Research Note

CRIMINAL PROSECUTION OF THE MENTALLY DISORDERED

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This study examines the interim and final dispositions of 379 criminal cases involving mentally disordered defendants. The findings indicate that a history of mental health problems tends to elicit a lenient penal sanction, even in the face of a criminal history. Furthermore, these findings show that the court used its authority to impose mental health treatment on criminal defendants as often as it imposed punishment.

I. INTRODUCTION

The fate of persons who cannot be civilly committed to mental institutions has been a troubling question ever since civil commitment standards and procedures were made more stringent in most jurisdictions in the mid-1970s. Some suspect that the criminal justice system is absorbing much of the population rendered untouchable by the new civil commitment laws (e.g., Abramson, 1972; Blair, 1973; Bonovitz and Bonovitz, 1981; Bonovitz and Guy, 1979; Dickey, 1980; Geller and Lister, 1978; Matthews, 1970; Roesch and Golding, 1979; Steadman *et al.*, 1978a; Steadman *et al.*, 1983; Steadman and Ribner, 1980; Steadman *et al.*, 1978b; Stelovich, 1979). If this is so, a variety of decisions, decision makers, and agencies would necessarily be involved, at least tacitly, in effecting control over this population. However, the literature has neither established the extent

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to which criminal law authority is being used to mandate mental health treatment nor examined the prosecutorial and judicial decision making that would support such a result (Teplin, 1983: 64). This note reports findings of research examining the disposition of criminal cases involving mentally disordered offenders.

II. THE DATA

The data for this study pertain to all adult criminal defendants in a single, county-wide jurisdiction who were identified as mentally disordered by a mental health screening unit between 1981 and 1983, inclusive.[1] The mental health screening unit, housed in the district attorney's office, is staffed by social service personnel charged with the tasks of identifying mentally disordered criminal defendants, ascertaining through records checks any history of mental health problems or treatment, and making treatment recommendations to prosecutors and judges. The screening unit staff scan daily charging lists to spot names of persons known to them from previous contact. In addition, defense attorneys, prosecutors, police officers, and judges sometimes ask the screening unit personnel to interview a defendant thought to have a mental disorder. The records maintained by the mental health screening unit served as the main source of data for this study and yielded the following information: demographic data, including education and employment, number of known prior mental health system contacts; previous and latest diagnoses; nature of prior mental health treatment (e.g., voluntary/involuntary, inpatient/outpatient, medical/nonmedical); ongoing treatment prescribed and cooperation in such by defendant; current offense; current charge (formal); liberty status; identity of criminal justice decision maker; and the current mental health treatment recommendation. Master files on clients maintained by the parent agency (a

[1] Some groups of mentally disordered persons who commit criminal-like offenses and are apprehended are excluded from or underrepresented in this study. Juveniles are excluded, as they are not treated as criminal defendants. Adults arrested for criminal-like behavior but officially processed in the city court, which has civil jurisdiction only, are absent from these data for the same reason. The city court typically is the arena of adjudication for minor offenses of the sort mentally disordered persons are likely to be accused (e.g., not paying a restaurant bill, disorderly conduct, and loitering), and although there is reason to believe that many mentally disordered offenders are processed in the city court for these minor offenses, it is impossible to determine the exact number. Also excluded from these data are individuals who might have a mental disorder that is never recognized by court personnel or, if recognized, is never brought to the attention of the mental health screening unit staff. All available evidence, although not conclusive, suggests that these latter two possibilities occur very rarely.

private, nonprofit, social service agency) were consulted to supplement data missing from the screening unit's records. Public court records provided information on prior criminal charges and dispositions, as well as on the legal resolution in the current case.[2]

III. THE FINDINGS

Over the three-year period to which the data pertain, 379 cases involved defendants identified as mentally disordered. The defendants were primarily male (81%) and about half (49%) were white. At the time of arrest, only 13 percent of the defendants were gainfully employed or receiving unemployment compensation; 15 percent had no apparent source of income at all. Information on education was available for only slightly more than half the defendants, but of those, 47 percent did not have even a high school diploma or special skills training of any sort, while another 25 percent had only a high school diploma or GED.

The vast majority (85%) of the defendants were arrested for conduct normally considered a misdemeanor.[3] More than half (60%) the cases involved defendants with a record of a prior criminal offense; more than one-quarter (28%) involved defendants with at least three prior offenses.[4] In the three-year period under examination, 80 percent ($N = 227$) of these individuals had only one case before the district attorney and another 13 percent ($N = 37$) had two cases, while only 7 percent ($N = 18$) had three or more cases before the district attorney.[5]

For those cases for which information could be ascertained (85%), one-fifth had no record of prior mental health treatment,[6] while one-third had records indicating at least three

[2] Widely differing base sample sizes may not be an indication of a large amount of missing data but of case attrition. When information is missing in large part, this fact will be noted in the findings.

