



Psychiatry & Behavioral Sciences Section – 2004

I16 The Sexual Predator's Inability to Control Concept

Bradley D. Grinage, MD, University of Kansas School of Medicine at Wichita, 1010 North Kansas, Wichita, KS 67214-3199*

After attending this presentation, attendees will become familiar with the most current U.S. Supreme Court ruling on volitional impairment and the sexually violent predator; become familiar with the mental health community's current understanding of volitional capacity and how that applies to the sexually violent predator; and gain recommendations to advance an understanding of an "Inability to Control" concept with regard to the sexually violent predator laws.

The major impact of this presentation should help to advance an understanding of a difficult and ill defined concept in the forensic community, namely volitional capacity. Some mental health investigators have suggested that there is no scientific basis for measuring a person's capacity for self-control or for quantifying any impairment of that capacity. Still others indicate that volitional impairment is as easily tested with a structured instrument as cognitive impairment. Just as the emergency psychiatric literature has suggested, the forensic community has a similar need to operationalize and research this 'inability to control' concept that is frequently used but poorly understood. By impacting the operationalization of a volitional capacity concept, this presentation would help create a useful tool for the general psychiatrist, better define mental health evaluation limitations, and advance understanding and communication across the forensic and legal professions.

Recent U.S. legal opinion maintains that proof of serious difficulty in controlling behavior upholds the constitutionality required for civil commitment of a sexually violent predator. Lack of legislative definitions and judicial guidance has left lower courts to turn to mental health professionals and the Diagnostic Statistical Manual (DSM) for clarification of specific legal terminology. Elements of volition may be psychiatrically evaluated in a way that contributes to the Court's understanding of that capacity. However, further study is needed to operationally define an Inability to Control concept and address issues of assessment validity and reliability.

Forensic psychiatry is defined as the application of psychiatry to the law. Conflicts inherent in this application stem from fundamental philosophical differences between medical and legal professions. Psychiatry, and medicine in general, is a deterministic science. Principles of law, on the other hand, presume behavior to be the product of free will such that the individual is held accountable for his or her behavior. This fundamental difference between legal and medical philosophies highlights the controversy of an Inability to Control issue surrounding sexually violent predator laws.

The Court's utilization of the term volitional impairment as a means for civil commitment has reignited debate within the mental health community. This article reviews two legal opinions critical to sexually violent predator case law (*Kansas v. Hendricks* and *Kansas v. Crane*) to elucidate problems inherent in applying vague concepts of behavior control to legal contexts. This article further attempts to summarize available psychiatric information pertaining to volitional impairment and suggests that if volitional capacity is indeed the linchpin for civil commitment of the sexually violent predator, the limiting factor is our understanding of that capacity.

The field of psychiatry does not have a valid or reliable means to describe a patient's volitional capacity, as no uniform clinical definition exists. Difficulties inherent in attempting to operationalize a concept of volitional capacity stem from problems associated with our current psychiatric nosology, vague legislative constructs, and a history of political and clinical dispute associated with the valid assessment of impaired behavior. Techniques such as actuarial tests and plethmography may help with risk assessment for dangerousness, but they have limited value in addressing an inability to control concept.

The medical literature supports a rudimentary understanding of volitional impairment through concepts such as impulse control and compulsive behavior, and suggests that elements of volition may be psychiatrically evaluated in a way that contributes to the Court's understanding of its impairment. According to emergency psychiatry literature, the focus of psychiatry should be on the frequently used but less reliable concepts such as impulse control problems. Building a consensus on the meaning of these key concepts would be a process to increase reliability. Three distinct clinical concepts to approach an understanding of a volitional capacity construct are presented. First, the ego dystonic nature of compulsive behavior and impaired self-regulation can be utilized to address the problem of acquiescence. Second, advances in self-assessment and laboratory evaluation of impulsive behavior approach a quantification of an inability to control. And finally, recent attempts to define and categorize an inability to control concept suggest the need for a dimensional nosology.

This article concludes that a clinical concept of volition has potential usefulness. However, further study is needed to operationally define volitional capacity, to facilitate valid and reliable research, and to improve effective communication across professional fields.

Forensic Psychiatry, Sexually Violent Predator, Volitional Impairment