People being made to have treatment by law – everyone knows there is a problem but no one is talking about it.

The Scottish Recovery Network (SRN) asked Mary O'Hagan to write this article. She is a leader in mental health issues here and abroad and has experience of mental illness herself. The article argues that being made to have treatment by law does not fit in with the main model of care used, called the recovery approach. It is also against our Human Rights.

This is a Plain English version of Mary's article. See the longer version on our website for a full list of references. We would like to hear what you think about what she has written – click here to visit our website and leave your comments.

Over the last 10 to 15 years a central part of Mental Health care used in many English speaking countries has been the recovery approach. At the same time more and more people in these countries are being made to have treatment.

There are 4 main parts to the recovery approach:

1. Hope and belief in what people can do.
2. Believing people can and should make their own decisions.
3. People having a choice of different services.
4. People treated equally and taking part in

The law allows some Doctors and others who provide mental health services to force people to do things, with the help of the police and the courts. This includes:

- Being made to stay in hospital.
- Being made to have treatments they don't want.
- Being locked up by themselves.
- Being made to have treatments in the community.

Doing these things goes against the 4 main parts of the recovery approach above but services still use the law to make people have treatment.

Discrimination is the biggest thing stopping recovery. It affects why, when and how people are made to have treatment. The public often think “mad people are violent” and “you don’t know what they will do next". As a result these Mental Health laws have been created.
The Mental Health laws in most countries say that people can be made to have treatment if they are a danger to themselves or others.

The growing worry about this is that it creates one rule for people thought to have a mental illness and another for everyone else.

For example:

- General health service users have a right to say no to treatment, even if they are seen as a danger to themselves, but mental health service users do not.

- The state has no power to lock someone up before they have committed a crime, even if they are thought to be a danger to others, so why should mental health systems be given these powers?

This situation means there is one standard for people with mental illness and a different standard for everyone else. The argument that supports this is a belief that people who use mental health services are unable to make decisions themselves. However, research has shown that the numbers of people unable to make decisions are similar for both mental health services and other patients in general hospitals.

Being unable to make your own decisions, or incapacity, has been included in some recent mental health laws. Some people who support this have said they also want these laws to include the forced treatment of general health service users without capacity as well as mental health service users. Some of these people have also said there should be different rules for deciding the capacity of those with a mental health illness, like when people do not agree that they are ill and might be helped by treatment. They also want a different test of capacity for people seen as having a mental health illness. They say this is needed because they think deciding whether someone can make their own decisions, or not, is more difficult if they have a mental illness.

This would not stop discrimination against people seen as having a mental health illness.

In modern Mental Health laws there are more ways than before for people being made to have treatment to question and try to change these decisions. These are called appeals, but the way they are done is not on the patient’s side. People asking to be let out of hospital often feel power is taken away from them and that doctors are listened to more. In some countries the number of people winning appeals is between 1 and 10 out of every 100. In some places people are made to have treatment forever.

If the rules were the same for members of the general public, including an unfair system of appeals, they would not stand for it. The use of force to make people do things and the way people could appeal would be made much fairer.
The number of people made to have treatment varies widely over time and across the European Union. The highest is 20 times more likely to keep people in hospital than the lowest. The numbers have also gone up in many Northern European countries, in New Zealand and Australia in the last 20 years. These differences are because of things like poor services and growing pressures to manage risks, not the law itself. People from poor backgrounds are also much more likely to be made to have treatment.

The research is still not clear that making people have treatment by law makes people's recovery better. Very little research has been done on whether it does any good to force people stay in hospital. The most common thing people are made to do is take one of the medicines called anti-psychotic drugs. These started being given in the 1950s. People taking them can live shorter lives and it has been shown that people with schizophrenia do not get better any quicker if they take these drugs.

Making people have treatment can cause a lot of harm, physically and mentally, but can it also save people from death and danger? Sometimes yes, but one person has worked out it takes 85 cases of people being made to have treatment in the community to stop one person going into hospital and 238 cases to stop one arrest. Another person worked out you would have to force many thousands of people who use mental health services to stay in hospital to possibly stop one murder. It is clear that the worry about the risk people are to others is untrue.

What do the people who have been made to have treatment by law think about this? There is not much research on this. What research there is shows that these people are often unsure. Some complain about not being free to leave but also accept it at the same time. Doctors regularly use their powers to make people do things by law just to get them the services they need quickly, because otherwise there are long waiting times. Some patients might go along with this so they get the service they need. There are also some people who end up being grateful to the people who lock them up.

A huge step forward in the area of making people have treatment by law is the United Nations Convention on the Rights of Persons with Disabilities. This international law was passed in 2006 and Article 14.1 in it says that 'the existence of a disability shall in no case justify a deprivation of liberty'. This means that there is no type of disability that means it is okay to take away someone's freedom. The United Nations Human Rights Council said in 2009 that making people have treatment for their mental health by law is probably not allowed. The countries who have said that they recognise the U.N. Convention is law have been slower to agree that this is the case.

The recovery approach and these recent human rights should be changing the basic laws on making people have treatment. Instead, making people have treatment by law continues to be a problem that everyone knows about but no one is talking about it.
All of us who support recovery and human rights need to say this is wrong and we need to make a way forward along these lines:

- The mental health system changes the way it works to help stop crises instead of reacting to them.
- The mental health system develops services that help recovery, works together with service users, and offers advance directives (a way people can say what treatment they want before they are ill) and offers choices for people in crisis.
- Society does not stand for discrimination and demands that all mental health and general health service users are treated equally when it comes to being made to have treatment.

Society also expects that people who have committed crimes and have mental health problems will receive the same level of support to get better in prison as people do in the mental health system.

We thank TransMedia Link for helping us translate this article into Plain English.

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