Assessing Violence Risk Using Standardized Measures and their Application to Legal "Dangerousness"

NRI's 2020-2021 State Profiles

Nov 29, 2021

HIGHLIGHTS BASED ON 48 STATES RESPONDING

State mental health authorities (SMHA's) often must assess an individual's risk of behaving violently, whether in managing inpatient units, planning for patients who are transitioning to less restrictive settings, or advising courts about a patient's committability/ eligibility for release. Risk assessment strategies are varied. Most SMHA's use standardized risk assessment instruments as part of their armamentarium. This report summarizes the states' use of these instruments.

80% (32) of SMHAS use a standardized instrument to assess dangerousness (risk of violence) of individuals sent to the state for treatment

Standardized dangerousness instruments are used by states to:

- Aid in determining clinical treatments (27 States)
- Aid in determining services or conditions for patients under consideration for conditional release (26 States)
- Aid in determining placement or security level of patients (25 States)
- Other Uses (6 States)
  - Providing Diagnoses and treatment recommendations
  - Assessing NGRI acquitees being considered for discharge recommendations to the court
  - Determine protective factors and not only risk factors that are dynamic and static for the patient
  - Aid in determining risk level associated with a particular privilege being considered for NGRI patient

The HCR-20 (Version 3) is the most frequently used standardized measure

The most frequently used standardized measures were:

• HCR-20	23 states
• VRAG	8 states
• Start	7 states
• PCLR	7 states
• Static-99R	7 states