[3] The seriousness of the offense is a dichotomous variable—misdemeanor and felony. It is not the same as the charge issued, as some cases were not charged, some felonies were charged as misdemeanors. Instead, this seriousness variable is based on a written description of the conduct and categorized as a misdemeanor or felony according to the statutory classification of the offense, without taking into consideration factors such as the situational context or mitigating circumstances, which the prosecutor might appropriately consider in the charging decision.

[4] Any previous offenses processed as civil matters through the city court would not be counted. One can safely assume, therefore, an undercount of prior offenses. This undercount might be substantial.

[5] A base of 379 cases, not 282 individuals, is used in this analysis, because case processing rather than individual experiences is the focus of interest.

[6] Some defendants who had no official record of previous mental health treatment were identified by the screening unit staff as mentally disordered. This conclusion was based on an interview with the defendant.

prior contacts with the mental health system. Approximately one-third (34%) had been diagnosed as having a schizophrenic disorder and more than one-quarter (28%) had been diagnosed as mentally disordered due to substance abuse. Of those known to have received mental health treatment in the past (62%; $N = 235$), two-thirds ($N = 161$) had been inpatients and 60 percent ($N = 97$) of those had been hospitalized involuntarily.[7] One-fifth of those who had received previous treatment were not receiving any treatment at time of arrest. Of those who were involved in ongoing treatment at time of arrest ($N = 129$), more than half (60%; $N = 77$) were not cooperating with their treatment plan. Further analysis provided information relevant to the following series of questions.

1. Does the criminal justice system mandate treatment for mentally disordered defendants? If so, to what extent, in what form, at which stages in criminal processing, and which decision maker is primarily responsible? The data clearly indicate that the criminal justice system, through the decisions of its prosecutors and judges, mandates mental health treatment for certain, but not all, criminal defendants identified as mentally disordered. In 61 percent of the cases ($N = 232$), defendants had treatment imposed on them as a result of their current involvement in the criminal justice system. Mental health treatment was most frequently imposed before trial, either through an informal agreement with the prosecutor, as a condition of pretrial release, or through treatment for incompetency to stand trial. Sixty-six defendants (17%) were subjected to treatment conditions as part of an agreement to defer charging, a decision made by the prosecutor. Typically, the prosecutor eventually elected to close the case if the defendant observed the treatment agreement (67% of the closed cases; $N = 6$). Ninety-one (24%) were granted pretrial release on the condition that they cooperate in some mental health treatment program, a decision made by a judge on a misdemeanor bench.[8]

[7] Inpatient status is much more likely to become part of a mental health record than is outpatient status. There were 78 cases (20%) with verified prior mental health contacts of an unknown nature. Assuming these were all outpatient contacts, if indeed any treatment was provided at all, the proportion of inpatients would fall to 50%, still a substantial segment.

[8] Slightly more than one-quarter (27%) of the charged cases have missing information on the pretrial release decision variable. Of the 379 defendants in the sample, 256 were charged with either a misdemeanor or felony; in both situations a pretrial release decision would have been made. This decision was recorded for only 187 cases, however. It is possible that an even greater percentage of defendants had mental health treatment imposed upon them as a condition of pretrial release.

Again, it was typical that at a later point the prosecutor moved to dismiss the case if the defendant had observed the treatment conditions (44% of the closed cases; $N = 31$). Another fifty-six defendants (15%) were ordered to undergo an incompetency evaluation, a decision informed by the expert opinion of either a psychologist or psychiatrist but ultimately made by a judge assigned to a misdemeanor bench. If a defendant is found incompetent to stand trial and does not regain competency within the amount of time equal to the maximum possible sentence for the crime accused, the law requires the court to dismiss the charges and free the defendant. Fifty-two percent ($N = 22$) of the closed cases in which the defendant had been evaluated for incompetency were eventually dismissed, although not necessarily because of time restrictions. Finally, fifty-four defendants (14%) were either placed on probation or given a suspended sentence contingent upon their participation in a prescribed mental health treatment program.[9]

2. Does the criminal justice system respond to information concerning the prior criminal record of the defendant? If so, what is the nature of this response? Criminal justice officials responded punitively to information traditionally considered detrimental to criminal defendants (see Table 1). This is particularly true for the charging and final disposition decisions. This relationship is less clear-cut for the pretrial release decision.

