13 Drexel L. Rev. 945

Drexel Law Review
2021

Article
Victoria M. Rodríguez-Roldán[a1]

Copyright © 2021 by Drexel University; Victoria M. Rodríguez-Roldán

THE RACIALLY DISPARATE IMPACTS OF COERCIVE OUTPATIENT MENTAL HEALTH TREATMENT: THE CASE OF ASSISTED OUTPATIENT TREATMENT IN NEW YORK STATE

ABSTRACT

In 1999, New York State began implementing Assisted Outpatient Treatment (AOT), which allowed for court-ordered outpatient mental health treatment. Despite the initial benevolent intent of this project, negative racial disparities pervade New York's AOT program, with Black and Hispanic people being disproportionately subjected to its court orders. This Article argues that the AOT program has acted to further marginalize and discriminate against New Yorkers of color and recommends several reforms to the program.

TABLE OF CONTENTS

INTRODUCTION: COERCION IN MENTAL HEALTH TREATMENT 946

I. KENDRA'S LAW 948

II. DISPARITIES: THE NUMBERS THROUGHOUT THE YEARS 951

III. AOT HAS A NEGATIVE DISPARATE IMPACT ON PEOPLE OF COLOR 956

IV. RECOMMENDATIONS FOR POLICYMAKERS 959

CONCLUSION 960

*946 INTRODUCTION: COERCION IN MENTAL HEALTH TREATMENT

While modern psychiatry traces its roots to the 1800s, mental illness has been recognized since the dawn of recorded history. The Greek father of medicine, Hippocrates, whose oath medical students still take, applied terms such as paranoia and epilepsy, which are still used to this day.[1]

Most of the history of mental health includes coercion and involuntary treatment toward the mentally ill. Hippocrates and his followers suggested during the fourth century B.C.E. that persons with mental health disabilities "be confined in the wholesome atmosphere of a comfortable, sanitary, well-lighted place."[2] In ancient Rome, the law provided for a guardian to have authority over the affairs of a person with a mental disability.[3] In early medieval England, treatment for the mentally ill consisted of beatings in an effort to "exorcise the devils which caused mental illness."[4] By the 1600s, Bedlam, as the Royal Bethlehem Hospital came to be called, acted as a sinister prison for society's rejects, usually brought there against their will, and served as a freak show where members of society would often visit on holiday to gawk at the infirm lunatics.[5]

The United States followed suit with the creation of its first mental asylums in the late eighteenth and early nineteenth centuries, such as the Worcester State Hospital in Massachusetts, founded in 1833.[6] The criteria at the time for involuntary commitment to this and other asylums usually consisted of a family member referring the person to the asylum ***947** and a doctor "certify[ing] the admission for an indefinite period."[7] By the twentieth century, mental healthcare treatments had evolved past the whippings of medieval society, but involuntary inpatient treatment persisted.[8] In 1972, the Eastern District of Wisconsin held in *Lessard v. Schmidt* that, absent a finding of "'dangerousness' to self or others," the indefinite commitment of a plaintiff due to schizophrenia was unconstitutional.[9] The dangerousness standard still informs involuntary commitment laws, which have been passed in virtually every state.[10]

One of the latest evolutions of coercion in mental healthcare is the concept of Assisted Outpatient Treatment (AOT). AOT is a form of involuntary commitment that is outpatient-based.[11] Thus, an individual in an AOT program continues to live in the community while being subject to a court-ordered mental health treatment, such as medication.[12] Statutes providing for AOT as a form of involuntary commitment have been enacted in forty-seven states and the District of Columbia.[13]

This Article examines the results of AOT in New York and the extent to which this new form of coercion in mental healthcare has had a disproportionately negative impact on New Yorkers of color.[14] New York State is the particular focus of this Article ***948** not because the dynamics examined are unique to the Empire State,[15] but rather because New York state health authorities have made most of their AOT-related demographic data easily accessible online, which allows for more informed analyses of the state's program.[16]

I. KENDRA'S LAW

On January 3, 1999, thirty-two-year-old Kendra Webdale was waiting for a train at the 23rd Street subway platform when Andrew Goldstein, who had schizophrenia, pushed her onto the tracks before an oncoming train.[17] Webdale was instantly killed.[18]

