Addictions and the Law

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Drug and alcohol addictions and the law are historically well acquainted in the American legal system. The pervasive presence of legal consequences from alcohol and drug disorders is evident in medical-legal populations. The forensic psychiatrist performs a variety of consultative functions, treatment roles, and evaluation determinations pertaining to individuals with a history of alcohol and drug disorders. The identification and treatment of addictive diseases are increasingly important in forensic practice, particularly in cases pertaining to criminal conduct, malpractice, employment, disability, child custody, and correctional psychiatry.1 The article by Miller and Sheppard in this issue provides more information on these topics.

The forensic psychiatrist has many avenues for interaction with clients and professionals in the legal system in state and federal courts. These courts make legal decisions that have direct bearing on the fate of those with addictive disorders. The legislative branches of the federal government and state governments create a number of significant and far-reaching laws that affect large numbers of addicted individuals. The constitutional amendments, particularly the 14th Amendment, provide due process and equal protection of the law for individuals with drug and alcohol addictions. Governmental administrative agencies create policies, rules, codes, and regulations to execute legislative statutes that govern the deterrence, treatment, prosecution, and diversion of offenders with addictive diseases.2,3

Alcohol and drug addiction occupy a paradoxical place within medicine and the law. On the one hand, addiction is considered a disabling illness. On the other hand, it is considered willful misconduct. Although court decisions, the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 have provided protection for addiction treatment and rehabilitation, other court decisions and laws have provided punishment for those with alcohol and drug addiction who commit crimes.

MENS REA AND CAPACITY

Definition and Relevance to Addictions

Mens rea is central to legal consequences and ethical decisions regarding individuals who have drug and alcohol addictions and violate laws, particularly as a result of their addictions. The application of mens rea in criminal cases involving alcohol and drug disorders depends in part on the acceptance of addiction as a disease. Whether conduct influenced by alcohol and drugs arises from a disease or is willful misconduct will have significant and fundamental implications for intent to commit a crime or failure to conform to a law and subsequent charges, convictions, and sentencing.4

Mens rea is defined as guilty mind and encompasses specific and general intent. Specific intent pertains to conduct that is committed purposely and knowingly. General intent pertains to conduct that is committed purposely, knowingly, recklessly, and negligently. Conduct is committed purposely when it is the offender's conscious object, and knowingly when the offender is aware of the circumstances that make the conduct criminal. Conduct is committed recklessly when there is a conscious element of disregard for risk, and negligently when there should have been awareness of the risk. Negligence is not criminal unless considered so by statute, as there is no

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intent to do harm, and it was unreasonable to be unaware.\(^5\)

In criminal cases where specific intent is necessary, the specific intent must be proven by the prosecution beyond a reasonable doubt. If there is no intent, then there is no crime or a lesser offense is charged. Diminished capacity is the impaired ability or the total lack of ability to form the requisite intent to purposely or knowingly commit a criminal act. Many states allow forensic testimony for diminished capacity; however, several states bar or restrict such testimony. Medical and scientific evidence may show that the intoxicating effects of alcohol and drugs can reduce or block an individual’s ability to form requisite intent to commit a crime. The principal sites of actions of alcohol and drugs are located in the frontal lobe (insight and judgment) and in the temporal lobe (memory). Diminished capacity from alcohol and drugs can be due to impaired insight and judgment and faulty memory.\(^6,9\)

Forensic testimony is often crucial to understanding the role of drugs or alcohol in the formation of specific intent or lack thereof; the influence of drugs or alcohol on insight, judgment, and memory; and the role of other mental aspects contributing to the act. The testimony often revolves around the responsibility of the individual beyond the intent to commit the crime. Because the individual is suffering from an addictive disease, the charges may be excused or lessened or the sentence mitigated because of the lack of specific intent. However, the individual may be held responsible for accepting treatment to prevent or reduce the probability of recurrence of criminal acts. The implication is that treatment that leads to abstinence from alcohol and drugs will deter future episodes of crime that are related to the acquisition of, compulsive use of, and relapse to drugs (addiction).\(^1\)

Legal Precedent

In People of California v Saille, the California Supreme Court ruled that the trial court did not err in its jury instructions in view of Senate Bill 54 abolishing the defense of diminished capacity in 1982. However, a defendant is still free to show that, due to mental illness or intoxication, he or she did not form the intent to kill unlawfully. In other words, diminished capacity depended on the proof that voluntary intoxication affected the ability to form intent.\(^10\)