Seriousness of current offense. In most cases, the prosecutor decided to issue charges reflecting the conduct, that is, two-thirds of the misdemeanors and two-thirds of the felonies were charged as such (gamma [G] = +.65). Another 8 percent of the felonies were charged as misdemeanors. Thirty-one percent of misdemeanors and 22 percent of the felonies were either not prosecuted or charging was deferred. The final case disposition is strongly related to the seriousness of the current offense ($G = +.50$). More than half of the misdemeanor offenses (53%) were ultimately dismissed or resulted in deferred or suspended sentences, while another 29 percent resulted in probation, one-quarter of those being without court-ordered treatment conditions. Incarceration was imposed on misdemeanants in only one-sixth (18%) of the cases. In contrast, only 21 percent of the felony offenses resulted in dismissal or

[9] Percentages add to more than 61% because some defendants had treatment imposed on them at more than one stage of prosecution or punishment. It should be noted that the base of 379 cases includes the 42 cases that were screened out by the prosecutor (nolle prosequi); if these were excluded from the base, 69% of the cases involved the imposition of treatment.

Table 1. Charging, Pretrial Release, and Final Case Disposition Decisions by Criminal History, for Misdemeanors and Felonies[a]

	Misdemeanors							Felonies						
				Prior Penal Sanction							Prior Penal Sanction			
	Prior Arrests			No	Free without	Free with		Prior Arrests			No	Free without	Free with	
Decisions	0	1	2+	Conviction	Treatment[b]	Treatment[c]	Incarceration	0	1	2+	Conviction	Treatment[b]	Treatment[c]	Incarceration
Charging														
Nolle prosequi	12	11	12	0	0	11	19	14	0	10	0	0	15	0
Charging deferred	26	23	12	20	0	19	7	18	0	10	0	0	0	10
Charges issued	62	66	77	80	100	70	74	68	100	80	100	100	85	90
Total *N*	128	61	123	30	1	95	54	22	9	20	2	2	13	10
Pretrial Release														
Release on recognizance	7	0	9	0	0	6	11	0	0	6	0	0	0	11
Cash bail	2	11	31	0	0	20	11	8	33	13	0	50	18	22
Release on recognizance with treatment	44	39	9	39	0	41	19	8	22	6	0	0	9	22
Cash bail with treatment	24	14	9	11	0	10	11	25	11	20	50	0	9	22
Held in custody	2	11	7	17	0	4	11	0	0	0	0	0	0	0
Competency evaluation	20	25	29	33	100	18	37	58	33	53	50	50	64	22
Total *N*	54	28	68	18	1	49	27	12	9	15	2	2	11	9
Final Case Disposition														
No Sanction[d]	66	44	46	40	0	45	16	25	33	15	50	0	13	11
Probation	10	6	6	8	0	6	4	0	0	0	0	0	0	0
Probation with treatment	15	33	21	16	100	25	32	50	22	31	50	0	13	33
Incarceration	10	17	25	36	0	24	44	8	44	46	0	100	50	56
Not guilty by reason of insanity	0	0	3	0	0	0	4	17	0	8	0	0	25	0
Total *N*	61	36	71	25	1	51	25	12	9	13	2	1	8	9

[a] Misdemeanors and felonies were categorized according to conduct described, not charge issued. Except for rows headed "Total *N*," all figures are percents; percents may not sum to 100 due to rounding.

[b] Includes acquittals, dismissals, and suspended and deferred sentences, as well as probation, all without treatment.

[c] Includes probation with treatment.

[d] Includes acquittals, dismissals, and suspended and deferred sentences.

suspended sentence. A sentence to probation was the modal disposition for felons (35%; $N = 12$), and all such sentences carried treatment conditions. Incarceration was nearly as common as probation, with one-third (32%; $N = 11$) of the felons being imprisoned.

Criminal History. The prosecutor's decision is related to both the number and seriousness of prior charges in the case of misdemeanants but not felons. For conduct normally considered a misdemeanor, the decision to issue a charge is related to the number of prior charges a defendant had ($G = +.27$), but in the case of felonious conduct, the number of prior offenses seems unrelated ($G = +.06$). The prosecutor's decision to show leniency is modestly related in the expected direction to the seriousness of prior offenses for misdemeanants ($G = -.21$) but not for felons ($G = -.09$), when the seriousness of the current offense is held constant. The trial court disposition is related to the number of prior offenses a defendant had ($G = +.28$ for misdemeanors; $G = +.41$ for felonies), and weakly related to the severity of previous sanctions ($G = +.18$ for misdemeanors; $G = +.19$ for felonies). In this sample, then, more serious offenders had greater numbers of prior offenses, which in turn led to more severe sanctions for previous and current criminal offenses.