In the immediate aftermath of Webdale's highly publicized death, New York policymakers zeroed in on Goldstein's mental illness as the cause of the killing and the problem that needed to be addressed.[19] The identified problems included the relative lack of an ability to force a mentally ill person to engage in long-term outpatient mental healthcare beyond the mere criminal legal system.[20] Then state Attorney General Eliot Spitzer pushed for the introduction of a bill--to be named after Webdale--with ***949** the intent to create a system by which people with untreated mental illness could be placed on court-ordered outpatient mental healthcare.[21]

The bill gained further traction and support when another person, Edgar Rivera, was pushed onto the subway tracks by a mentally ill person just a few months later in April 1999.[22] As such, in August 1999, Governor George Pataki signed the bill known as Kendra's Law, which became effective in November of that year.[23]

The political backdrop behind Kendra's Law is important because the motive was not necessarily to help or protect people with mental illness themselves, but rather to protect the broader community *from* people with mental illness. After all, the events that inspired and fueled the bill's introduction and passage were murders committed by individuals with mental illness, with said mental illness being blamed for their actions. As is often the case when laws are passed in the aftermath of a tragedy, emotions ran high[24] and reason low. In that sense, New York's passage of this law was hardly unique; it is simply one example in a long history of society viewing mental illness as scary or dangerous.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

Kendra's Law, section 9.60 of the New York Mental Hygiene Law, established a system known today as AOT.[25] As described by the City of New York, the law mandates outpatient treatment via court order to a "small number of individuals who have difficulty engaging in rehabilitation and can pose a ***950** risk to themselves or others in the community."[26] These court orders are granted in either the supreme or county court where the person is located.[27] To be subjected to this court order, an individual must be over the age of eighteen and considered to be suffering from mental illness, unlikely to live safely in the community without supervision, unlikely to consent to said treatment, likely to deteriorate without treatment, and has a history of lack of compliance with treatment.[28]

A broad variety of individuals may petition a court for AOT, such as a health provider of the individual in question, parole officers, parents or close relatives, or even any adult over the age of eighteen with whom the person resides, including a roommate.[29] A mental health professional must establish a treatment plan to be approved by the court.[30]

The court may mandate an extremely broad range of treatments. The treatment plan can include medication, periodic blood and urine tests to determine compliance with said medications, therapy (group or individual), alcohol or drug testing and counseling, supervision of living arrangements, "and any other services" developed within the plan prescribed for the person's mental illness.[31] In instances where the person subject to the court petition is not willing to submit to a psychiatric examination, the court may order police officers to take the person into custody and take them to a hospital for examination.[32]

Because there is such a wide range of treatment plans, there are also many opportunities for an individual to fall out of compliance, for example, if the person subject to the order does not take the prescribed medications, or refuses or fails a blood, ***951** urine, alcohol or drug test.[33] When that happens, the physician in charge of the program may direct the local police to take the person into custody and have the person brought to the hospital for evaluation and possible inpatient hospitalization.[34]

As demonstrated above, while the AOT program in New York is designed to be an outpatient alternative to involuntary civil commitment, AOT orders exert a similar amount of control over a person's life. Under an AOT order, the court's and medical professionals' authority encompasses almost all aspects of a person's daily life, including, as discussed previously, whether to subject themselves to blood or urine tests and whether to take prescribed medications.

What has been described is what the program is in theory. Part II will explore what New York's AOT program looks like in *practice,* with a specific focus on the racial disparities found in the program.

II. DISPARITIES: THE NUMBERS THROUGHOUT THE YEARS

The New York State Office of Mental Health keeps track of all AOT petitions filed and granted, as well as the demographic composition of the program.[35] A review of this data shows that Black and Hispanic[36] recipients are significantly overrepresented in the AOT process as opposed to their white counterparts.

***952** Between November 1999 and August 2021, 30,580 AOT petitions were filed statewide, of which 95% were granted.[37] Of those petitions that were granted, over 60% occurred in the five boroughs of New York City.[38] The fact that a majority of petitions come from New York City is somewhat notable due to the city comprising only 43% of the state's population, meaning that the five boroughs are overrepresented in the state's AOT program.[39] During the period of August 2020 to August 2021, the statewide number of filed petitions was 1,589, of which 90% were granted.[40] Within just New York City, the amount of petitions filed were 788 in that same time period, of which 87% were granted.[41]

Cumulatively since the law's passage in November 1999 to August 2021 at a statewide level, 12% of individuals spent less than six months under an AOT court order.[42] Twenty-one percent spent six to twelve months, 15% lasted twelve to eighteen months, 21% were at eighteen to thirty months, and 31% spent over thirty months in the AOT program.[43] The fact that nearly one-third of recipients have spent over two years within the program should raise a concern about whether it has become essentially an outpatient form of long-term institutionalization.

