DOI: 10.1590/1413-812320222712.11502022EN

ARTICLE

Custody and Psychiatric Treatment Hospitals in the prison system: A social death decreed?

Aline Sanches Oliveira (https://orcid.org/0000-0003-2606-2245) [1]
Helian Nunes de Oliveira (https://orcid.org/0000-0003-1635-5175) [2]
Hélio Lauar de Barros (https://orcid.org/0000-0002-3267-2982) [3]
Fernando Machado Vilhena Dias (https://orcid.org/0000-0002-5538-4852) [2]

Abstract *This text discusses people with mental disorders in conflict with the law in Brazil and the Custody and Psychiatric Treatment Hospitals, institutions included in the prison system and considered a hybrid between health and justice. When we present the reality in the national context, we show that the Psychiatric Reform did not reach these institutions, and these individuals continue to be stigmatized, and their human rights are violated. We substantiate the need to advance the debate and raise some questions to establish new solutions to tackle the issue and ensure well-structured, scientific evidence-based health care.*
Key words *Mental illness, Security measure, Custody and Psychiatric Hospital*

[1] Programa de Promoção de Saúde e Prevenção da Violência, Faculdade de Medicina, Universidade Federal de Minas Gerais (UFMG). Av. Prof. Alfredo Balena 190, Santa Efigênia. 30130-100 Belo Horizonte MG Brasil. alinesanc@gmail.com.
[2] Departamento de Medicina Preventiva e Social, Curso de Medicina, UFMG. Belo Horizonte MG Brasil.
[3] Fundação Hospitalar do Estado de Minas Gerais (FHEMIG). Belo Horizonte MG Brasil.

Goffman[1] argues that stigmatized individuals constantly struggle to build their social identity. These people are excluded from social relationships and, consequently, do not find space, function, or role, nor do they have a voice or can be subjects of action[1]. This author also establishes the concept of social death[2]. He affirms that "a selective and classificatory process occurs whereby the socially dead become definitively hidden from us"[2](p.10). One of the ways to conceal such individuals and decree their nonexistence is to include them in the so-called total institutions.

Custody and Psychiatric Treatment Hospitals (CPTH) are the institutions that house people with mental disorders in conflict with the law. The first CPTH in Brazil was founded in 1921 in Rio de Janeiro[3], and since 1940, they are the institutions recommended by the legislation to comply with the Security Measure (SM), characterized as a criminal sanction applied to non-imputable or semi-imputable individuals[4]. The SM mainly aims to implement general prevention over society and special protection over individuals, offering compulsory treatment[4]. When established, it can be detention-oriented or restrictive; in other words, it is performed under a regime of internment in CPTHs or outpatient treatment[4]. Thus, there is a close relationship between the criminal justice system, mental health, and the prison system. These individuals are dually stigmatized: by the mental disorder itself ("crazy") and the crime committed ("criminals")[3].

According to the National Survey of Penitentiary Information from the Information System of the National Penitentiary Department, 2,679 people are currently serving SM time in the country, with approximately 86% in psychiatric internment and 14% in outpatient treatment[5]. However, it is inferred that the total number of people with mental disorders in conflict with the law in Brazil is even higher since, besides possible underreporting and data divergence, some records show that individuals serve their SM time in common prisons without any special treatment[6] due to the lack of State equipment. Diniz[7] states that these people represent "a mostly male and black population with low schooling level and peripheral inclusion in the world of work, who generally committed a criminal offense against someone from their family or domestic network"(p.16). Thus, the prison system's demography highlights the vulnerabilities and inequalities to which this population is exposed.

Although they are called "Hospitals", all CPTHs are linked to security systems, incorporated into the penitentiary system, and managed by the Penitentiary Administration Secretariats[8]. Thus, while they are part of the prison system and are managed per the security precepts, these institutions are considered treatment and health care places. Soares Filho and Bueno[9] affirm that the dichotomous positions between the Unified Health System and the norms of criminal enforcement culminate in a treatment model determined by criminal legislation and not by public health policy, with several contradictions: treatment conducted in the judicial sphere, with reduced participation of the public health/social assistance network; disinternment conditioned to dangerousness cessation; perpetual internments, without clinical indication for such and regardless of crime severity; chronification, reinforcement of stigma and institutionalization of patients; irreversible loss of family ties and impossibility of returning to the socio-family environment; consumption of public resources that should be used to finance open, inclusive, and community-based services[9].

In Brazil, Law No. 10,216/2001 ensures the rights and protection of people with mental disorders[10]. Since its enactment, CPTHs have been recommended to redirect themselves per the new mental health parameters[11]. However, the Psychiatric Reform has knowingly not reached the CPTH[12-14]. Inspection reports published by the National Mechanism for the Prevention and Fight Against Torture and other works in the literature denounce that individuals submitted to these institutions have their human rights violated and are not receiving adequate health care[13].