At the pretrial release decision, punitiveness cannot be inferred directly from the data, although a criminal history did work against the imposition of treatment conditions that was the precursor of subsequent leniency. For misdemeanants, those with more prior offenses were less likely to have treatment conditions imposed on them ($G = -.45$), but this same relationship did not exist for felons ($G = -.03$; see Table 1). The severity of final sanction for previous offenses exhibits a weak negative relationship with imposition of treatment at the pretrial release stage for misdemeanants ($G = -.12$) and a stronger correlation for felons ($G = -.33$). In other words, those not previously imprisoned were more likely to receive mental health treatment as a condition of pretrial release.

3. Does the criminal justice system respond to information concerning the mental health history of the defendant? If so, what is the nature of this response and at what stage and by which decision maker is this response exhibited? Criminal justice decision makers clearly responded to information concerning the defendant's mental health history, but this response assumed different forms depending on the official's authority and function (see Table 2). The greater the number of the defendant's mental health system contacts, the greater the likelihood

Table 2. Charging, Pretrial Release, and Final Case Disposition Decisions by Mental Health History, for Misdemeanors and Felonies[a]

	Misdemeanors						Felonies					
	No. of Contacts			Restrictiveness[b]			No. of Contacts			Restrictiveness[b]		
Decisions	0	1	2+	Outpatient	Residential	Inpatient[c]	0	1	2+	Outpatient	Residential	Inpatient[c]
Charging												
Nolle prosequi	15	12	9	8	10	9	14	8	7	0	100	8
Charging deferred	32	19	14	19	20	18	14	17	10	12	0	17
Charges issued	53	69	77	73	70	73	72	75	83	88	0	75
Total *N*	57	75	125	48	10	130	7	12	29	8	2	24
Pretrial Release												
Release on recognizance	10	3	6	10	0	4	0	0	0	0	—	0
Cash bail	20	3	6	10	25	4	0	50	9	50	—	5
Release on recognizance with treatment	**35**	**45**	**34**	**35**	**50**	**33**	**25**	**12**	**9**	**0**	—	**15**
Cash bail with treatment	20	16	21	20	0	23	25	12	20	25	—	20
Held in custody	5	5	5	10	25	1	0	0	0	0	—	0
Competency evaluation	10	29	28	15	0	34	50	25	62	25	—	60
Total *N*	20	38	62	20	4	70	4	8	21	4	0	20
Final Case Disposition												
No sanction[d]	27	60	61	52	50	70	0	0	33	0	—	35
Probation	9	6	10	0	17	9	0	0	0	0	—	0
Probation with treatment	18	19	19	26	32	16	33	50	33	50	—	41
Incarceration	45	13	10	22	0	6	67	37	23	50	—	12
Not guilty by reason of insanity	0	2	0	0	0	0	0	12	10	0	—	12
Total *N*	22	48	62	27	6	70	3	8	21	6	0	17

[a] Misdemeanors and felonies were categorized according to conduct described, not charge issued. Except for rows headed "Total *N*," all figures are percents; percents may not sum to 100 due to rounding.

[b] In cases of multiple contact, most restrictive was used.

[c] Includes *all* those previously examined for competency; category is overinclusive.

[d] Includes acquittals, dismissals, and suspended and deferred sentences.

that the prosecutor would issue charges, although this relationship is weaker for felons than misdemeanants ($G = +.30$ for misdemeants; $G = +.14$ for felons).[10] The prosecutor's decision to charge and the defendant's previous treatment conditions are at best only weakly related. There is a modest positive relationship between a decision to charge and previous treatment as an involuntary client ($G = +.19$). On the other hand, the restrictiveness of the previous treatment setting (outpatient, residential, inpatient) seems unrelated to the decision to charge ($G = +.03$). The mental health variable having the most bearing on the prosecutor's decision to issue charges was the defendant's lack of cooperation in a previously prescribed ongoing treatment program ($G = +.40$). The prosecutor was more likely to decline prosecution altogether or defer charging if the defendant was cooperating with the mental health treatment program (for 33% of the cooperating defendants and 19% of the non-cooperating defendants).