Socioeconomically and gender-wise, AOT recipients are primarily male,[44] more likely to have substance abuse issues,[45] ***953** and have high likelihoods of experiencing homelessness[46] or incarceration.[47] As of August 2021, 72% of recipients statewide were diagnosed with schizophrenia[48] and 16% with bipolar disorder.[49] The majority of the AOT recipients were people of color,

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

comprised primarily of Black and Hispanic people.[50] Despite the fact that 55% of the state's population is comprised of white people,[51] white people make up only 31% of the state's AOT recipients.[52] Likewise, while Black and Hispanic people make up 17.6% and 19.3% of the population of New York State,[53] when it came to AOT recipients, 38% were Black and 27% were Hispanic.[54] These figures are even more disproportionate in the five boroughs of New York City. While Black and Hispanic people make up only 24% of and 29% of the city's population respectively, 44% of the city's AOT recipients are Black and 33% are Hispanic.[55]

An obvious question arises from these statistics: Why are Black and Hispanic people overrepresented in the AOT program? The program in practice has served mostly people with schizophrenia and bipolar disorder, so the question necessarily presents itself: Where are all of New York's white ***954** schizophrenics? While Black people in the United States are more likely to be diagnosed with schizophrenia,[56] and there is a higher prevalence of psychosis among Blacks and Hispanics,[57] these differences are not sufficient to account for such vast overrepresentation.[58] One explanation, however, may be that psychiatric healthcare providers are more likely to misdiagnose Black people who suffer from severe depression with schizophrenia.[59] This bias is compounded with the lack of diversity in the medical profession, which is only 5% Black.[60]

The second question that arises is whether this overrepresentation of people of color is due to racial bias or prejudice. The answer to this question was one of the concerns of a 2009 program evaluation commissioned by the New York State Office of Mental Health and conducted by Duke University.[61] The study did not find evidence of biased selection of Black patients for AOT, stating:

> [T]he overrepresentation of African Americans in the AOT Program is a function of African Americans' higher likelihood of being poor, higher likelihood of being uninsured, higher likelihood of being treated by the public mental health system (rather than by private mental health professionals), and higher likelihood of having a history of psychiatric hospitalization. ***955** The underlying reasons for these differences in the status of African Americans are beyond the scope of this report.[62]

The study's authors additionally used the question of whether the program is a net plus or a net negative as the lens through which to see the question of whether the overrepresentation of people of color is discriminatory:

> Whether this overrepresentation is discriminatory rests, in part, on whether AOT is generally seen as beneficial or detrimental to recipients and whether AOT is viewed as a positive mechanism to reduce involuntary hospitalization and improve access to community treatment for an under-served population, or as a program that merely subjects an already-disadvantaged group to a further loss of civil liberties.[63]

As the study implies, one must address whether AOT is a beneficial program (and thus, one that disproportionately benefits people of color) or a program that further curtails civil liberties and rights (and thus, one that disproportionately harms people of color). A key to ascertaining the answer lies in the intent of the authors and proponents of the program in 1999. As discussed earlier, the political will to conceive AOT happened as a result of a highly publicized murder perpetrated by a mentally ill person.[64] As such, the desire of legislators and their constituents can be inferred to be one of protecting the public from the mentally ill, rather than of helping and protecting the mentally ill. Indeed, this took place despite the fact that people with mental illness are more likely to be *victims* than perpetrators of violent crimes.[65]

***956** Essential to this line of analysis is what sort of treatment the AOT actually involves. Per the statute, the ordered treatment can include taking away the person's right to not take prescribed medication regardless of the side effects.[66] This is particularly important because, as in the case of antipsychotic medications, the side effects can sometimes be serious or harmful enough to outweigh the benefits of the medication.[67] An AOT order may also require recipients to submit themselves to invasive urine and blood testing for drugs and alcohol.[68] After examining the conditions and restraints that can be placed on an AOT recipient, it should be easier to view the practice more akin to criminal probation or parole than therapy.[69] Thus, the conclusion that any overrepresentation of minorities in the AOT program is harmful is inescapable.

