



Hearing before the
Senate Committee on the Judiciary
Subcommittee on Human Rights and the Law

on

"Human Rights at Home: Mental Illness in U.S. Prisons and Jails"

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Testimony submitted by

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The Problem

I am dismayed to be “forced to authorize the confinement of persons with mental illness in the Williamsburg jail, against both my conscience and the law” because of lack of appropriate services. (Governor of Virginia, 1773)¹

People with mental illnesses (most of whom have co-occurring substance use disorders) are overrepresented at every stage of the criminal justice system. Increasingly large numbers of these individuals come in contact with law enforcement agencies, courts, jails, community corrections, and prisons. Recently, researchers documented serious mental illnesses in 14.5 percent of male jail inmates and 31 percent of female jail inmates;² rates in excess of three to six times those found in the general population.³ Generalized to the findings that more than 13 million jail admissions were reported in 2007, this implies that more than 2 million bookings of a person with a serious mental illness occurs annually.⁴ The presence of so many people with mental illnesses in criminal justice settings represents an enormous challenge for federal and state corrections and behavioral health systems of care, our communities, families, and those with mental illnesses. It is also the case that the vast majority of people with mental illnesses will be returned to the community from jail or prison. However, with states facing the grim reality of enormous budget shortfalls, it is difficult to identify resources to fund effective transition strategies such as specialized community corrections supervision, effective mental

¹ Deutsch A. *Mental Illness in America: A History of Their Care and Treatment from Colonial Times* (New York: Columbia University Press, 1937).

² Steadman, H. J., F. C. Osher, P. C. Robbins, B. Case, and S. Samuels. “Prevalence of Serious Mental Illness among Jail Inmates.” *Psychiatric Services* 6 (2009): 761–65.

³ The estimate for the prevalence of serious mental illness in the general population is 5.4 percent (Kessler, R. C., C. B. Nelson, K. A. McKinagle, Edlund, R. G. Frank, and P. J. Leaf, The epidemiology of co-occurring addictive and mental disorders: Implications for prevention and service utilization. *American Journal of Orthopsychiatry* 66 (1996): 17–31.

⁴ Sabol, W. J., and T. D. Minton. *Jail Inmates at Midyear 2007* (Washington: Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2008).

health and co-occurring substance abuse treatments, supported employment, and supportive housing.

The majority of individuals with mental illnesses who wind up in jails have committed nonviolent misdemeanors, often as a result of their untreated mental illnesses and many with co-occurring substance use disorders. For these individuals, contact with the criminal justice system starts a cycle of arrest, incarceration, release, and re-arrest that poses nearly insurmountable challenges to recovering from their mental illnesses. With more serious charges, or failure to comply with conditions of probation and parole, prisons become the institutional home for these individuals. There is no doubt that many individuals who have mental illnesses commit crimes for which they should be incarcerated. As one component in efforts to improve public safety, individuals with mental illnesses who commit violent crimes must be held responsible for their actions. However, most correctional officials agree with community-based treatment providers that jail and prison environments are not the best treatment setting for the vast majority of individuals with mental illnesses—in fact, this environment can exacerbate mental illnesses in a manner that poses risks to the individuals, the general corrections population, and supervising staff.

Prisons were never intended to serve as mental health facilities, and all too often prisoners receive little or inadequate care, despite the best efforts of corrections administrators. The Eighth Amendment provides prisoners a right to humane conditions of confinement, and corrections administrators and their staffs work hard to achieve these conditions despite ballooning prison populations and shrinking operations dollars. Unfortunately, for too many incarcerated individuals with mental illnesses, many do not have access to the level of care that

they require. Prisons are overcrowded and over-stimulating environments where violence is commonplace and prisoners with mental illnesses are disproportionately victims of this violence. Prisoners with mental illnesses generally have more trouble adhering to rules, resulting in punishment for misconduct, long disciplinary histories, and little accumulation of “good time.” Dorothea Dix crusaded for humane responses to the needs of inmates with mental illnesses in the mid-1800s and her work was translated into state systems that traded punishment for care. We have come full circle and find ourselves asking the same questions that she posed 150 years ago: Why are we incarcerating people with mental illnesses, in environments that can be toxic, when we know recovery is possible if they are afforded adequate care? “This national disgrace, kept hidden for too long, represents one area in civil rights where we have actually lost ground.”⁵

These conditions exist despite the fact that spending on corrections has risen faster than spending on nearly every other state budget item, and now tops \$45 billion a year.⁶ Although the amount of dollars has skyrocketed, the majority of resources have been devoted to capital construction to accommodate prison population booms, whereas treatment and programming budgets can’t keep pace with growing demands. The result is understaffing, limited programming, insufficient facilities, and inadequate care. There is unanimity from administrators, staff, those incarcerated, and their families, that a safer and more rehabilitative environment is needed.