Voluntary intoxication, which is the voluntary use of alcohol and drugs to the point of intoxication, does not qualify for diminished capacity. Historically, mere drunkenness from alcohol or drugs has not been an excuse for a criminal act. Involuntary intoxication can be an insanity defense in instances of becoming intoxicated by the external actions of others or through furtive methods. Other states or conditions that qualify for a diminished capacity defense are idiosyncratic (pathological) intoxication, delirium tremens, and permanent psychosis secondary to alcoholism (eg, Wernicke–Korsakoff syndrome).\(^4,5\)

**ADDICTIVE DISEASE**

**Intoxication and Addiction**

Intoxication, in addition to or originating from a mental illness such as alcohol and drug addiction, can preclude specific intent. Addiction to drugs and alcohol is a mental illness that can reduce the capacity of the individual to resist the use of these substances and hence avoid the resulting adverse consequences. The addictive drive can compel the individual to relapse to the adverse effects of alcohol and drugs despite the initially intact capacity to form intent in the legal sense in the abstinent state. Once the compulsive use of drugs and alcohol is initiated, the capacity to form intent is further compromised by the intoxicating effects of these substances acting directly on the brain.\(^9\)

Addiction is a disease that is defined by a preoccupation with acquiring alcohol and drugs and compulsively using them and a pattern of relapse to alcohol and drugs. Preoccupation is demonstrated by a high priority for the use of alcohol and drugs in an individual’s life. Compulsivity is continued use despite recurring adverse consequences, including legal consequences. Relapse is a return to use despite adverse consequences. Pervasivity to preoccupation, compulsivity, and relapse is a loss of control over alcohol and drug use that renders the individual incapable of resisting the urges to use these substances. The loss of control is largely unconscious and persistent, similar to drive states

\(^1\)
such as hunger or sex. As with most drive states, conscious control is possible, but the loss of control for use of alcohol and drugs is ultimately expressed in some way.\textsuperscript{11,12}

Legal decisions have acknowledged that addiction to drugs and alcohol is not willful misconduct in a legal sense. Court cases have emphasized that being a drug addict or an alcoholic is a status and not a crime.\textsuperscript{9}

Legal Precedent

In \textit{Robinson v California}, the U.S. Supreme Court ruled that the California law against being a drug addict was unconstitutional. The court said that the law could not make “status” a crime, and that treatment and punishment represented different goals.\textsuperscript{13} In \textit{Powell v State of Texas}, the U.S. Supreme Court ruled that public drunkenness was a crime, but that being an alcoholic (status) was not.\textsuperscript{14}

\section*{CRIMINAL LAW}

\subsection*{Insanity Defense}

Intoxication from alcohol and drugs does not qualify for an insanity defense because the individual is otherwise sane by legal standards in the abstinence state. Voluntary intoxication from alcohol and drugs does not equate insanity in the legal sense, despite the use of these substances rendering the defendant “unable to appreciate the nature and quality of the acts or to know right from wrong, or conform to the requirements of the law.”\textsuperscript{15-17} The intoxicated state is considered legally preventable by refraining from or resisting the use of alcohol and drugs to appreciate the criminality of this conduct or to conform to the requirements of the law.\textsuperscript{57} Court decisions would suggest that an individual who commits a crime under the influence of alcohol and drugs may not be legally dangerous or mentally ill in the abstinence state.

Legal Precedent

In \textit{Foucha v Louisiana}, the U.S. Supreme Court ruled that Foucha was not suffering from a mental illness, and that due process required that he could be held only as long as he was both mentally ill and dangerous. He had committed his crime while in a drug-induced psychosis. In the abstinence state, he was not considered mentally ill, although he probably did suffer from a drug addiction.\textsuperscript{18}

\section*{CRIMINAL COMPETENCE}

In the landmark case for the precedent for criminal competence, \textit{Dusky v United States}, the U.S. Supreme Court ruled that competent to stand trial meant that the “defendant has sufficient present ability to consult with lawyer with a reasonable degree of rational and factual understanding of proceedings against him. It was not sufficient to find that the defendant was oriented to time, place, and to some events.” Dusky was accused of kidnapping a 15-year-old girl. He and two boys had been drinking vodka prior to offering to drive the girl home. Instead of taking the girl home, they drove to a back road where the two boys raped her. Dusky tried but was unable to rape her. Although Dusky was also schizophrenic, he was not grossly impaired if he took proper amounts of thorazine.\textsuperscript{19}