III. AOT HAS A NEGATIVE DISPARATE IMPACT ON PEOPLE OF COLOR

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

The 2009 study stated that it had found no evidence of racial bias in the AOT system. However, the study's findings were flawed as it tried to analyze racism within the AOT process without acknowledging the surrounding context of systemic racism within the medical field, courtroom, and society in general. Indeed, the study's authors believed that Black recipients' higher proportions of poverty, incarceration, and lack of insurance were "beyond the scope" of the report.[70] In that sense, the study fails at analyzing racism within the AOT process because it focuses narrowly, and solely, on whether the ***957** individuals in charge of the day-to-day AOT process are themselves racially biased, instead of examining the ways in which the process may exacerbate and worsen already existing racial disparities due to systemic racism.[71]

By focusing solely on deliberate bias within the AOT process, the study's view of racial bias is that racist actions have to be conscious and deliberate to qualify as racism. Because this is not necessarily the case in most systems, the analysts similarly found there is no racial bias in the AOT process.[72] Within this limited understanding of racism and bias, the researcher's findings that there is no apparent intentional racial bias in the AOT referral, petition, and order process are likely correct.[73] Yet, the study ignores structural and implicit bias.

Structural racism provides a better context with which to view the disproportionate impact of New York's AOT program on people of color. Structural racism is the societal system that continually confers social benefits on some groups while imposing burdens on others, principally, people of color.[74] This encompasses historical legacies like slavery and institutional policies that create drastic racial disparities.[75]

***958** In this case, Kendra's Law is, in and of itself, facially neutral as it mentions neither race nor class. Furthermore, there may not be evidence of racial animus on the part of the physicians and officers of the court that form part of the AOT process.[76] Ostensibly, its goal is to compel into outpatient treatment New Yorkers whose mental illness keeps them from being able to live safely in the community and who are likely to refuse treatment.

However, by the admission of the 2009 study, over the last two decades, the AOT program primarily treated those who are more likely to live in poverty, lack private insurance and access to private physicians, have been incarcerated,[77] and/or have experienced homelessness.[78] This means that people of color, especially Black people, are much more likely to be subjected to the negative restrictions that the AOT program places on their rights and daily life.

Not only are white mentally ill people in New York more likely to see private mental health providers, but the providers are less likely to refer them to involuntary outpatient treatment.[79] As such, the AOT system compounds upon the already existing systems of oppression against Black and Hispanic New Yorkers. In this regard, the AOT system has become, perhaps unwittingly, more akin to the criminal legal system--an inherently racist system that primarily deprives people of color of their rights and liberties.[80] New York's AOT ***959** system, while not necessarily *intentionally* racially-biased, has created a punitive and segregated system for the mental health treatment of low-income, Hispanic, and Black New Yorkers. This process is not ethically sustainable and is in need of extensive reform.

IV. RECOMMENDATIONS FOR POLICYMAKERS

While it may be tempting to make the AOT system a more all-encompassing one that includes more white and affluent people, that is hardly the right approach because the system itself dehumanizes people with mental illness by subjecting them to broad restrictions on how they may live for long periods of time. Such an approach may also ignore the ability of people with more resources to effectively opt-out of the system by engaging a private healthcare system that is less likely to make such referrals.[81]

Instead, the legislature should deprioritize the AOT system, in favor of creating greater and better funded *voluntary* mental health resources for low-income individuals that are designed to empower people with mental illness by addressing disparities in accessing treatment. This could include initiatives such as: expansion of public housing programs (prioritizing accessibility to people with mental illness)[82] or a shift from prosecuting of the mentally ill for crimes related to their illness toward a restorative justice approach that encourages communication and accountability.[83]

These solutions are not silver bullets, and further studies and research are needed to ascertain ways to level the access to mental healthcare across race and class demographics. However, if one thing has become clear, it is that AOT has failed ***960** at increasing access in an equitable or fair way. AOT has also demonstrated that coercion and the use of force do not appear to be succeeding at much beyond further targeting already vulnerable communities, not unlike the criminal justice system already

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

has.[84]

Further research must be conducted into other forms of involuntary commitment, such as inpatient civil commitment, and the extent to which they may have strayed from acting as forms of help and instead have become tools that further marginalize already vulnerable populations. While this Article does not advocate for outright abolition of the AOT process, or of involuntary commitment in mental health, such radical action should not be entirely dismissed from the debate: If it is ultimately impossible to create a genuinely fair system, the process may do more harm than good.