People with psychological distress in conflict with the law are known to have been segregated for more than a century, distanced from society and their families with no prospect of return, prevented from exercising their rights, and without receiving the minimum treatment established by the National Mental Health Policy[9] due to the close relationship with the Justice system. In other words, they receive treatment with more deleterious than beneficial potential for their health conditions. Wermuth and Branco[14] affirm that "this has always been and will always be a non-priority agenda for the Brazilian State in all spheres: Legislative, Executive and Judiciary"(p.17).

Thus, we again emphasize the need to deconstruct the stigma and invest in new debates and possibilities that consider the assurance of these citizens' rights. Since 2011, the Brazilian mental health care model has been based on the Psy-

Ciência & Saúde Coletiva, 27(12):4553-4558, 2022

chosocial Care Network (RAPS) organization, which aims to operate in a network based on the treatment offered in various substitute devices[15]. In recent years, we have seen an increased awareness of the rights of people with mental disorders, their integration into the community, fostering the recovery of functionality, treatment in freedom, and reducing hospitalization time and beds in psychiatric hospitals[16]. Despite this, Brazil and the global world harbor persistent conflicting opinions and mechanisms on treatment adequacy or punishment for people with psychological distress who commit crimes[17].

Historically, the security measure (SM) was constructed as a biopower strategy, and the criminal justice system highly resists abandoning such a structure[12]. The SM is based on the notion of dangerousness, which assumes the risk that these individuals will come to commit new illicit acts[12]. However, Lebre[18] points out that "crime is not the privilege of the "abnormal" and not always the crime of the mental patient is linked to his pathology – which is why there is no mention of predisposition to wrongdoing"(p.277). Furthermore, several factors can contribute to recidivism, including vulnerabilities and social determinants of health, to which the whole society is exposed[19]. Thus, the argument of dangerousness legitimizes the role of social control of the unwanted exercised by the criminal system[18]. This argument is reinforced when we consider the conditioning of the extinction of the SM to the examination of cessation of dangerousness. Based on the presumption of dangerousness, given the disease as a totalizing and reducing factor of the individual is reinforced, and the individual's release is continually postponed[12].

Due to all the particularities involved in this population and the dual stigma already mentioned, these people continue to be excluded from criminal and health policies and advances in mental health. A recent example is Recommendation 62/2020, issued by the National Justice Council (CNJ) to Courts and Magistrates, recommending the adoption of preventive measures to prevent the spread of infection by the new coronavirus within the criminal and socio-educational justice systems[20]. The text did not address the security measures and people in psychological distress in conflict with the law, thus exposing the exclusion of this topic within the Brazilian criminal policy itself[14].

Many authors defend the reorientation of the care model and the urgent need to create intersectoral strategies for the deinstitutionalization of individuals and the final extinction of CPTHs. Ten years ago, the Federal Prosecutor's Office for Citizens' Rights and the Federal Public Prosecutor's Office published the "Opinion on security measures and custody and psychiatric treatment hospital from the perspective of Law No. 10,216/2001", which established the urgency to extinguish CPTHs, redirecting all federal and state resources used in their maintenance to the implementation and expansion of the several RAPS devices[21]. Wermuth and Branco[14] state that "the implementation of detention security measures as they are carried out until today in CPTHs and prisons is delegitimized and illegal, including the practice of torture"(p.15).

Soares Filho and Bueno[9] consider that the community should be the place of care for these individuals and the hospitalization of the judicial patient the last therapeutic resource used. The authors argue that this transition from hospitals to the community should be based on specific policies for these patients' deinstitutionalization and social reintegration, besides improved intersectoral policies for the integralization of care and the assurance of more significant investments in the PHC network[9].

In this context, it is essential to highlight the role of the "Evaluation and Monitoring Teams of Therapeutic Measures Applicable to People with Mental Disorders in Conflict with the Law" (EAP), established by the Ministry of Health through Ordinance MS/GM No. 94 in 2014[22]. In 2020, this critical Ordinance was temporarily extinguished and, after mobilizing civil society and institutions of the Justice system, the EAPs were re-established. Although they still do not cover the entire Brazilian territory, they are based on strengthening the local networks and the feasibility of a progressive deinstitutionalization of the interned[22].