Generally, alcoholics and drug addicts in the abstinent or sober state show the ability to understand legal charges and proceedings against them, particularly at the time of trial. Despite gross impairment of mental capacity while under the influence of alcohol and drugs, alcoholics and drug addicts alone do not show sufficient difficulty in grasping the nature of the offense and in assisting the attorney in their defense during the legal proceedings for the specific charges in question.\textsuperscript{20}

\section*{CIVIL COMPETENCE}

Civil competence is a capacity or a potential of mental functioning required, in a decision-specific manner, to understand and perform certain tasks of decision making. Competence is presumed to be present unless there is an active and affirmative finding by a court that it is not present. Incompetency means that a mental illness is causing a defect in judgment in the specific area in question. Individuals suffering from addictive diseases generally satisfy the legal criteria for civil competence unless a mental illness or state such as intoxication can be shown to produce a lack of understanding and judgment for the specific decisions or tasks in question.\textsuperscript{21}
ALCOHOL AND DRUG USE AND ADDICTION AS RISK FACTORS IN CRIME AND CRIMINAL INTENT

According to the MacArthur study, substance abuse tripled the rate of violence among individuals in the community who were not patients and increased the rate of violence among discharged patients by up to five times. Patients discharged from psychiatric hospitals who had symptoms of alcohol or drug use were as violent as their neighbors who were not patients.22

In a study of self-reported violence among 10,000 individuals within a community, alcohol and drug abuse or dependence accounted for more than half of the incidences of violence among those individuals who had psychiatric diagnoses. According to another study, substance abuse is a much greater risk factor for violence than is mental illness. Alcohol or drug dependence is the leading psychiatric diagnosis in studies of completed suicides, and is a leading risk factor in those who attempt and complete suicide.23

Alcohol and drug addiction are highly prevalent in criminal acts. All drugs, including alcohol, are associated with crime.24 At least 35% of convicted offenders were under the influence of alcohol at the time of their offense.25 An additional significant proportion of offenders were using other drugs at the time of their offense.26 More than 50% of murderers were using alcohol, drugs, or both, at the time of their crime. Alcohol, cocaine, amphetamine and derivatives, phencyclidine hydrochloride, and heroin are drugs that are particularly linked to violent behaviors toward others.23,27

In other studies, violence due to alcohol and drugs was attributed to crimes to gain access to these substances and to resolve disputes over them, as well as to the effects of these substances on the individual’s mind and behavior.24 Drugs diminish control, impair insight and judgment, induce grandiosity and paranoia, disinhibit, and provoke and stimulate uncontrollable behaviors.28 Alcohol intoxication was responsible for most violent crimes, including murders, assaults, sexual assaults, and family violence.29-30 Sixty-two percent of violent offenders were drinking at the time of their crime.30 Among individuals with psychotic disorders, those with substance-related comorbid-

CIVIL LAW IN SELECTED POPULATIONS

Child Abuse and Custody

The Child Abuse Prevention and Treatment Act of 1974 defines child neglect and abuse as “the physical and mental injuring, sexual abuse, negligent treatment, or maltreatment of a child under the age of 18.” Alcohol and drug use and addiction are commonly associated with physical and sexual abuse and neglect. The common form of maltreatment is physical neglect. Head trauma is the leading cause of child abuse fatalities.31 Statutes requiring child abuse to be reported are an affirmative duty for professionals related to acts required to protect third parties (eg, Tarasoff).32

Courts consider addictive disease a treatable cause of child abuse in those who have responsibility for a child’s welfare but commit acts of abuse as a result of an alcohol or drug problem or while under the influence of these substances. Courts may offer the parent the alternative to comply with treatment and monitoring in lieu of termination of parental rights. Termination of parental rights, either voluntary or involuntary, can result from not satisfying the stipulations of addiction treatment and monitoring by the court because the condition was viewed as not likely to change within the foreseeable future.33

Decisions for child custody disputes rely on the standard of the “best interest” of the child. Predictors of negative outcome for custodial care of a child include a history of alcohol or drug problems in the parent. Of crucial importance for positive outcome is the custodial parent-child relationship, which can be impaired in those with alcohol and drug disorders. The need for evaluation of addictive disease in both parents and referral for treatment is evident for the welfare of the child and the ability of the parent to meet requirements for the best interest of the child.35

