

The Need to Define “Danger” in Maryland Civil Commitment Law

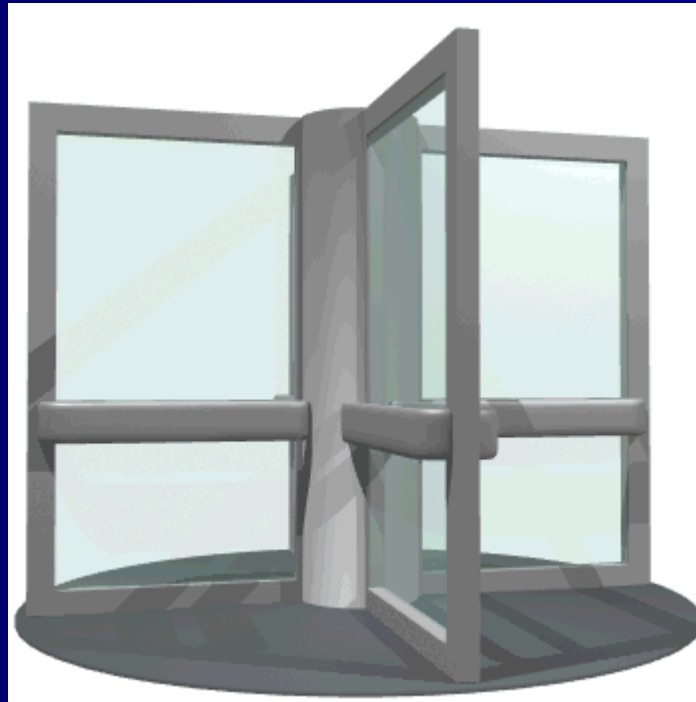
**Maryland Commission to Study
Mental and Behavioral Health
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Treatment Non-Engagement

Too many with SMI caught in the “revolving doors” of the mental health and criminal justice systems



**A most challenging
cause of non-engagement:**

**a symptom of brain
dysfunction known as ...**

ANOSOGNOSIA



A

Low self-reflection



B

High self-reflection

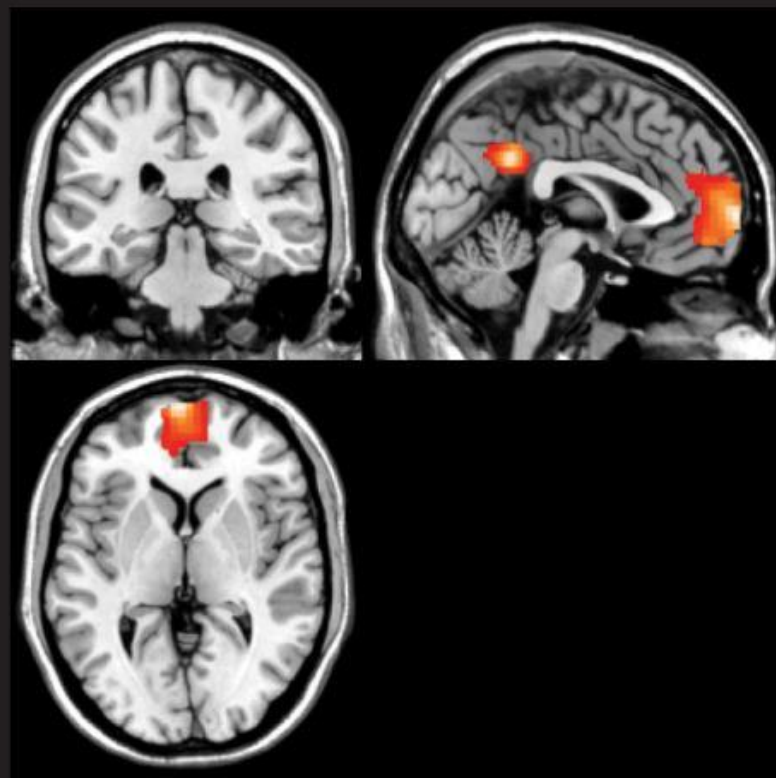


Figure 2. Brain activation of selected individuals is displayed (the patterns of activation are consistent with the group-level differences). Differences in brain activation in the left and right vMPFC during a self reflection task between two patients with schizophrenia, one patient with impaired insight and one patient with good insight. (A) a patient with a low score (7) on the subscale self reflectiveness of the Beck Cognitive Insight Scale (BCIS) and (B) a patient with a high score (27) on the subscale self-reflectiveness.

