**Study: Jurors can't distinguish between knowing and reckless conduct**

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**Body**

A defendant found guilty of a knowing homicide in Colorado is subject to a mandatory sentence of 16 to 48 years in prison. If that same defendant is found guilty of a reckless homicide, he or she faces a non-mandatory sentence of two to six years in prison.

The problem - according to a study by a group of law and psychology professors - is that jurors often are unable to distinguish between knowing and reckless conduct, as defined by the Model Penal Code.

That code, which has been around for 50 years and has been adopted by most states, requires jurors to sort defendants into four categories of conduct: purposeful, knowing, reckless and negligent. The code assumes that the average person would recognize these states.

To test that assumption, the researchers conducted a series of tests designed to gauge how well jurors identified those mental states and assigned punishment under varying degrees of exposure to the code's definitions.

"Our results suggest, by and large, that people are pretty good at this, which is a validation for the primary parts of the Model Penal Code," said Owen Jones, a law and biology professor at Vanderbilt University and director of the John D. and Catherine T. MacArthur Foundation Research Network of Law and Neuroscience, which is housed at Vanderbilt. "However, we were surprised by the apparent confusion between reckless and knowing."

The study, titled *Sorting Guilty Minds*, appears in the November issue of the New York University Law Review. Jones worked with Tulane University Law School visiting assistant professor Francis Shen; Denver, Colo., District Judge Morris Hoffman; Harvard University associate psychology professor Joshua Green; and Vanderbilt University associate psychology professor René Marois.

The 1,326 study participants were given hypothetical situations that varied by the harm done to the victim and the level of culpability of the defendant. The participants were asked to determine a suitable level of punishment.
Even without being given the definitions of the four categories of criminal conduct under the Model Penal Code, the subjects regularly identified purposeful, negligent and blameless conduct. But the distinctions they made between knowing and reckless conduct were largely arbitrary, the researchers found.

Previous studies have tested the general ability of humans to assess the mental states of others, Jones said, but this study was the first to empirically assess that ability under the Model Penal Code in a "tightly controlled experiment." (Several earlier studies by legal academics on the ability of jurors to assess culpability or determine mental states had methodological problems and produced contradictory findings, he said.)

"We were surprised that the empirical record is so thin on these particular questions, Jones said. "I can only speculate, but I think, in part, this stems form the fact that empirical approaches to legal questions is a fairly new phenomenon."

In one of the team's experiments, there was little difference in the punishment ratings study participants assigned to scenarios involving knowing and reckless conduct. In one scenario, reckless conduct was punished more harshly than knowing conduct.

Participants' ability to differentiate between the two did not improve even after the researchers increased the frequency with which they provided the definitions of knowing and reckless conduct.

This inability to accurately distinguish between knowing and reckless actions has serious implications for high-stakes cases including homicide, Jones said. Still, the researchers caution that more study is needed to test the validity of the code.

They did identify several possible reforms, however. Revising the definitions within the code may improve jurors' ability to sort mental states. Keeping the existing definitions but doing a better job of explaining them to jurors also could help. Abolishing the distinction between knowing and reckless conduct is another possibility.

"If jurors cannot really tell these two categories apart, then at worst we are subjecting some similarly situated homicide defendants to divergent consequences based on the vagaries of a meaningless distinction," the article reads.

The team plans further research on the subject.

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