Sexual Offenders

Most sex crimes involve the influence of or complications due to the presence of alcohol and drug disorders. Substance abuse was the most
common diagnosis in murderers (34.6%), rapists (29.4%), and rapists–murders (40%). A common, if not the most common, reason given for recidivism due to violation of parole is relapse to alcohol and drug use.\textsuperscript{36} Despite the glaring presence of addiction, the need for treatment of it to improve compliance with other treatments for sexual offenders and to prevent relapse to alcohol and drugs has not been established. More clinical programs, and studies to document their efficacy, are needed to show the effectiveness of addiction treatment in this population. Studies indicate that addiction treatment is effective in achieving reduced drug and alcohol use and abstinence in other psychiatric and nonpsychiatric populations.

**Malingering**

The clinical characteristics of addictive disease include denial, minimization, and rationalization. As a result, alcoholics and drug addicts regularly deny and minimize their use. Other motivating factors for denial may be to avoid prosecution, to avoid loss of a job or child custody, and social stigma. On the other hand, the notion that alcoholics and drug addicts, or normal individuals, exaggerate their suicidality or make contingent suicide threats for nonmedical or nonpsychiatric reasons (e.g., hospital admission) is simply not supported by studies or reasonableness. The addict who is out of control and at risk for danger to self or others or who is incapable of caring for himself or herself is most likely using complaints of suicidality to emphasize feelings of helplessness and hopelessness arising out of sickness and a sense of being out of control.\textsuperscript{37}

One study compared veterans who exaggerated their suicidality or made contingent suicide threats for the purpose of being admitted to a hospital with “genuinely” suicidal patients. Those who threatened suicide had more substance abuse but no statistical difference in the incidence of completed suicide at the 6-month follow-up.\textsuperscript{38} Active drug addicts and alcoholics may seek addiction treatment under duress of threat of legal prosecution, but alcohol and drugs are central problems in these individuals’ lives and are often the cause of the legal predicament. Coerced addiction treatment can be an effective means of removing the drug factor from criminal recidivism.\textsuperscript{39}

**CORRECTIONS AND COERCED TREATMENT**

**Goals of Treatment**

The purposes of punishment are deterrence of future crimes, incapacitation to prevent individuals from committing further crimes, rehabilitation to correct the underlying problems of criminal conduct, and retribution because they deserve it. The correctional system provides an opportunity to intervene for those individuals with alcohol and drug disorders, particularly when these disorders are implicated with the crimes causing their incarceration. Until recently, criminals did not receive attention for their addictive diseases. Programs are gradually being introduced into the criminal justice system to provide addiction treatment services.\textsuperscript{40}

Studies of recidivism have shown that untreated alcohol and drug addiction lead to a high rate of relapse and repeated criminal offenses. Because of the strong association of criminal conduct with alcohol and drug disorders, the need for treatment during incarceration to correct the underlying problems and to deter further criminal conduct is obvious. It is important that addiction treatment continue as a condition of parole and release into the community (see the article by Miller and Sheppard in this issue for more detail).

**Diversion**

Diversion is the evaluating of detainees for the presence of a mental disorder and negotiating with the legal system and mental health providers, including addiction treatment, to offer a disposition in lieu of prosecution or as a condition of reduction in charges.\textsuperscript{41} Factors in determining diversion of a mentally ill offender at the pretrial stage include the seriousness of the crime and the area of jurisdiction.\textsuperscript{42} Traditional diversion programs to reduce recidivism of repeat violations of driving while intoxicated have been operating successfully for decades. Drug courts are examples of a growing trend of attempts at diverting alcoholics and drug addicts to treatment programs to correct the underlying problems perpetuating their crimes.\textsuperscript{39}
Prevalence of Alcohol and Drug Disorders During Incarceration

Lockups contain large numbers of individuals with alcohol and drug intoxication and withdrawal. The suicide rate is higher in lockups than in jails or prisons.\textsuperscript{40} Eighty-two percent of all jail inmates said they had used an illegal drug, and 25% stated they had received treatment for a mental or emotional disorder.\textsuperscript{43} Sixty-one percent of the men and 70% of the women in jail had a lifetime prevalence of substance use disorder.\textsuperscript{44,45} Sixty-two percent of prison inmates reported regular use of a drug at some time in their lives. Half of all prison inmates in 1991 had used cocaine in some form.\textsuperscript{46} More than 80% of the women in prison had a lifetime prevalence of a substance use disorder.\textsuperscript{47} According to the National Institute of Mental Health Epidemiologic Catchment Area program study, 72% of prison inmates had a lifetime prevalence of substance abuse.\textsuperscript{48}

