5. Convictions Against the 86 Discharged Insanity Acquittees Having a Clear Potential for Physical Harm

Original NGBRI	Subsequent Conviction	Disposition	Number of Years from Discharge to Conviction
1. Rape/A&B	Murder	Incarceration	1
(NGBRI over hospital's objection)	Rape	Incarceration	1
2. Assault W/I murder	Assault	Fine	5
	Assault	Incarceration	6
3. Assault W/I murder	Breaking & entering	Incarceration	5
4. Handgun violation	Handgun violation	Incarceration	4
	Assault of guard	Incarceration	4
5. Armed robbery	Assault	Incarceration	7
	Assault (common)	Incarceration	7
6. Armed robbery	Assault	Fine	2
7. Armed robbery	3° sex offense	Incarceration	5
8. Robbery with deadly weapon	Possession of handgun	Incarceration	1
9. Arson & assault	Assault	Fine	5
	Assault on police	Probation	7
	Driving intoxicated	Probation	7
10. Assault	Deadly weapon	Probation	9
11. Assault	Assault & battery	Probation	3
	Assault & battery	Probation	3
12. Break & enter/ grand larceny	Assault W/I rape	Probation	1
	Breaking & entering	Incarceration	4
	Breaking & entering	Incarceration	5

need for further investigation. One is the apparent reduction in arrest rate experienced by the cohort after their discharge from the hospital. They were arrested 2.5 times less frequently after their insanity acquittal as a group, and in 44 percent of cases their arrest rate became zero. It is likely this experience is a direct result not only of their hospital treatment but also of the five-year conditional release program described herein and possibly the halfway house program described in an earlier publication.[11] A study is now under way to elucidate factors differentiating the group with subsequent arrests from those who were not rearrested. While it is difficult to directly compare arrest rates in this study with those reported by Pasewark *et al.*,[12] they found comparability of outcome between exconvicts and exacquittees. The reduction in criminality noted in this cohort after discharge from the hospital may reflect Maryland's stricter aftercare requirements.

In a prior study of 65 insanity acquittees on conditional release in Maryland, Madden[13] found only a few factors that correlated with successful outcome. These have been summarized by one of the authors elsewhere.[14] A detailed review of premorbid psychosocial variables and of the treatment course of the present cohort may clarify some factors distinguishing the group with no subsequent arrests from the group that appeared to have only a reduction in arrests. Perhaps further analysis also will identify variables linked to poor outcome. It was of interest that the most severe of subsequent offenses, murder, was reported to have been committed by the only individual in the cohort who had been found NGBRI over the hospital's objection. The court's reliance on the forensic hospital's opinion in determining the ultimate verdict when the insanity defense is raised (reported by Steadman[15]) would appear to be sound in this context.

Although arrest rates have been used as a measure of recidivism in prior studies, the authors believe that closer examination of charges and convictions is also necessary and that the latter parameters may be more reliable indicators of criminality. While arrests may reflect polymorphous "trouble" in the community, arrests in this patient group often do not truly reflect recurrent significant criminality. Arrests often are employed as a mechanism of rehospitalization. A former insanity acquittee may be subject to arrest on lesser suspicion than someone not known to the police when a significant offense occurs in the community. Additionally, arrests of known mental patients may reflect community bias. Finally, recidivism as reported by corrections actually refers to reappearance of individuals in that jurisdiction's prisons, a more stringent parameter than convictions. Accordingly, reports citing reconviction or reincarceration rates may enable comparisons to be drawn more readily from the literature generated by the criminal justice system. The authors did not view rehospitalization as an indication of criminality and did not, therefore, include such data in the current report.

One objective of this study was to assess the appropriate length of time that supervised aftercare should be imposed. It was discovered that although nearly 60 percent of new criminal charges were incurred during the first five years after discharge from the hospital, a substantial number of charges occurred during the next five years. These same proportions apply to convictions as well (from Table 4). Practically no new charges were reported beyond ten years, but the number of patients in the cohort who had been in the community for much more than ten years was relatively small. It would appear that Maryland's policy of at least five-year supervised follow-up in most cases with the possibility of further extension for cause is appropriate. Further analysis of the present study cohort may enable refinement in the assessment of the length of time necessary for prudent aftercare.

A qualitative review of the convictions listed in Table 3 revealed that many were rather trivial. Of further interest was the not-unexpected finding that relatively few individuals accounted for much of the recidivism. Although the authors rated three convictions as having been for offenses at least as hazardous as the original ones, probation was the court disposition for one of them (Table 5,

Case 12, assault with intent to rape). The most severe case was a subsequent homicide and was a controversial insanity acquittal in the original trial.

Anecdotally interesting was the finding that of the recurrent insanity acquittals, the one with the least dangerous original offense (Table 4, destruction of property) incurred the most serious later charges. In general, the subsequent NGBRI findings were for substantially less dangerous infractions.

Most striking, however, was the finding that 87 percent of the study cohort was not reincarcerated during an almost ten-year follow-up despite many arrests. The authors believe the relatively low rate of incarceration reflected that in most instances, the nature of the actual behaviors leading to the charges did not clearly present significant likelihood for harm to others. The courts would have had, in the authors' judgment, little hesitation to incarcerate former insanity acquittees convicted of crimes with potential for danger in the community, especially after considering the severity of their original offenses. Such reasoning would support the notion that many of the convictions listed in Table 5 appear to represent more serious crimes than were actually perpetrated. For example, assault charges cover a wide range of behaviors.

In summary, these results suggest that notwithstanding very serious original charges, insanity acquittees as a group do not present a substantial danger to public safety when discharged from the hospital. Furthermore, a five-year time frame for supervised aftercare appears to cover the period of greatest risk for criminal recidivism in this population. Additional study may clarify parameters in treatment, hospital course, demographics, or prior psychosocial experience associated with favorable or unfavorable outcome.

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