⁵ Report of the National Leadership Forum on Behavioral Health/Criminal Justice Services, *Fixing an American Tragedy: Addressing the Needs of Justice-Involved People with Mental Illnesses and Co-occurring Disorders*. 2009, in press.

⁶ National Association of State Budget Officers. *State Expenditures Report 2006* (Washington: National Association of State Budget Officers, 2007).

Although the available treatments and conditions that people with mental illnesses in prison experience far too often demand remedy, I've chosen to focus the remainder of my comments on strategies to keep people with mental illnesses who don't need to be in jails and prisons out, and assist those who are reentering society from jail and prison from coming back.

Heterogeneity of the population

In discussing incarcerated individuals with mental illnesses, it is important to keep in mind the heterogeneity of this group. They differ in terms of the seriousness of their mental illnesses, charge levels, criminogenic risks, and access to community supports. Unfortunately, the criminal justice system rarely does an adequate job of screening, assessing, and individualizing responses to those identified as having a mental illness. Lumping prisoners with mental illnesses into a single class does not allow for prioritization of scarce resources to those most in need. The need for valid and reliable screening and assessment processes has never been greater.

Why are there so many people with mental illnesses in jail and prison?

To develop appropriate responses to with mental illnesses in jail and prison, it is important to understand the reasons why they wind up in jail and prison. There are a number of common explanations:

- First, people with mental illnesses may be more visible to law enforcement because of behaviors stemming from lack of treatment (e.g., public disturbance or other “nuisance” offenses).
- Second, people with mental illnesses are at increased risk of developing substance use disorders over the course of their lifetimes, and arrests for drug offenses have skyrocketed since 1980. Research has found that nearly three-quarters of men and women with mental illnesses in jails also have a co-occurring substance use disorder.⁷
- Third, incarcerated persons with mental illnesses are much more likely to have been homeless at the time of their arrest than those without mental illnesses.⁸ Being homeless makes a person very visible in our communities and their panhandling or public intoxication are frequent causes of calls to law enforcement. In addition, not having a stable place to live severely complicates the reentry of a person with mental illness after release from prison.
- Fourth, limited access to over-burdened community-based treatment may make individuals with untreated symptoms more likely to be arrested, increase delays in release from jail and prison, and may limit individuals’ ability to successfully reintegrate into their communities. As such, cuts in mental health services have

⁷ Abram, K. M., and L. A. Teplin, “Co-occurring Disorders among Mentally Ill Jail Detainees: Implications for Public Policy.” *American Psychologist* 46 (1991): 1036-45.

⁸ Ditton, P. M. *Mental Health and Treatment of Inmates and Probationers* (Washington: US Bureau of Justice Statistics, 1999).

an impact on the prevalence of mental illnesses in jails and prisons insofar as they make it more difficult for treatment providers to dedicate resources, time, and treatment slots to this population.

- Fifth, the conditions in many jails and prisons can have a harmful effect on the mental health of all prisoners. Overcrowded, high-intensity interactions with regular threats to personal safety, and limited access to treatment can make the prison experience a prolonged traumatic event. Privacy is non-existent. The noise levels within jail and prison settings throughout the day and night are excessive and there is absolutely nothing the prisoner or inmate can do about it. And yes, this is incarceration after all, but the deleterious effects of these circumstances on a person with serious mental illnesses are predictable – ranging from despair or psychotic symptoms to violent acting-out. These reactions are exacerbated by the use of special housing units that isolate individuals acting out as a result of their mental illness from contact with others and psychiatric services.
- Sixth, once in jail and prison, people with mental illnesses tend to stay longer, and are less likely to be placed on probation or parole, than others charged with similar offenses. Parole board members may lack confidence in community resources for individuals with mental illnesses, have misconceptions about mental illnesses, or fear negative public reactions. As a result, people with mental illnesses more often serve the maximum sentence allowed by law.⁹

⁹ Council of State Governments Justice Center, Criminal Justice/Mental Health Consensus Project Report, 2002.

- And finally, once released, without adequate treatment, supports, and supervision, prisoners with mental illnesses are more likely to recidivate. In a study that examined data on people released to parole in California during 2004 (more than 100,000 people), researchers found that people on parole with mental illnesses were more likely to return to prison for a parole violation within one year (33 percent), compared to people without mental illnesses (20 percent).¹⁰

Recommendations

To address the large numbers of people with serious mental illnesses in jails and prisons, and their heterogeneity, will require multiple approaches. Some central features of this response should include the following:

- Improve the process of identifying prisoners with mental health needs.
 - Ensure jail and prison screening, assessment, and follow-up facilitates individuals' safe and effective placement and programming while in custody and during the transition back to the community—recognizing that individuals with mental illnesses who pose limited public safety risk, many of whom are pre-trial detainees, are sensitive to stress and trauma that can result in the worsening of

¹⁰ Louden, Dickenger, and Skeem. Parolees with Mental Disorder; Toward Evidence-based Practice. in press.

their condition. The use of validated screening instruments and assessment processes at every criminal justice site is of paramount importance.