Bottom Line on Anosognosia

- If you build it ...



... SOME still won't come!

Treatment Delay = Tragedy

- Voluminous research establishes linkage between duration of untreated psychosis (DUP) and patient's prospects for recovery.
- DUP also linked to brain damage.
- To wait for proof of physical danger is to court disaster. Leads to criminalization.
- Time to let the person "figure things out" is a luxury we lack.

Inpatient Commitment Criteria

- Nationally, the “danger” standard as the key criterion for civil commitment is universal.
- What varies is:
 - What does “danger” mean?
 - In particular, what does “danger to self” mean? (Danger to others is more or less understood the same everywhere)
 - How imminent must the danger be?

Maryland Civil Commitment Criteria

- (1) The individual has a mental disorder;
- (2) The individual needs inpatient care or treatment;
- (3) The individual presents a danger to the life or safety of the individual or of others;**
- (4) The individual is unable or unwilling to be admitted voluntarily; and
- (5) There is no available, less restrictive form of intervention that is consistent with the welfare and safety of the individual.

Maryland leaves “danger” undefined

- No definition provided for “danger to the life or safety of the individual or of others.”
- Only 4 other states provide no statutory guidance on what “danger” means.
- Leaves meaning in the eye of the beholder. Lack of beds, cross-pressures on system most often leads to the narrowest possible interpretation. (violence / suicide / shockingly risky behaviors)

Inpatient Commitment Criteria

3 levels of potential criteria:

- All states: Traditional “Dangerousness” to Self/Others (Violent, Suicidal, or behavior that exposes self/others to serious risk of injury)
- 45 states: Grave Disability (inability to meet basic survival needs – food, clothing, etc.)
- 24 states: Psychiatric Deterioration (inability to prevent harm to one’s own brain likely to result from continued non-treatment)

Grave Disability Example

Michigan Comp Laws

§ 330.1401(1)(b)

“Person requiring treatment” means:
[among other alternatives]

- An individual who has mental illness, and who as a result of that mental illness is **unable to attend to** those of his or her **basic physical needs** such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.

Psych Deterioration Example

405 Illinois Comp Stat 5/1-119(3)

“Person subject to involuntary admission on an inpatient basis” means [among other alternatives]:

A person with mental illness who:

- refuses treatment or is not adhering adequately to prescribed treatment;
- because of the nature of his or her illness, is unable to understand his or her need for treatment; and
- if not treated on an inpatient basis, is reasonably expected, based on his or her behavioral history, to suffer **mental or emotional deterioration** and is reasonably expected, after such deterioration, to [be physically dangerous to self/others or gravely disabled].

SB928/HB1344 (2021)

For purposes of this section, “danger to the life or safety of the individual or of others” means a substantial risk, in consideration of the individual’s current condition and, if available, personal and medical history, that as a result of the mental disorder the individual will: (3 alternatives)

- cause bodily harm to the individual or another individual; or
- be unable to provide for the individual’s basic needs, including food, clothing, shelter, health, or safety; or
- suffer substantial deterioration of the individual’s judgment, reasoning, or ability to control behavior, provided that the individual is currently unable to make a rational and informed decision as to whether to submit to treatment.

Define Danger in Law (Not Regulation)

- Danger standard must be interpreted across a range of professions. Not just by health care providers but also by law enforcement, courts and families. Most won't ever see a health regulation.
- A regulation is easily amended or rescinded. Stable guidance should be enshrined in law, as in all 45 states that define danger at all.

TAC is Here to Help



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