- 18 states report using multiple measures

80%

of SMHAs Use A Standardized Measure of Dangerousness

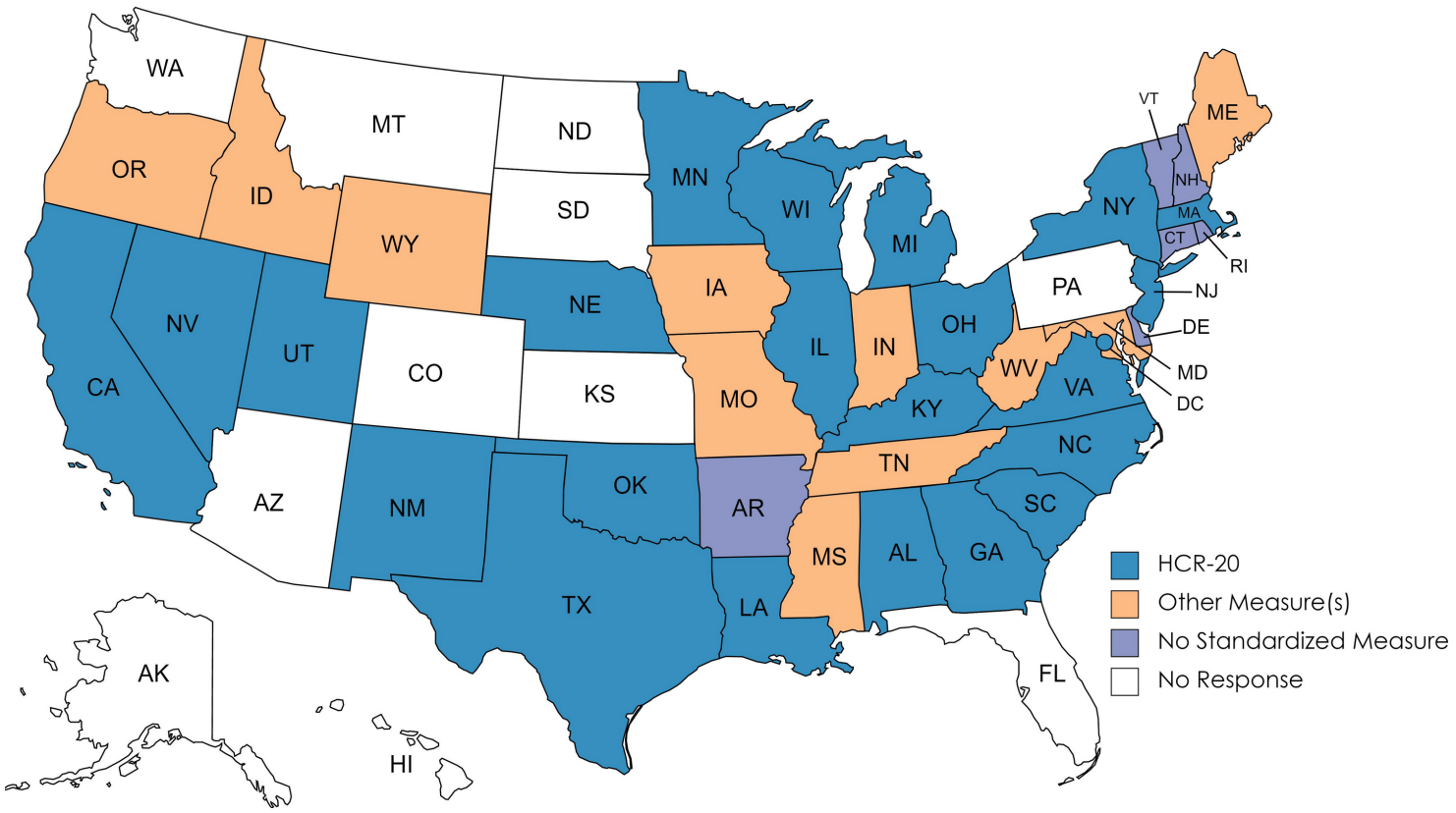
23

SMHAs Use the HCR-20 Instrument
18 SMHAs use Multiple Standardized Measures

27

SMHAs Use Dangerousness Measures to Aid in Determining Clinical Treatment Needs

Use of HCR-20 or Other Standardized Dangerousness Instrument by States



Uses of Results of Risk Assessment Instruments

Results of Actuarial Risk Assessments are included in:

- **Written Opinions on Committablity for the courts: 20 states**
- **In Oral Testimony on Committablility: 18 states**
- **Other: 9 states**
  - May not be used as a determination for committability, however could be used in decision making for continued need for treatment.
  - For written opinions and oral testimony regarding diagnoses and treatment recommendations
  - Other court orders (not for NCR/NGRI patients, but for pretrial defendants) can request risk assessment, such as to aid in sentencing decisions
  - Hospital and Department review of discharge planning for NGRI patients
  - An additional risk assessment called the Analysis of Risk Report.
  - Conditional release patients.

Nine States Describe Rules for Commitment/Retention Due to a Finding of Dangerousness Evidenced by Factors other than Serious Mental Illness

- Legal precedent allows for the continued commitment of NGRI patients based on ASPD alone (California).
- Patients may/can be committed because they have been diagnosed with anti-social personality disorder (Montana).
- For NGRI/NRRI patients, courts have committed patients due to dangerousness related to personality disorder traits. For sex offender commitments, a person can also be committed with a personality disorder (Nebraska).
- For sex offender civil commitment at Civil Commitment Unit for Sexual Offenders (CCUSO), a personality disorder diagnosis combined with a paraphilic disorder diagnosis may be used to meet the "mental abnormality" prong needed for commitment (Iowa).
- Sometimes clients are ordered to the SMHA for competency restoration or remanded for commitment purposes and it is later determined by SMHA treating doctors that the client does not have a serious mental illness. At that point the SMHA brings the findings to the court for further determination (Louisiana).
- NCR/NGRI commitment is automatic after the legal finding, and in the NCR petitioning hearings, dangerousness does not have to be tied to the mental illness (Maine).
- Some patients are admitted under a MI&D commitment and placed in a forensic bed because there are no other suitable options for them in the community (Minnesota).
- The Sexually Violent Predator Act allows for civil commitment for a mental abnormality that is not a traditional mental illness. See statute – NJSA 30: 4-27.26 (New Jersey).
- Risk factors associated with a particular individual can deem them dangerous if/when there is a re-emergence of such factors (New York).

State Examples of how Dangerousness Measures Are Used

- The structured violence risk instruments are used by the recovery (treatment) team to assist in decision-making concerning initial (30-day) civil commitment review of insanity acquittees as well as annual civil commitment review of insanity acquittees and incompetent and nonrestorable defendants. Furthermore, the results are used to help guide treatment planning of individuals who are civilly committed as well as placement, monitoring, and treatment planning for individuals recommended for discharge to the community (Georgia).
- Regarding those considered Dangerous and Mentally Ill (DMI); The following conditions may delay admission to a facility for restoration treatment beyond the required seven (7) calendar days while coordinating between systems. If, at any time prior to or during an individual's incarceration, the individual displays behaviors that appear to meet the Dangerous and Mentally Ill criteria (DMI), the Division of Behavioral Health (DBH) Regional Program assigned to evaluate the individual will request that the county prosecutor petition the court for a designation of DMI. Individuals found by the court to be DMI as defined by statute will be transferred to the state's Security Medical Program (ISMP), subject to the approval of DOC and in accordance with the DBH's ISMP process (Idaho).
- These are not used in every case. Those cases in which they are used are in review panels for clients on NGBRI status and second opinions for a less restrictive setting for unrestorable to violent charges (Louisiana).