Judges making a pretrial release decision exhibited a strong preference for noncustodial dispositions with treatment conditions. A decision to release the defendant with treatment conditions—on either a personal recognizance bond or cash bail—was the modal pretrial disposition regardless of the number and type of prior mental health system contacts. Custody was rarely maintained except to address issues of competency, and then custody was usually in a hospital rather than a jail setting. Ordering an incompetency evaluation was related to the extent of previous mental health system involvement. By holding the seriousness of the current offense constant, it was revealed that prior mental health contacts played an important part in the judge's decision to order an incompetency evaluation for misdemeanants (phi = +.54), whereas the relationship for felons is not as straightforward. On the other hand, prior hospitalization for mental disorders appears to have been a more decisive factor for felons (phi = +.63) than for misdemeanants (phi = +.31) in ordering an incompetency evaluation. In addition, the decision to order an incompetency evaluation was much less frequent for those with a diagnosis of

[10] Whereas the immediate interpretation of this finding is to assume that prosecution rather than leniency is a punitive response, the strategy here might be one of seeking court-enforced treatment rather than sheer punitiveness, as only after a formal charge is filed can the question of competency be raised or legally enforceable treatment be imposed through a pretrial release agreement. (In cases in which charging is deferred, the only recourse for noncompliance with treatment is to issue charges.) This interpretation is supported by the fact that in two-thirds of the cases the prosecutor made a decision consistent with the recommendation of the screening unit staff.

a substance abuse disorder (10%) than for those with other diagnoses (32%).[11]

Leniency at the final case disposition is correlated with the mental health history of the defendants. At this point, outright dismissal was the modal disposition for those with at least one known prior mental health contact. There is an obvious negative relationship between the number of mental health contacts and the severity of trial court disposition ($G = -.32$ for misdemeanors; $G = -.54$ for felonies). Considering misdemeanants and felons together, 48 percent of those with no known prior mental health contacts, 20 percent of those with only one prior contact, and only 15 percent of those with two or more prior contacts were imprisoned. The restrictiveness of the prior mental health treatment setting exhibits a negative relationship to the restrictiveness of the final case disposition ($G = -.38$ for misdemeanors; $G = -.79$ for felonies). Seventeen percent of the misdemeanants with histories of outpatient treatment were given a sentence of imprisonment, compared with only 5 percent of the inpatient misdemeanants (phi $= -.55$). The same sort of relationship persists for felons; half of the outpatients but only one-tenth of the inpatients were sentenced to imprisonment (phi $= -.81$). Neither whether the defendant's previous patient status was voluntary or involuntary nor whether they were cooperating with a treatment plan at the time of arrest had any noticeable impact on the severity of the final case decision.

Even pretrial mental health treatment in the current case is related to leniency of final case outcome. Considering only closed cases, a much larger percentage of those who had been ordered to undergo pretrial treatment were ultimately released without serving a sentence (48%; $N = 59$) than were those who had not been ordered to participate in a treatment program (19%; $N = 6$). Leniency toward those who had been involved in treatment is evident at the other end of the scale as well; 31 percent ($N = 10$) of the untreated defendants but only 19 per-

[11] Those with a primary diagnosis of a substance abuse disorder were not distinguishable from others at either the charging decision or the final case disposition. Proportionately, substance abusers were shown no more leniency or severity than other defendants. The different outcome with respect to an incompetency evaluation probably reflects the practical operating presumption that substance abuse, if controlled, would not render a defendant incompetent to stand trial. Substance abusers were as likely as others to be released on their own recognizance prior to trial and to have their case nolle prosequi'd or dismissed. These findings lend no support whatsoever to the speculation that criminal justice officials view punitiveness as a more appropriate response to substance abuse than leniency.

cent ($N = 20$) of the treated were incarcerated. Overall, treatment and leniency are rather strongly associated ($G = +.41$).