CONCLUSION

Upon review, New York's AOT system disproportionately harms New Yorkers of color and effectively acts as a tool of broader systemic oppression, particularly upon Black people. While previous studies find no explicit racial bias in the process of its administration, when reviewed within a broader context of systemic racism, the AOT process furthers existing racist systems that target people of color who already experience poverty, criminalization, and other forms of marginalization. Reform by legislators is urgently needed, and so too is further research into the dynamics of other forms of involuntary mental health treatment.

Footnotes

[a1] J.D., University of Maine School of Law; B.A., University of Puerto Rico. Victoria M. Rodríguez-Roldán is the Senior Policy Manager for AIDS United, where she brings her own unique intersectional specialties to the fight against the HIV epidemic. Her particular areas of expertise and focus center on the issues affecting people living at the intersections of transgender identity, disability, and mental illness as viewed through a social justice lens. She frequently speaks on discrimination issues impacting the trans and disability communities and currently serves on the boards of HIPS, an organization dedicated to harm reduction for sex work and drug use in the District of Columbia, and Equality New York, the Empire State's leading LGBTQ equality organization.

[1] Christos F. Kleisiaris, Chrisanthos Sfakianakis & Ioanna V. Papathanasiou, *Health Care Practices in Ancient Greece: The Hippocratic Ideal,* J. MED. ETHICS & HIST. MED., Mar. 15, 2014, at 1-3.

[2] SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., CIVIL COMMITMENT AND THE MENTAL HEALTH CARE CONTINUUM: HISTORICAL TRENDS AND PRINCIPLES FOR LAW AND PRACTICE 2 (2019) [hereinafter SAMHSA, CIVIL COMMITMENT].

[3] *Id.*

[4] CATHARINE ARNOLD, BEDLAM: LONDON AND ITS MAD 1 (2008).

[5] *Id*. at 3-4.

[6] SAMHSA, CIVIL COMMITMENT, *supra* note 2, at 3.

[7] *Id*.

[8] *See id*. at 3-4.

[9] 349 F. Supp. 1078, 1093 (E.D. Wis. 1972), *vacated,* 414 U.S. 473 (1974).

[10] *Standards for Involuntary Commitment (Assisted Treatment) State-by-State (Source Treatment Advocacy Center),* MENTAL ILLNESS POL'Y ORG., https://mentalillnesspolicy.org/national-studies/state-standards-involuntary-treatment.html (last visited Mar. 26, 2021).

[11] *Guide to How AOT (Assisted Outpatient Treatment) Works,* MENTAL ILLNESS POL'Y ORG., https://mentalillnesspolicy.org/aot/assisted-outpatient-treatment-guide.html (last visited Mar. 26, 2021).

[12] *Id*.

[13] LISA DAILEY, MICHAEL GRAY, BETSY JOHNSON, SABAH MUHAMMAD, ELIZABETH SINCLAIR & BRIAN STETTIN, TREATMENT ADVOC. CTR., GRADING THE STATES: AN ANALYSIS OF U.S. PSYCHIATRIC TREATMENT LAWS 4 (Sept. 22, 2020). The only states that do not have a statutory AOT mechanism are Maryland, Connecticut, and Massachusetts. *Id*. at 6.

[14] In the statistics provided by the New York State Office of Mental Health, "Hispanic" is a category separate from "white." N.Y. STATE OFF. OF MENTAL HEALTH, KENDRA'S LAW: FINAL REPORT ON THE STATUS OF ASSISTED OUTPATIENT TREATMENT CHARACTERISTICS OF AOT RECIPIENTS [hereinafter FINAL REPORT], https://omh.ny.gov/omhweb/kendra_web/finalreport/characteristics.htm (last visited Mar. 26, 2021). The only three racial categories with enough representation outside of "Other" are white, Hispanic, and Black. *Id*. For the

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

purposes of this Article, I am using “people of color” to denote Black and Hispanic New Yorkers in the study.