State Examples of how Dangerousness Measures Are Used (Continued)

- The instrument is used as a component of the risk assessment and for developing plans for risk management (Massachusetts).
- Violence Risk Assessment (VRA) instruments are used to assess whether a patient may be appropriate for a less restrictive level of care (e.g. treatment in the community) and suitability to leave the hospital on an Outpatient Commitment or Conditional Release. These instruments also are particularly useful in determining what interventions/supports are needed to mitigate violence risk upon discharge (Mississippi).
- To determine privileges level and placement at the State Hospital (Montana).
- Risk assessment measures are used in conjunction with a clinical interview, record review, and potentially other psychological assessment instruments to provide recommendations for supervision, treatment, and mitigation of risk factors to identify least restrictive environment in which risk can be managed (Nebraska).
- To determine if they need a level of security provided by facility (Nevada).
- Part of the Comprehensive Violence Risk Assessment (Oklahoma).
- Forensic evaluators provide detailed information to the court on risk assessments and recommendations for potential levels of care for a variety of forensic populations (Oregon).
- The HCR-20 V3 is used to assist clinicians in determining risk for future violence during the initial NGRI risk assessment, and then at the particular privilege level requests and prior to any considerations for release to the community (Virginia).

One state added a caveat about variability in how standardized measure of dangerous are used: "Every evaluator has a different preference and level of expertise. The instruments they use are a combination of various structured professional judgment and actuarial based instruments."

Background on the Role of "Dangerousness" in Determining Psychiatric Hospitalization:
By W. Lawrence Fitch, J.D.

The essential criterion for psychiatric hospitalization has always been need for treatment. At least since the 1970's, however, involuntary hospitalization in most states has required an additional showing: that, without treatment, an individual's mental illness would place them at some risk of harm to self or others (Fitch and Swanson, Civil Commitment and the Mental Health Care Continuum, SAMHSA, 2019). Many state laws characterize this risk of harm as "dangerousness." Dangerousness due to a mental illness thus has become the focus of commitment and release decision-making nationally.

Determining whether a person is dangerous due to a mental disorder is challenging. Studies have shown that clinical judgment alone, uninformed by data, is unreliable. Beginning in the 1980's (and continuing today), researchers have studied the determinants of violent behavior and produced a variety of risk assessment instruments that address the degree to which a person's behavioral history or other characteristics align with known violence risk factors. The factors that place a person at increased risk are varied. Serious mental illness is generally not considered such a factor-- at least, not a major risk factor contributing, across populations, to violence against others. (Dangerousness to self, likely the most common ground for involuntary commitment, is another matter. Mental disorder clearly raises the risk of self harm, whether active 'suicidality' or passive 'grave disability'). For some individuals, of course, the symptoms of a serious mental disorder may increase violence risk-- even drive criminal behavior (e.g., persons found NGRI); for the large majority, however, they do not. More significant risk factors include gender, age, and character (in particular,"psychopathy"). Some of the standardized risk assessment instruments that are available prioritize these other risk factors and may classify a person as at elevated risk for reasons having little or nothing to do with a mental disorder.

May dangerousness alone, unrelated to a mental disorder, support a person's commitment to (or retention in) a psychiatric hospital? The US Supreme Court, addressing the commitability of insanity acquittees, has said no (Foucha v Louisiana, 504 US 71 (1992)), reasoning as it did in Jackson v Indiana (406 US 715 (1972)) and Jones v U.S (463 US 354 (1983)) that the nature of a person's confinement must bear some reasonable relation to its purpose. The acquittee in the Foucha case may have been dangerous (he had not proved he was not, as required by Louisiana law), but he had no mental illness. Justice O'Conner plainly stated that "...acquittees could not be confined as mental patients absent some medical justification for doing so; in such a case the necessary connection between the nature and purposes of confinement would be absent." Thus, in a proceeding to determine the committability of an insanity acquittee, an opinion that the individual is at increased risk for violence due to factors unrelated to a mental disorder would be (or should be) inadmissible as irrelevant to the legal question, "Is the person dangerous due to a mental disorder?"

Note that the standard for committing sex offenders may be different. The Court has sanctioned laws for the special civil commitment of sex offenders who are "sexually dangerous" due to a "mental abnormality or a personality disorder" that causes them serious difficulty in controlling their behavior (Kansas v Hendricks, 521 US 346 (1997); Kansas v Crane, 534 US 407 (2002)). Whether such a person's confinement must be "medically justified" is not clear.

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