Prevalence of Suicide and Alcohol and Drug Disorders During Incarceration

In lockups, 60% of the suicide victims were under the influence of alcohol, drugs, or both at the time of arrest and booking. Fifty percent of the suicides occurred within the first 24 hours, and 27% occurred within the first 3 hours.\textsuperscript{49} Suicides occurred 3 to 8 times more often in jails than in the general population.\textsuperscript{50} The rate of suicide in prisons was approximately twice that in the general population.\textsuperscript{51}

Legal Precedent

The 8th Amendment prohibits cruel and unusual punishments. It applies to those who are convicted of a crime, but not to pretrial detainees. Convicted prisoners, therefore, have a constitutional right to medical care. In 	extit{Estelle v Gamble}, the U.S. Supreme Court set the “deliberate indifference” to serious medical need as the standard that constitutes the “unnecessary and wanton infliction of pain” proscribed by the 8th Amendment. The 7th Circuit Court of Appeals stated that a medical need is serious if either a physician has determined that medical treatment is required or a layperson would recognize the need for treatment.\textsuperscript{52}

In 	extit{Ruiz v Estelle}, prisoners brought forth a class action suit regarding conditions of confinement. Six essential elements from the district court ruling provided guidelines for planning mental health services: systemic screening and evaluation; treatment that was more than mere seclusion or close supervision; participation by trained mental health professionals; accurate, complete, and confidential records; safeguards against psychotropic medication prescribed in dangerous amounts, without adequate supervision, or otherwise inappropriately administered; and a suicide prevention program.\textsuperscript{40}

THE DEATH PENALTY AND ADDICTIONS

A psychiatric and medical examination often finds a history of alcohol and drug disorders among individuals sentenced for capital punishment. Substance-related disorders are the most common psychiatric diagnosis in prisoners sentenced to death. Studies show that between 70% and 80% of prisoners have a lifetime prevalence of substance-related disorders (see the article by Miller and Sheppard in this issue for more detail).

In 	extit{Eddings v Oklahoma}, a 16-year-old boy was sentenced to death for killing a police officer. The case was appealed to the U.S. Supreme Court based on the argument that the trial court had not sufficiently considered the mitigating evidence. The U.S. Supreme Court agreed, reversing the decision and remanding the case for the sentencing judge to give fuller consideration to the mitigating evidence. This decision can open the doors to providing evidence of the role of alcohol and drug disorders in a capital crime. Ultimately, mitigating evidence could save the life of an individual who otherwise may not have formed the intent to commit a crime if not under the influence of alcohol and drugs.\textsuperscript{53}

INvolUNTARY HOSPITALIZATION

Civil commitment statutes generally require components of mental illness, dangerousness (to self or others), grave disability (unable to care for self), treatability, and the least restrictive alternative. Civil commitment is common for those suffering from the complications of alcohol and drug disorders. Suicidal behavior is strongly associated with intoxication from alcohol and drugs. The
availability of treatment for withdrawal and the addictive disorder itself makes involuntary hospitalization an important potential step in reducing dangerousness and introducing individuals to sustained recovery.\(^{37}\)

Unfortunately, there are no legal precedents to hold an alcoholic or a drug addict who, in the abstinent state, appears to be at high risk for relapse to alcohol or drugs. Despite the effectiveness of coerced treatment in promoting sustained abstinence and reducing complications from alcohol and drug disorders, courts do not allow clinicians to hold individuals against their will to initiate addiction treatment. Coerced treatment is effective in confronting the denial of the addictive illness and motivating individuals to comply with treatment and ultimately find sustained abstinence and recovery.\(^{39}\)

**MALPRACTICE**

In a malpractice case, the plaintiff must prove negligence by a preponderance of the evidence, that negligence occurred more likely than not, and that the care did not meet the standard of practice. Negligence is defined as dereliction or breach of a duty directly causing actual damage. Cases of malpractice that involve alcohol and drugs, including prescription of addicting medications, are increasingly common. There are several major areas of case law that hold the physician liable for negligence when treating patients with alcohol and drug disorders.\(^{54}\)

**Competence to Sign Into an Institution**

Voluntary patients must be competent to sign into an institution and must understand the implications of doing so. The importance of assessing the capacity of an intoxicated patient to make decisions and understand their consequences is highlighted by legal precedent.

