Position Statement 54: Death Penalty and People with Mental Illnesses

Policy Position

- Our current system of criminal justice inadequately addresses the complexity of cases involving criminal defendants with mental health conditions. Therefore, Mental Health America (MHA) calls upon states to suspend using the death penalty until more just, accurate and systematic ways of determining guilt and considering a defendant's mental status are developed. 1
- Defendants should not be executed or sentenced to death if, at the time of the offense, they had a severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences or wrongfulness of their conduct, (b) to exercise rational judgment in relation to conduct, or (c) to conform their conduct to the requirements of the law.2 Defendants should not be executed or sentenced to death if, at the time of the offense, they had significant limitations in both their intellectual functioning and adaptive behavior, as expressed in conceptual, social, and practical adaptive skills, resulting from mental retardation, dementia, or traumatic brain injury.3
- Mental health conditions should be taken into account during all phases of a death penalty case. This includes the execution itself. No legitimate government purpose is served by the execution of someone who is not competent at the time of the execution.4 The assessment of competency to stand trial as well as competency to be executed should be conducted by a multi-disciplinary team of qualified professionals, including professionals with expertise in the defendant's particular mental illness.
- MHA is opposed to the practice of having a psychiatrist or other mental health professional treat a person in order to restore competency solely to permit the state to execute that person, and MHA opposes the practice of medicating defendants involuntarily in order to make them competent either to stand trial or to be executed.
- Research studies have demonstrated that a persistent pattern of racial disparities exists in the implementation of the death penalty. African-American defendants are four times more likely to receive the death sentence than white defendants 5. African-Americans are also less likely to receive mental health treatment. MHA believes that these discrepancies are linked, at least in part, to the pervasive effects of racism in American society and thus serve as an independent reason to oppose the death penalty.

Background

Over the past thirty years, the number of people with mental health conditions and other mental disabilities on death row has steadily increased.6 Although precise statistics are not available, it is estimated that 5-10 percent of people on death row have a serious mental illness.7

Mental health conditions can influence an individual's mental state at the time he or she commits a crime, can affect how "voluntary" and reliable an individual's statements might be, can

compromise a person's competence to stand trial and to waive his or her rights, and may have an effect upon a person's knowledge of the criminal justice system.

The process of determining guilt and imposing sentence is necessarily more complex for individuals with mental health conditions. A high standard of care is essential with regard to legal representation as well as psychological and psychiatric evaluation for individuals with mental health conditions involved in death penalty cases. Some states require a prediction of future dangerousness in order to impose a death sentence. However, research has shown predictions of future dangerousness to be unscientific and frequently inaccurate.[8] Therefore, such predictions are highly suspect as a basis on which to impose the death penalty. Moreover, there is a danger that the wholly unwarranted perception that mental illness is associated with violence could bias such predictions. In fact, research shows that people with mental illness pose no greater risk of violence than the average person.[9] Unfortunately, however, the misperceived link between mental illness and violence drives both legal policy and criminal justice system practice with respect to people with mental health conditions.

In 1986, the Supreme Court ruled in Ford v. Wainwright, 477 U.S. 399 (1986) that, "the reasons at common law for not condoning the execution of the insane -- that such an execution has questionable retributive value, presents no example to others, and thus has no deterrence value, and simply offends humanity -- have no less logical, moral, and practical force at present. Whether the aim is to protect the condemned from fear and pain without comfort of understanding, or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment." 477 U.S. at 400.

However, conversely, people with mental illness can be executed if they understand the punishment that awaits them and why they are being put to death. This ruling has prompted some states to provide psychiatric treatment to offenders with mental illness on death row in order to "restore their competency." Consistent with the code of ethics of the American Medical Association[10], MHA is opposed to the practice of having a psychiatrist or other mental health professional treat a person in order to restore competency solely to permit the state to execute that person. Similarly, MHA is opposed to the practice of medicating defendants involuntarily in order to make them competent either to stand trial or to be executed. Great care must be taken to assure informed consent for treatment / no treatment options.