4. Is there an identifiable point at which the criminal justice system appears to shift from a perspective that the defendant is "bad" to one that the defendant is "mad"? Is there a level of seriousness that provokes a punitive/custodial response from the criminal justice system regardless of prior mental health history? Is there a lower threshold of mental health involvement that, if not met, results in the defendant's being treated as "bad," regardless of the offense? The data are only suggestive at best with respect to what determines whether a defendant is viewed as "mad" instead of "bad." As might be expected, multiple contacts with the mental health system and inpatient status appear to foster a label of "mad." On the other hand, many prior offenses and the prior imposition of criminal sanctions seem to work in favor of a "bad" label. Although the sample of felony offenses is small enough to raise concern about its reliability ($N = 55$), criminal justice officials appear to seek more punitive and custodial dispositions for felons than for misdemeanants, even though both groups have been identified as mentally disordered. For example, defendants arrested for felonies are more likely than misdemeanants to be charged (78% versus 72%), evaluated for incompetency (44% versus 21%), and confined during the evaluation (67% versus 43%). Felons are also more likely to be convicted (80% versus 47%), sentenced (67% versus 47%), and imprisoned (32% versus 18%). Furthermore, both criminal histories and mental health histories appear to have a lesser impact on the prosecutor's decision to issue a charge for felons ($G = +.06$ for prior criminal offenses; $G = +.14$ for prior mental health contacts) than for misdemeanants ($G = +.27$ for prior criminal offenses; and $G = +.30$ for prior mental health contacts). Thus, it is reasonable to conclude that felonious conduct marks a seriousness level that provokes a greater punitive/custodial response from the criminal justice system.

The distinction between felons and misdemeanants is even more pronounced at the final case disposition. For misdemeanants, *any* record of prior mental health treatment elicited a lenient disposition in the end. Sixty-one percent ($N = 67$) of those with at least one prior mental health contact but only 27 percent ($N = 6$) of those with no prior contact received no meaningful penal sanction. In contrast, to benefit from leniency by the court felons seem to have needed a more extensive mental health history. Forty-six percent ($N = 6$) of the felons

Table 3. Effect of Mental Health History and Criminal History on Final Case Disposition Decisions[a]

	Final Case Disposition			
	No Sanction[b]	Probation	Incarceration	Total *N*
+MH; −CJ[c]	63%	31%	6%	49
+MH; +CJ	49%	31%	20%	84
−MH; −CJ	28%	36%	36%	11
−MH; +CJ	15%	23%	62%	13

[a] $G = +.57$

[b] Includes suspended and deferred sentences as well as dismissals and acquittals.

[c] "+MH" denotes the presence of a verified history of a mental health problem; "−MH" denotes the absence of same. "+CJ" denotes the presence of a verified criminal history; "−CJ" denotes the absence of same.

with three or more prior mental health contacts but only 5 percent ($N = 1$) of those with less than three such contacts escaped meaningful penal sanction.

5. What is the net effect of factors that can be expected to elicit a punitive response from criminal justice system officials and evidence of mental disorder? Does the latter ameliorate or exacerbate the anticipated effects of the former? Is the mentally disordered defendant "twice-cursed," or is the net effect one of leniency? This study does not provide evidence that mentally disordered defendants in the criminal justice system are, as many have feared, "twice-cursed" in the sense of being coerced into treatment *and* incarceration. The available evidence suggests that a history of mental health problems ameliorates rather than exacerbates the effect of criminal activities (see Table 3). For this group of defendants, a mental health history was more powerful in eliciting a lenient final case disposition than a criminal history was in eliciting a punitive disposition. Repeat offenders with a history of mental health problems were treated more leniently than first offenders without a history of mental health problems. The greatest expression of leniency was reserved for the ultimate disposition, however, and was less manifest in decisions at charging and pretrial release.

The typical mentally disordered defendant may well "pay for his crime" before trial by submitting to court-ordered treatment conditions or an incompetency evaluation. This interference with liberty may be just as great as that experienced by other defendants sentenced to probation. This study, lacking a comparison sample of defendants without apparent mental disorders, does not have the information required to compare the

extent of coerciveness or punitiveness between mentally disordered and other defendants. However, this study does show clearly that although many mentally disordered defendants may feel the heavy hand of the criminal court before trial, it is not evident that they are frequently "twice-cursed."

IV. SUMMARY

The data show that the court used its *criminal* authority in a significant number of cases involving mentally disordered defendants (47%; $N = 96$)[12] to mandate *treatment only*, which is generally viewed as in the province of the court's *civil* authority, and to decline to impose any meaningful final penal sanction. This finding suggests that criminal justice officials viewed many of these defendants, primarily misdemeanants with a verified history of prior mental health problems, as inappropriate subjects for criminal sanction. These data further indicate that the criminal justice system mandated treatment (61% of the cases) at least as often as punishment (only 59% of the charged cases resulted in even a conviction) for these mentally disordered defendants.

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[12] This base N of 204 reflects the fact that 20% of the charged cases ($N = 256$) had missing information for the final case disposition variable. It is most reasonable to assume that many of these missing cases are still pending; cases were selected through December 1983 yet data collection terminated in July 1984, when some cases were undoubtedly still pending.

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