In *Zinermon v. Burch*, the U.S. Supreme Court held that in states such as Florida, which requires a patient to be competent before voluntarily signing into an institution, the failure to screen out incompetent patients violates those patients' constitutional rights. The implication was that the court suggested that all voluntary patients should be screened for competence before voluntary hospitalization is allowed.\(^{55}\)

**Informed Consent**

The essential requirements of informed consent are that the patient understand the nature and extent of his or her addiction problems, the risks and benefits of proposed treatment, and alternative courses of treatment. The patient must be competent to give informed consent to accept or reject treatment. The implications from legal decisions pose challenges for clinicians who treat patients with addictions.

In 1960, *Natanson v. Kline* was the first court requirement of informed consent.\(^{56}\) In 1972, the U.S. Court of Appeals' ruling in *Canterbury v. Spence* was for the court to require that information include the inherent and potential risks of the proposed treatment, the alternatives to treatment, if any, and the likely result if the patient remained untreated.\(^{57}\)

Although many clinicians, including physicians, are not aware of the effectiveness of addiction treatment, their lack of sufficient skill and knowledge may not protect them against liability if a patient is to be informed about his or her addictive disease and the risks and benefits of treatment versus no treatment. Given recent court cases, the possibility of malpractice may be increased in clinical cases of nicotine dependence if physicians do not explain the nature and extent of complications from continued smoking, the benefits of treatment, and the risks of refusing treatment. The liability for malpractice may be extended to other addictive drugs, including alcohol and medications, if sufficient attempts are not made to inform the patient of the nature and extent of the addictive disease, particularly the adverse consequences, the need for treatment, and the outcomes with and without treatment.

**Injury to a Third Party by Alcoholics and Drug Addicts**

As in the *Tarasoff* principle, the duty to protect others from patients who are likely to harm themselves or others was established in legal cases involving alcohol and drugs. In one case, the harm was done after discharge from the clinician's care.\(^{58}\) Although other court decisions have not always supported the *Tarasoff* decision, the precedent is clearly available for plaintiffs' cases.\(^{58,59}\)
In *Petersen v Washington State*, the Washington Supreme Court ruled that the hospital was liable for not extending the involuntary stay of a patient who, in a psychosis induced by phenylcyclidine hydrochloride, struck the plaintiff's car 5 days after release. The patient was a known drug addict who was seen driving recklessly on hospital grounds 1 day before discharge.60

**ADOLESCENTS AND JUVENILE COURT AND ADDICTIONS**

**Prevalence of Alcohol and Drug Use and Disorders in Juvenile Populations**

The onset of alcohol and drug use and disorders is often during the adolescent years (younger than 18 years). Ninety percent of high school seniors consume alcohol, and 5% do so daily.61 According to the Epidemiologic Catchment Area study, the mean age at onset of alcohol dependence is 22 years for men and 25 years for women. The mean duration of alcohol dependence is 9 years to diagnosis. Significant drug use is discernible as early as the 4th, 5th, and 6th grades. Although alcohol is the most common drug used, younger individuals typically consume other drugs, including nicotine, marijuana, cocaine, organic solvents, heroin, hallucinogens, and tranquilizers.62

As with adults, assessing the future dangerousness of adolescents includes an evaluation for alcohol and drug use. In a study of 72 adolescents charged with murder at the Michigan Center for Forensic Psychiatry between 1977 and 1985, three-fourths of the crime group (defined as killing during another crime such as robbery) and one-third of the conflict group (defined as involved in an interpersonal conflict with the victim) were intoxicated at the time of the offense.63 From 1992 to 1994, 25% of those who perpetrated school deaths had a history of having been previously involved with alcohol and drugs to a significant degree and 35% were involved in drug-related gangs.64 In general, studies show a strong association of drug and alcohol disorders with delinquency, truancy, violent crimes, property crimes, and other legal problems.64 Diversion is a common practice in juvenile court. The court can order to divert the case out of the legal system, often to alternative programs for the assessment and treatment of alcohol and drug disorders.