- Increase appropriations for the Mentally Ill Offender Treatment and Crime Reduction Act.
 - Research shows that community-based treatment works for the vast majority of people with serious mental illnesses, and the overwhelming majority of people with serious mental illnesses have no contact with the criminal justice system. For those who are involved with the criminal justice system, specialized responses have been shown to increase access to treatments and services and some interventions show promise in reducing recidivism. Communities have established such promising practices as police-based interventions that divert people with mental illnesses into treatment in lieu of arrest when appropriate, problem-solving court-based models (such as mental health courts) that mandate treatment in return for charge-reduction or dismissal, enhanced transition planning from jail and prison to the community, and specialized probation and parole supervision models that aim to reduce recidivism rates for this population post-adjudication.
 - These activities are supported by the Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA). MIOTCRA was signed into law in 2004 and authorized a \$50 million grant program to be administered by the U.S. Department of Justice (DOJ). This law created the Justice and Mental Health Collaboration Program (JMHCP) to help states and counties design and implement collaborative efforts between criminal justice and mental health

systems. The grants available through the MIOTCRA are in high demand. In the first three years of the program only about 11 percent of grant applications were funded. In 2008, Congress reauthorized the MIOTCRA program for an additional five years. Communities around the country are applying MIOTCRA grant dollars to implement evidence-based interventions such as specialized police-based responses; mental health courts; jail interventions that provide continuity of care; training for community correction officers to break the cycle of re-incarceration; and the provision of specialized reentry services and supports.

- Improve access to income supports and entitlements to individuals with mental illnesses upon release from prison.
 - Getting immediate access to income supports and entitlements on release from a corrections facility can be a significant event associated with reduced recidivism. These benefits allow individuals to receive critical treatment and medications. States such as Oklahoma have developed innovative partnerships between the departments of corrections, human services, and the state social security administration to ensure access to benefits on release. Evaluating and expanding these initiatives can make a critical difference.
- Address the tremendous cost of incarceration by the reinvestment of resources into community-based services that can reduce recidivism.
 - With state prison populations projected to continue increasing over the next decade, state policymakers are finding themselves at a crossroads: they must find

new dollars to build and operate additional corrections facilities or identify strategies to manage the growth of the prison population. In response, policymakers in various states have been planning, designing, and applying a justice reinvestment strategy to increase public safety and save millions of dollars that would have otherwise been spent to build new prisons. Because of the overrepresentation of mental illnesses within corrections settings, some of this investment should fund effective community-based mental health services.

- Fund comprehensive reentry services through the Second Chance Act.
 - The Second Chance Act (P.L. 110-199) was signed into law on April 9, 2008. The Second Chance Act is an investment in programs proven to reduce recidivism and the financial burden of corrections on state and local governments, while increasing public safety. The bill authorizes \$165 million in grants to state and local government agencies and community organizations to provide employment and housing assistance, substance abuse treatment, family programming, mentoring, victim support and other services that help people returning from prison and jail avoid criminal activity and succeed in their communities. Mental health services are a critical component of the Second Chance Act and these services are needed to help reduce the revolving doors of jail and prison that are too often experienced by people with mental illnesses.

Thank you for the opportunity to address the critical issue of persons with mental illnesses in our jails and prisons. Acting now can both alleviate systemic problems that are choking correctional

facilities and enable justice-involved individuals with mental illnesses to achieve their full potential.

About the Justice Center

The Council of State Governments Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. The Justice Center provides practical, nonpartisan advice and consensus-driven strategies—informed by available evidence—to increase public safety and strengthen communities. The Center’s work focuses on areas in which the criminal justice system intersects with other disciplines, which requires that we bring together broad coalitions of disparate groups to develop cross-systems solutions.

CSG’s Justice Center is a strong proponent of coordinated and integrated mental health/substance abuse services that can reduce contacts with the criminal justice system. The Center released the *Consensus Project Report* in 2002, which was written by staff under the guidance of more than 100 national experts from law enforcement, courts, corrections, community supervision, mental health, addictions, and victims’ agencies. The Consensus Project helps policymakers and practitioners improve the response to people with mental illnesses who come into contact with the criminal justice system—many of whom have co-occurring substance use problems and cycle through both the justice system and emergency services.