Against the troubling backdrop and the slow change outreach, the authors propose a "provisional transinstitutionalization" as a possibility, whereby CPTH patients would be referred to conventional psychiatric hospitals to provide conditions for extinguishing the security measure while initiating a progressive deinstitutionalization and construction of the Singular Therapeutic Project through the RAPS and the social assistance network of the Unified Social Assistance System[9]. The authors recognize that this is a delicate proposal when considering the anti-asylum struggle's precepts, but they see the suggestion as a possibility of a first step towards closing the CPTHs[9].

In Italy, a country considered a model for Brazil in the Psychiatric Reform, the CPTHs have already been extinguished, and the Residences for the Enforcement of Security Measures were created[23]. Following another possibility of treatment, England and Wales have the so-called Supervised Community Treatment Orders, which oblige post-discharge patients to comply with the conditions specified by their doctors under the possibility of a compulsory return to the hospital for new internment[24]. In contrast, Articles 12 and 14 of the International Convention on the Rights of Persons with Disabilities address "Equal recognition before the law" and "The person's freedom and security" and provide subsidies to advance this discussion further[25]. Considering the papers mentioned above, some people claim that the transgressions of people with psychological distress should be judged much in the same way as the act of any citizen is judged. The fact that non-imputability exempts the subject from guilt prevents him from answering for the act committed, removing his right to be held accountable[26]. Thus, when considered unimputable, people with mental disorders are automatically alienated from the possibility of defense, the right to justice, and any implication with the act. Should the individual with psychological distress be considered attributable and serve a custodial sentence receiving mental health treatment as any treatment available for other comorbidities?

We know that the security measure failed to fulfill its objectives and that, while not preventing new crimes, it segregates and deprives individuals of access to adequate mental health treatment[12]. The work aimed at the continuous monitoring of individuals with severe psychological distress and in a situation of social vulnerability, which allows the active search for cases, intensive care in times of crisis, inclusion in social centers, health promotion, autonomy, and improved social and territorial bond, can prevent crimes[27]. To this end, it is necessary to strengthen the RAPS through more important qualifications, improved financing, and extension of the coverage of substitutive services.

Faced with this complex system and after all the above, the questions persist: What would be the most appropriate way to address these situations considering the guarantee of these citizens' rights? Should mentally ill individuals who commit crimes be referred to compulsory psychiatric treatment or subject to a specific sentence? If treatment is offered, which would be the most appropriate option? This dilemma has no straightforward solution, so its discussion should be increasingly encouraged.

The fact is that these individuals continue to be violated, objectified, and daily experience "self-mortification". Some persistent, significant challenges can only be faced through a consistent dialogue between health and justice and the definition of a policy focused on the specificities and priorities of this population, based on respect for human rights and the best available scientific evidence. Finally, we leave the reflection proposed in Brecht's poem[28]: "The river that everything drags is known as violent, but nobody calls violent the margins that arrest him"(p.155).

Collaborations

AS Oliveira contributed to the literature review and text writing. All other authors contributed to the text's reading and review at all implementing stages.

References

1. Goffman E. *Estigma: Notas sobre a Manipulação da Identidade Deteriorada*. 4ª ed. Rio de Janeiro: LTC; 2019.
2. Goffman E (1952). Acalmando o otário: Alguns aspectos de adaptação à falha. *Rev Progr Pos-Grad Sociol USP* 2009; 16(1):195-211.
3. Carrara SL. *Crime e loucura*. Rio de Janeiro: Eduerj; 1998.
4. Brasil. Código Penal. Decreto-Lei nº 2.848, de 07 de dezembro de 1940 alterado pela Lei nº 7.209 de 1984. *Diário Oficial da União* 1940; 31 dez.
5. Sistema de Informações do Departamento Penitenciário Nacional (SISDEPEN). *Levantamento Nacional de Informações Penitenciárias do Sistema de Informações do Departamento Penitenciário Nacional. Período de julho a dezembro de 2020* [Internet]. [acessado 2021 jan 21]. Disponível em: https://www.gov.br/depen/pt-br/sisdepen.
6. Lima SC, Rodrigues MS. Execução de medida de segurança no estado do Tocantins frente à ausência de Hospitais de Custódia. *Rev Hum Inov* 2020; 7(20):474-485.
7. Diniz D. *A custódia e o tratamento psiquiátrico no Brasil: Censo 2011*. Brasília: Letras Livres, Editora Universidade de Brasília; 2013.
8. Jacobina PV. *Direito penal da loucura: medida de segurança e reforma psiquiátrica*. Brasília: ESMPU; 2008.
9. Soares Filho MM, Bueno PMMG. Direito à saúde mental no sistema prisional: reflexões sobre o processo de desinstitucionalização dos HCTP. *Cien Saude Colet* 2016; 21(7):2101-2110.
10. Brasil. Lei nº 10.216, de 6 de abril de 2001. Dispõe sobre a proteção e os direitos das pessoas portadoras de transtornos mentais e redireciona o modelo assistencial em saúde mental. *Diário Oficial da União*; 2001.
11. Brasil. Ministério Público Federal. *Reforma psiquiátrica e manicômio judiciário: relatório final para reorientação dos hospitais de custódia e tratamento psiquiátrico*. Brasília: Ministério Público Federal; 2002.
12. Branco TC. *A (des)legitimação das medidas de segurança no Brasil*. Porto Alegre: Livraria do Advogado; 2018.
13. Oliveira AS, Dias FMV. Andando na contramão: o destino dos indivíduos com transtorno mental que cometem crimes no Brasil. *Physis* 2018; 28(3):e280305.
14. Wermuth MAD, Branco TSC. Medidas de segurança no Brasil em tempos de pandemia: da biopolítica à necropolítica? *Rev Juridica (FURB)* 2021; 25(56):e9939.
15. Brasil. Ministério da Saúde (MS). Portaria nº 3.088, de 23 de dezembro de 2011. Institui a Rede de Atenção Psicossocial para pessoas com sofrimento ou transtorno mental e com necessidades decorrentes do uso de crack, álcool e outras drogas, no âmbito do Sistema Único de Saúde. *Diário Oficial da União* 2011; 23 dez.
16. World Health Organization (WHO). *Guidance on community mental health services: promoting person-centred and rights-based approaches*. Geneva: WHO; 2021.
17. Melamed Y. Mentally Ill Persons Who Commit Crimes: Punishment or Treatment? *J Am Acad Psychiatry Law* 2010; 38(1):100-103.