**Legal Precedents**

In *Kent v United States* and *In re Gault*, the U.S. Supreme Court held that a juvenile is entitled to a hearing, access to counsel, a written statement by the judge for reasons of waiver (*Kent v United States*), notice of charges, counsel, confrontation, cross-examination of witnesses, and privilege against self-incrimination.65 These safeguards allow for evaluations for identifying the underlying problem of addictive disease and diverting to alternative programs to provide education, intervention, and treatment for alcohol and drug-related offenses.

The Juvenile Justice and Delinquency Prevention Act emphasized community-based treatment and prevention. It established the Office of Juvenile Justice and Delinquency Prevention, deinstitualized status offenders, and limited placement of juveniles in adult institutions.66

**FORENSIC PATHOLOGY AND DRUG TESTING**

**Forensic Pathology**

Knowledge of the role of forensic pathology can be important to determinations made by a forensic psychiatrist. Factors of potential importance in identifying the role of alcohol and drugs are time of death, time of injury, manner of death, and manner of abuse (as in child abuse, rape, or penetration). Virtually any interface between the law and medicine may call for the expertise of a forensic pathologist.67

**Drug Testing**

Toxicology determinations on urine, blood, hair, and other body fluids or tissues are crucial to ascertaining the influence of alcohol and drugs on a particular individual or crime. Drug testing is also used to monitor compliance with diversion, probation, or stipulation of release from incarceration. Drug testing is one measure of treatment compliance and can be motivation for continued participation in monitoring programs.68

**MEDICAL RECORDS**

Federal and state statutes limit access to medical information. Federal confidentiality laws and
state licensing and confidentiality laws protect the identity, diagnosis, and treatment episodes of those who have alcohol and drug problems. Special federal rules pertain to the confidentiality of information concerning patients treated for or referred for treatment for alcoholism or drug addiction. The rules apply to any facility receiving federal funds for any purpose, including Medicare or Medicaid reimbursement. The rules preempt any state law that purports to authorize disclosures contrary to them, but states are permitted to impose tighter confidentiality requirements.

Methadone treatment programs must maintain records traceable to specific patients, showing dates, quantities, and batch or code marks of the drug dispensed for 3 years after the date of dispensing. When narcotics are administered for the treatment of hospitalized patients who are dependent on narcotics, the hospital must maintain accurate records, showing dates, quantities, and batch or code marks of the drug administered for at least 3 years. 69

REHABILITATION ACTS

The Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 have provided broad protection for individuals with physical and mental impairments. These acts provide precedent for inclusion of alcohol and drug addiction as a disability. An employee with an alcohol problem, drug problem, or both (which can apply to illegal drugs if in treatment and not using them) can be offered accommodation in the form of addiction treatment before losing his or her employment. An alcoholic is entitled to the option of addiction treatment to perform the essential functions of a particular job. An alcoholic who refuses treatment can be terminated from his or her position, especially if unable to perform his or her functions due to continued alcohol use. However, court decisions have made some distinctions as to how these acts can be applied to individual cases. 70-77

In Traynor v Turnage and Mckelvey v Turnage, two veterans sued the Veterans Administration for violation of the Rehabilitation Act, which prohibits discrimination against disability. The U.S. Supreme Court stated that Traynor and Mckelvey, who claimed that alcoholism created a disabling condition, were denied benefits “because they engaged with some degree of willfulness in the conduct that caused them to become disabled.” The historical dichotomy is illustrated in this case in which alcoholism is considered a disabling condition, but willful misconduct can be present in the individual with alcoholism. 70

CONCLUSION

Addictions and the law are interwoven in court cases, legislative actions, constitutional law, and administrative policy. In general, the law views alcohol and drug addiction as an illness in an individual who bears responsibility for its consequences, including punishment and therapeutic treatments. The individual is not completely guilty or absolved from criminal or civil responsibilities because of addictive disease. Increasingly, alcohol and drug disorders are considered the root causes of criminal and civil violations that can be ameliorated or eliminated through therapeutic actions sanctioned and monitored by the courts.

The forensic psychiatrist and the generalist should acquaint themselves with the efficacy of addictions treatment and the importance and advantages of identifying addictive diseases in their patients. They must also consider the legal consequences for not informing patients of the treatment options for their addictions. If addiction treatment is viewed as an alternative consequence of addictive disease in legal cases, the psychiatrist can cooperate with the legal system to improve clinical care and reduce harm to self and others by those suffering from alcohol and drug disorders. In this model, addiction treatment becomes the “carrot” in mitigation and the legal consequences for not complying with the alternative are the “stick” to induce the individual to exercise personal responsibility in his or her decisions.

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