DO REVIEW TRIBUNALS CONSIDER PROTECTIVE FACTORS IN THEIR DECISIONS ABOUT PATIENTS FOUND NOT CRIMINALLY RESPONSIBLE?

CARISA COLLINS, M.A.
KRYSTLE MARTIN, PH.D.
LISA MARSHALL, PH.D.
Overview

- Not Criminally Responsible on account of Mental Disorder (NCRMD)
- Violence Risk Assessment
- Protective Risk
- Current Study
- Methods
- Results
- Discussion
• **Judgement of incapacity to form criminal intent** (Winko v. British Columbia (Forensic Psychiatric Institute), 1999)
  - Neither guilty nor acquitted

• **Relatively few cases** (Mental Health Commission of Canada, 2013)
  - Majority are non-violent offenses (Crocker et al., 2015)

• **Overseen by provincial Review Tribunals (RTs)** (Livingston, Crocker, Nicholls, & Seto, 2016)
  - Expert testimony most influential (Hilton & Simmons, 2001)
  - RTs not using violence risk assessments (e.g., Cote, Crocker, Nicholls, & Seto, 2012)
• Clinical guidelines recommends VRA as integral to care and treatment (e.g. APA 2004)

• Actuarial vs Structured Professional Judgement

• Gold-standard: Historical Clinical Risk Management-20 (HCR-20) (Douglas, Hart, Webster, & Belfrage, 2013)

• Little correlation between clinician opinion and VRA results (Hilton & Simmons, 2001)
PROTECTIVE RISK

• Some factors have protective effects from reoffending
• Tools have been developed to measure such protective factors
  • Gaining attention as component of risk assessment
• Experts recommend measuring both when planning treatment
  • Overestimate recidivism
• Patients find strengths based inquiries positive in negative environment
CURRENT STUDY

• Very little research examining impact of strengths based approaches on RT proceedings
• Ontario Shores considering introduction of SAPROF
  • Adds incremental validity to risk for institutional misconducts
• Are protective factors currently being considered?
  • Will this change post-introduction?
• Get preliminary basis for how RTs use protective factors
Method

- Random sample of 67 cases
- July 2016 – June 2017
- Structured Assessment of Protective Factors (SAPROF) (de Vogel, de Ruiter, Bouman, & de Vries Robbé, 2012)
  - Modified
- File review
  - Cohens kappa (k) = 0.845, p < 0.001
RESULTS

Fig. 1. Mean # of protective factors mentioned. * indicates significant difference.
Fig. 2. Total # of mentions by disposition decision
DISCUSSION

- Some promise, room for improvement
  - Lack of use of protective factors
  - Improvement following implementation (Livingston et al., 2016)
- RTs should focus more on hospital reports
  - Too much focus on clinician testimony
- Negative experience may have consequences for trajectory
IMPLICATIONS

- Risk assessment procedure
  - Should include protective assessments to increase the focus on protective factors
- Evidence at hearing
  - What is presented and how it is presented
- Focus of treatment
  - Include methods of increasing protective factors.