18. Lebre M. Medidas de segurança e periculosidade criminal: medo de quem? Responsabilidades 2013; 2(2):273-282.
19. Melnychuk RM, Verdun-Jones SN, Brink J. Geographic risk management: A spatial study of mentally disordered offenders discharged from forensic psychiatric care. *Int J Forensic Mental Health* 2009; 8(3):148-168.
20. Conselho Nacional da Justiça (CNJ). *Recomendação 62* [Internet]. Brasília: CNJ; 2020 [acessado 2021 jan 21]. Disponível em: https://www.cnj.jus.br/wpcontent/uploads/2020/03/62-Recomendação.
21. Brasil. Ministério Público Federal. Procuradoria Federal dos Direitos do Cidadão. *Parecer sobre medidas de segurança e hospitais de custódia e tratamento psiquiátrico sob a perspectiva da Lei nº 10.216/2001*. Brasília: Ministério Público Federal; 2011.
22. Brasil. Ministério da Saúde (MS). Secretaria de Atenção à Saúde. Departamento de Ações Programáticas Estratégicas. Coordenação de Saúde no Sistema Prisional. *Serviço de Avaliação e Acompanhamento de Medidas Terapêuticas Aplicáveis à Pessoa com Transtorno Mental em Conflito com a Lei*. Brasília: MS; 2014.
23. Catanesi R, Mandarelli G, Ferracuti S, Valerio A, Carabellese F. The new residential forensic psychiatric system (REMS): A one-year population study. *Ital J Criminol* 2019; 13:7-23.
24. Weich S, Duncan C, Twigg L, McBride O, Parsons H, Moon G, Canaway A, Madan J, Crepaz-Keay D, Keown P, Singh S, Bhui K. *Use of community treatment orders and their outcomes: an observational study*. Southampton: NIHR Journals Library; 2020.
25. Brasil. Ministério da Saúde (MS). Secretaria de Atenção à Saúde. Departamento de Ações Programáticas Estratégicas. *Direito é qualidade: kit de ferramentas de avaliação e melhoria da qualidade e dos direitos humanos em serviços de saúde mental e de assistência social*. Brasília: MS; 2015.
26. Gomes RMM. A responsabilidade como condição de humanização: a resposta de Althusser. In: Gomes RMM. *Dos desvios da norma à responsabilidade pelo imprevisível: a avaliação pericial do louco do infrator*. Belo Horizonte: Ed. Autor; 2020. p. 231-246.
27. Oliveira LV, Salvador PTCO, Freitas CHSM. Assistência em saúde mental aos pacientes internados nos institutos de psiquiatria brasileiros: scoping review. *Rev Bras Enferm* 2020; 73(Supl. 1):e20190548.
28. Brecht B. *Poemas: 1913-1956*. São Paulo: Editora 34; 2004.

Article submitted 28/11/2021
Approved 14/07/2022
Final version submitted 16/07/2022

Chief editors: Maria Cecília de Souza Minayo, Romeu Gomes, Antônio Augusto Moura da Silva

This is an Open Access article distributed under the terms of the Creative Commons Attribution License