MHA believes that our current system of fact-finding in capital cases fails to identify who among those convicted and sentenced to death actually has a mental health condition. Thus, there is reason to believe that individuals with mental illness are being executed without the criminal justice system knowing of the existence of that illness and, therefore, without the requisite consideration of whether that mental illness may be a mitigating factor in these cases. Therefore, MHA calls upon states to suspend use of the death penalty until more just, accurate and systematic ways of determining a defendant's mental status are developed. This position supports the American Bar Association's (ABA) call for a moratorium on the imposition of the death penalty because, in its judgment, "fundamental due process is systematically lacking" in capital cases.[11]

MHA applauds the U.S. Supreme Court's March 1, 2005 ruling in Roper v. Simmons, 543 U.S. 551 (2005), that declared the juvenile death penalty unconstitutional. Young people under age 18 should not be held to the same standard of culpability and accountability for their actions as adults. Impulsiveness, poor judgment, and lack of self-control are characteristics of childhood and are the reasons we limit many of the rights of minors. The age, maturity, mental status, and any history of abuse or trauma of a youthful offender should always be considered in deciding his or her punishment. MHA considers the execution of people for crimes they committed as children to be unjust and inhumane, serving no principled purpose, and demeaning to our system of justice, and thus endorses the Court's holding that the juvenile death penalty constitutes "cruel and unusual punishment."

Effective Period

The Mental Health America Board of Directors approved this policy on March 5, 2011. It is reviewed as required by the Mental Health America Public Policy Committee.

Expiration: December 31, 2016

1. For example, the inability to make such determinations led Illinois first to declare an 8-year moratorium and then to abolish the death penalty in 2011. "Since our experience has shown that there is no way to design a perfect death penalty system, free from the numerous flaws that can lead to wrongful convictions or discriminatory treatment, I have concluded that the proper course of action is to abolish it," Governor Quinn said in a statement. Illinois joins a wave of states that have reconsidered capital punishment in recent years. New Jersey abolished the practice in 2007. New Mexico did so in 2009. The Connecticut legislature voted to abolish the death penalty in 2010, but the governor vetoed the measure. See http://www.nytimes.com/2011/03/10/us/10illinois.html?_r=1&nl=todaysheadlines&emc=tha24
2. Recommendations of the American Bar Association Section of Individual Rights and Responsibilities, Task Force on Mental Disability and the Death Penalty. 2006. http://www.abanet.org/irr/hr/spring07/tabakspr07.html
3. *Id.* Mental Health America strongly agrees with the United States Supreme Court decision in *Atkins v. Virginia*, 536 U.S. 304 (2002), prohibiting the execution of persons who were mentally retarded at the time of the offense.
4. *Ford v. Wainright*, 477 U.S. 399 (1986).
5. Dieter, Richard. "The Death Penalty in Black and White: Who Lives, Who Dies, Who Decides." Death Penalty Resource Center. 1998 http://www.deathpenaltyinfo.org/death-penalty-black-and-white-who-lives-who-dies-who-decides
6. The National Coalition to Abolish the Death Penalty. Fact Sheet: "Mental Competency and the Death Penalty." http://www.ncadp.org/facts.html
7. Personal communication with the California Appellate Project.
8. *Deadly Speculation: Misleading Texas Capital Juries with False Predictions of Future Dangerousness*, Texas Defender Service (2004). http://02f2fd4.netsolhost.com/tds/images/publications/DEADLYSP.pdf
9. Steadman, H., Mulvey, E., Monahan, J., Robbins, P., Appelbaum, P., Grisso, T., Roth, L., Silver, E. "Violence by People Discharged From Acute Psychiatric Inpatient Facilities and by Others in the Same Neighborhoods." Archives of General Psychiatry 55:5, 393-401 (May 1998). http://archpsyc.ama-assn.org/cgi/content/full/55/5/393 A 2009 study published in the Archives of General Psychiatry found that mental illness alone is not an adequate basis for a prediction of dangerousness. As stated in the abstract, "bivariate analyses showed that the incidence of violence was higher for people with severe mental illness, but only significantly so for those with co-occurring substance abuse and/or dependence. Multivariate analyses revealed that severe mental illness alone did not predict future violence. http://archpsyc.ama-

ssn.org/cgi/content/full/66/2/152?maxtoshow=&hits=10&RESULTFORMAT=&searchid=1&FIRSTINDEX=0&resourcetype=HWCIT

10. American Medical Association. D-140.979 "Moratorium on the Imposition of the Death Penalty:" "Our American Medical Association will actively disseminate its opinion regarding physician non-participation in legally authorized executions". (Res. 5, A-03). http://www.ama-assn.org/ad-com/polfind/Directives.pdf

11. American Bar Association. Death Penalty Moratorium. 1997, www.abanet.org/moratorium/resolution.html