15 Most states have established AOT programs, and every state has provisions for involuntary inpatient treatment for mentally ill individuals. *See* DAILEY ET AL., *supra* note 13, at 4-5.

16 *See generally* N.Y. STATE OFF. OF MENTAL HEALTH, *AOT Program Status,* https://omh.ny.gov/omhweb/kendra_web/interimreport/aotstatus.htm (last visited Mar. 8, 2021). I hope to, in time, continue this line of research at a national level with a focus on inpatient commitments.

17 Ali Watkins, *A Horrific Crime on the Subway Led to Kendra's Law. Years Later, Has It Helped?,* N.Y. TIMES (Sept. 11, 2018), https://www.nytimes.com/2018/09/11/nyregion/kendras-law-andrew-goldstein-subway-murder.html; Robert D. McFadden, *New York Nightmare Kills a Dreamer,* N.Y. TIMES (Jan. 5, 1999), https://www.nytimes.com/1999/01/05/nyregion/new-york-nightmare-kills-a-dreamer.html.

18 McFadden, *supra* note 17.

19 Nicholas Tantillo, *The Story Behind Kendra's Law,* WAMC (May 21, 2017), https://www.wamc.org/post/story-behind-kendra-s-law.

20 *Id.*

21 *Id.*

22 *Id.;* Andrew Jacob, *Subway Victim Says He Harbors No Anger,* N.Y. TIMES (June 3, 1999), https://www.nytimes.com/1999/06/03/nyregion/subway-victim-says-he-harbors-no-anger.html.

23 MARVIN S. SWARTZ, JEFFREY W. SWANSON, HENRY J. STEADMAN, PAMELA CLARK ROBBINS & JOHN MONAHAN, N.Y. STATE OFF. OF MENTAL HEALTH, NEW YORK STATE ASSISTED OUTPATIENT TREATMENT PROGRAM EVALUATION 59 (June 30, 2009), https://my.omh.ny.gov/analyticsRes1/files/aot/aot-

WESTLAW © 2023 Thomson Reuters. No claim to original U.S. Government Works.

2009-report.pdf.

24 *See, e.g.,* Anemona Hartocollis, *Nearly 8 Years Later, Guilty Plea in Subway Killing,* N.Y. TIMES (Oct. 11, 2006), https://www.nytimes.com/2006/10/11/nyregion/11kendra.html (discussing public reaction to defendant's guilty plea in Kendra Webdale's homicide case).

25 N.Y. MENTAL HYG. LAW § 9.60(a)(1) (Consol. 2020).

26 *Assisted Out-patient Treatment (AOT),* NYC HEALTH, https://www1.nyc.gov/site/doh/health/health-topics/assisted-outpatient-treatment.page (last visited Mar. 26, 2021).

27 N.Y. MENTAL HYG. LAW § 9.60(e)(1) (Consol. 2020).

28 *Id.* § 9.60(e)(1)(i-viii).

29 *Id.*

30 *Id.* § 9.60(i)(2).

31 *Id.* § 9.60(a)(1).

32 *Id.* § 9.60(h)(3).

33 *Id.* § 9.60(n).

WESTLAW © 2023 Thomson Reuters. No claim to original U.S. Government Works.

[34] *Id*. § 9.60(h)(3).

[35] *See generally* N.Y. STATE OFF. OF MENTAL HEALTH, ASSISTED OUTPATIENT TREATMENT, [hereinafter AOT REPORTS], https://my.omh.ny.gov/analytics/saw.dll?dashboard (last visited Aug. 6, 2021) (click "Reports").

[36] The New York State Office of Mental Health uses the term "Hispanic" in all of its reports on AOT petitions. Though the term "Latinx" may be more appropriate for some of the people who are captured in this data, especially the non-Spanish-speaking people from the Caribbean and South America, I have chosen to keep the wording the same in this Article in order to minimize confusion. For a discussion on the use of the word "Hispanic" to describe people within the Latinx community, see Araceli Cruz, *The Problematic History of the Word "Hispanic,"* TEEN VOGUE (Oct. 9, 2018), https://www.teenvogue.com/story/problematic-history-of-hispanic-word.

[37] AOT REPORTS, *supra* note 35 (click "Reports" then "Petitions Filed"). Note that these reports are updated on a weekly basis, and the numbers in this Article reflect data present as of August 5, 2021.

[38] *Id*.

