

# PATIENTS' RIGHTS VS. PUBLIC SAFETY

## Virginia Tech shootings highlight how mental health laws that prohibit forced treatment make it difficult to intervene

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Even after Rae Belle Gambs' son held a gun to her head, he was not considered an imminent enough threat to himself or others to be forced into treatment for schizophrenia.

After years of trying to get help for her adult son, the woman from Atascadero (San Luis Obispo County) thought she had no choice other than to pursue criminal charges that ultimately landed him in jail in 1998, where he received treatment for four months.

For Gambs, last week's shootings at Virginia Tech highlight major failings in our nation's mental health laws: Long-standing laws protecting patients' rights make it difficult for authorities and family members to intervene and order a loved one to receive treatment.

"It absolutely breaks my heart and makes me so sad that so many people died because we, as a society, didn't treat this man," said Gambs, San Luis Obispo County's president of the National Alliance on Mental Illness of California. Her son, now 34, lives in community housing and is successfully stabilized on medication.

Emerging details about Seung-Hui Cho's interactions with the mental health system more than two years before the shootings have stirred up long-standing debate around how state and local authorities should handle mentally ill people who refuse treatment but show signs of potentially dangerous behavior.

Some experts and family members say scarce resources combined with well-intentioned laws that reversed decades of inhumane treatment of the

mentally ill give them few options to prevent patients from hurting themselves or others. Other mental health advocates say involuntary treatment frightens away people who might otherwise seek help.

"If there's any one issue that polarizes the mental health community, it's forced treatment," said Sally Zinman, executive director of the California Network of Mental Health Clients, an advocacy group vehemently opposed to imposing treatment on the mentally ill and linking the disease with violence.

While experts say Cho showed signs of a mental illness -- possibly paranoia and psychosis -- they are quick to point out that the vast majority of people with emotional diseases are not violent or are more likely to harm themselves than others.

Concern over potential suicide led an acquaintance of Cho's, in December 2005, to contact police, who referred Cho to a mental health center. Counselors petitioned a local magistrate for a temporary detention order based on an initial assessment that Cho might be a danger to himself or others.

The order required that Cho be evaluated further at an off-campus psychiatric hospital, but he was released after a brief stay and ordered to receive outpatient treatment. Officials have not confirmed whether Cho received further treatment.

California has a historic role in establishing the laws that restrict involuntary treatment. The law behind Cho's temporary hold and subsequent release was modeled after a bill passed in this state almost 40 years ago to stop the abuse of people who were labeled mentally ill and thrown indefinitely into state hospitals.

The Lanterman-Petris-Short Act, a product of the civil rights movement signed by California's then-Gov. Ronald Reagan in 1967, required that a judge determine a patient to be an immediate threat before ordering an involuntarily commitment. Such commitments are limited to 72 hours, with a subsequent evaluation and court order needed to justify a longer stay.

The law coincided with the closure of state hospitals. Later, funding and support for community psychiatric services and board-and-care were severely curtailed, leaving many mentally ill people with fewer places to go. With insufficient outpatient resources, many people with serious illnesses ended up on the streets or in jail. Even with the passage of recent reforms, the problem persists.

Some health experts argue the pendulum has swung too far in favor of protecting patient rights, giving authorities and family members few options to protect potentially violent individuals.

"Being completely and absolutely overcome with illness -- walking around and thinking you're on Mars and that everyone is a Venusian -- is not enough to get someone into treatment. They have to be in physical danger at the time," said Jonathan Stanley, assistant director of the Treatment Advocacy Center, a national group based in Arlington, Va., that supports forced treatment.

That standard often prevents authorities from stepping in until after something terrible has happened.

"A person has to commit a crime -- there has to be blood on the ground -- before we can act," said Randall Hagar, director of governmental relations for the California Psychiatric Association. "That's a pretty darn high bar."

Hagar said the requirement of imminent danger is too strict because people are generally being observed for a short period of time.

"The person who can hold it together for 20 minutes while they're being interviewed by a police officer on a street corner may be highly dangerous," he said, "but they can evade detention."

As a mother, Gambs said she was mystified by a system that encouraged her to allow her adult son to become homeless and ultimately jailed before he could be hospitalized against his will. She said police officers actually encouraged her to let her son live on the streets in hopes he would be arrested and get help.

"My personal opinion is it costs too much money, and we don't want to treat them," she said of the mentally ill. "It is cheaper to keep them in jail."

The unintended consequence of patient rights laws, such as the criminalization of the mentally ill, is a growing movement among states to find a middle ground.

In 2003, California passed a forced outpatient law known as "Laura's Law," after Laura Wilcox, a 19-year-old college student from Nevada County. She was shot to death by a man with paranoid delusions who refused his family's efforts to get help.

The law, fashioned after one in New York called "Kendra's Law," which is named after a 32-year-old woman who was pushed in front of a subway train in 1999 by a schizophrenic man who was off his medications, requires those deemed likely to become dangerous if left untreated to receive outpatient care.

But the California law, now more than 3 years old, is not being enforced because it requires that counties show that they are not cutting back on voluntary services to pay for involuntary care.

Forty-two states now have some ability to require outpatient treatment with varying degrees of effectiveness.

But forcing outpatient care isn't acceptable to some mental health advocates.

"The threat of that forced treatment turns people away from the system and causes them to choose not to engage in mental health services," said Zinman, of the California Network of Mental Health Clients.

A recent California reform that seems to draw wider support from mental health experts is Proposition 63, which was passed by voters in 2004.

Known as the "millionaire's tax," Prop. 63 collects almost \$1 billion a year for mental health programs by placing a 1 percent tax on Californians with incomes greater than \$1 million. Supporters view it as a way to provide funding for community-based mental health services, thus making up for the broken promises made almost 40 years ago.

"Clearly, something is happening in California," said Dr. Ken Duckworth, medical director of the National Alliance on Mental Illness, who described the new law as "awesome." "The voters of California somehow assessed the care system in California was inadequate for poor people."

Because the law is new, its effects are unclear, but mental health advocates say it gives them hope.

"California is unique in that there's this opportunity to put in place a whole system that would support people where they're at in a preventive way," Zinman said, "and avoid people escalating and getting worse and worse."

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#### How California treats mentally ill

-- More than 50,000 mentally ill people live on the streets and 20,000 are imprisoned.

-- An estimated 300,000 adults with serious mental illnesses don't have access to needed services.

-- The state spends about \$4 billion annually on services, most of any state.

-- The state has lost 30 percent of its inpatient hospital beds over 10 years.

Sources: California Psychiatric Association; California Mental Health Planning Council; National Alliance on Mental Illness; California Hospital Association

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<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/04/22/MNGEMPDE6V1.DTL>

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