[39] *See Quick Facts: New York City, New York,* U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/newyorkcitynewyork (last visited Mar. 26, 2021); *Quick Facts: New York State,* U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/NY (last visited Mar. 26, 2021).

[40] AOT REPORTS, *supra* note 35 (click "Reports," then "Petitions Filed").

[41] *Id*.

[42] AOT REPORTS, *supra* note 35 (click "Reports," then "Length of Time in AOT").

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

[43] *Id*. As of August 6, 2021, there were 3,440 people statewide in an AOT program, of which 1,448 were in New York City. AOT REPORTS, *supra* note 35 (click “Recipients Under Court Order”).

[44] Sixty-six percent of statewide AOT recipients are male. FINAL REPORT, *supra* note 14.

[45] Fifty-two percent were diagnosed as having alcohol or substance abuse issues. *Id*.

[46] Nineteen percent had experienced homelessness at least once. *Id*.

[47] Twenty-three percent have been incarcerated at some point in their lives. *Id*.

[48] AOT REPORTS, *supra* note 35 (click “Reports,” then “Diagnosis”). Schizophrenia is defined as “a serious mental disorder in which people interpret reality abnormally,” which “may result in some combination of hallucinations, delusions, and extremely disordered thinking and behavior that impairs daily functioning and can be disabling.” *Schizophrenia,* MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/schizophrenia/symptoms-causes/syc-20354443 (last visited May. 15, 2021).

[49] AOT REPORTS, *supra* note 35 (click “Reports,” then “Diagnosis”). Bipolar disorder is defined as “a mental health condition that causes extreme mood swings that include emotional highs (mania or hypomania) and lows (depression),” and it was formerly referred to as “manic depression.” *Bipolar Disorder,* MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/bipolar-disorder/symptoms-causes/syc-20355955 (last visited May. 15, 2021).

[50] FINAL REPORT, *supra* note 14.

[51] *Quick Facts: New York State, supra* note 39. These figures represent an approximation from 2019 estimates.

[52] AOT REPORTS, *supra* note 35 (click “Reports,” then “Race/Ethnicity”). Here, “white people” are those who identify as non-Hispanic and non-Latinx.

WESTLAW © 2023 Thomson Reuters. No claim to original U.S. Government Works.

[53] *Quick Facts: New York State, supra* note 39.

[54] AOT REPORTS, *supra* note 35 (click “Reports,” then “Race/Ethnicity”).

[55] *Id.; Quick Facts: New York City, New York, supra* note 39.

[56] Robert C. Schwartz & David M. Blankenship, *Racial Disparities in Psychotic Disorder Diagnosis: A Review of Empirical Literature,* 4 WORLD J. PSYCHIATRY 133, 135 (2014).

[57] *Id*. at 136-37.

[58] *Id*. (“To date, there are no empirically verified explanations determining why African Americans are overrepresented ....”).

[59] Michael A. Gara, Shula Minsky, Steven M. Silverstein, Theresa Miskimen & Stephen M. Strakowksi, *A Naturalistic Study of Racial Disparities in Diagnoses at an Outpatient Behavioral Health Clinic,* 70 PSYCHIATRIC SERVS. 130, 132 (2019).

[60] *Diversity in Medicine: Facts and Figures 2019,* ASS’N OF AM. MED. COLLS. (July 1, 2019), https://www.aamc.org/data-reports/workforce/interactive-data/figure-18-percentage-all-active-physicians-race/ethnicity-2018.

[61] MARVIN S. SWARTZ, JEFFREY W. SWANSON, HENRY J. STEADMAN, PAMELA CLARK ROBBINS & JOHN MONAHAN, N.Y. STATE OFF. OF MENTAL HEALTH, NEW YORK STATE ASSISTED OUTPATIENT TREATMENT PROGRAM EVALUATION (June 30, 2009), https://my.omh.ny.gov/analyticsRes1/files/aot/aot-2009-report.pdf.

[62] *Id*. at vii.

[63] *Id*. at 53.

[64] *See* Tantillo, *supra* note 19.

[65] Graham Thornicroft, Comment, *People with Severe Mental Illness as the Perpetrators and Victims of Violence: Time for a New Public Health Approach,* 5 LANCET PUB. HEALTH e71, e72 (2020).

[66] *See* N.Y. MENTAL HYG. § 9.60(j)(4).

[67] *See Mental Health Medications,* NAT'L INST. OF HEALTH (Oct. 2016), https://www.nimh.nih.gov/health/topics/mental-health-medications/index.shtml (listing potential side effects of antipsychotic and antidepressant medications, which can include: seizures, suicidal thoughts, aggression, and insomnia); John Muench & Ann M. Hamer, *Adverse Effects of Antipsychotic Medications,* 81 AM. FAM. PHYSICIAN 617, 617 (2010).

[68] N.Y. MENTAL HYG. § 9.60(i)(1).

[69] *See* Kathryn A. Worthington, *Kendra's Law and the Rights of the Mentally Ill: An Empirical Peek Behind the Courts' Legal Analysis and a Suggested Template for the New York State Legislature's Reconsideration for Renewal in 2010,* 19 CORNELL J. L. & PUB. POL'Y 213, 225 (2009).

[70] SWARTZ ET AL., *supra* note 61, at vii.

[71] NAACP President Derrick Johnson described systemic racism as "systems and structures that have procedures or processes that disadvantage African Americans." Andrew Koppelman, *What Is Systemic Racism Anyway?* USA TODAY (Sept. 23, 2020, 4:00 AM), https://www.usatoday.com/story/opinion/2020/09/23/systemic-racism-how-really-define-column/5845788002/. In this sense, systemic racism is best seen as the consequence of centuries of racist policies. *Id.; see also* Morning Edition, *What Systemic Racism Means and the Way it Harms Communities,* NPR (July

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

1, 2020, 5:00 AM), https://www.npr.org/2020/07/01/885878564/what-systemic-racism-means-and-the-way-it-harms-communities ("The framing around racism has always been there is a white person who doesn't like people of color or a Klan member or someone, you know, who's making their hatred and ignorance very obvious. But what's actually been impacting our lives are systems that rely on subtle and not so subtle biases against people of color to disempower us and put us at risk. And so we've been fighting for job opportunities, for safety from violence, for equal education, for freedom from medical racism. And that is upheld not by how you love or don't love people of color but by how you participate with our systems.").

72 *See* SWARTZ ET AL., *supra* note 61, at vii; *see also* William M. Wiecek, *Structural Racism and the Law in America Today: An Introduction,* 100 KY. L.J. 1, 4 (2011).

73 *See* SWARTZ ET AL., *supra* note 61, at vii.

74 *Id.* at 5.

75 *Id.*

76 *Id.*

77 In 2019, Black adults, who represent 15% of the adult New York State population, received 48% of total prison sentences in New York State. N.Y. STATE DIV. OF CRIM. JUST. SERV., NYS ADULT ARRESTS AND PRISON SENTENCES BY RACE/ETHNICITY IN 2019 (Aug. 31, 2020), https://www.criminaljustice.ny.gov/crimnet/ojsa/comparison-population-arrests-prison-demographics.html (click on "2019").

78 In 2019, 59% of single adult homeless shelter occupants in New York City identified as Black (non-Hispanic). COAL. FOR THE HOMELESS, STATE OF THE HOMELESS 2020, at 11 (March 2020), https://www.coalitionforthehomeless.org/advocacy-library/research-and-policy/state-of-the-homeless-archive/ (click on first prompt that says "Download the complete report here").

79 *See* Julian Chun-Chung Chow, Kim Jaffee & Lonnie Snowden, *Racial/Ethnic Disparities in the Use of Mental Health Services in Poverty Areas,* 93 AM. J. PUB. HEALTH 792, 796 (2003).

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

[80] *See* Radley Balko, *There's Overwhelming Evidence that the Criminal Justice System Is Racist. Here's the Proof.,* WASH. POST (June 10, 2020), https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/.

[81] *See* Chun-Chung Chow et al., *supra* note 79, at 796.

[82] *See* Peggy Bailey, *Housing and Health Partners Can Work Together to Close the Housing Affordability Gap,* CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 17, 2020), https://www.cbpp.org/research/housing/housing-and-health-partners-can-work-together-to-close-the-housing-affordability.

[83] *See* Jessica Burns, *A Restorative Justice Model for Mental Health Courts,* 23 REV. L. & SOC. JUST. 427, 449-50 (2014).

[84] *See, e.g.,* Balko, *supra* note 80.

13 DREXLR 945

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.