Trans-Institutionalization: Treatment of Persons with a Behavioral Health Disorder within the Criminal Justice System

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A Burgeoning Population

U.S. Correctional Population

Source: Probation and Parole in the United States 2006, Bureau of Justice Statistics, NCJ220218

- Probation
- Prison / Jail
- Parole

[Graph showing the increase in correctional population from 1981 to 2006]
Convictions for Drug-Related Offenses

Number of Persons under State and Federal Custody for Drug Offenses, 1980–2001

Again, Racial Disparities

Illegal Drug Use & Incarceration Rates in the U.S.

- White: 70% Percentage of drug users
- African American: 12% Percentage in state prison for drug use
- Hispanic: 13% Percentage of drug users
- Hispanic: 41% Percentage in state prison for drug use

(USDOJ, Bureau of Justice Statistics, Prisoners in 2012-Advance Courts, July 2013)
Trans-Institutionalization

Institutionalization in the United States (per 100,000 adults)

Illustration based on *From The Asylum To The Prison*
Bernard E. Harcourt, March 2007, used with permission

- Total Rate
- Prison Rate
- Mental Hospital Rate
Rates of Mental Illness in Jails and Prisons

Inmates with 12-month Mental Health Problem

Data courtesy of DOJ

A Costly Endeavor

TWENTY YEARS OF RISING COSTS

Between fiscal years 1987 and 2007, total state general fund expenditures on corrections rose 315 percent.

$50 million
$44.06 billion
$19.38 billion
$10.62 billion

General fund expenditures
Inflation adjusted

SOURCE: National Association of State Budget Officers, "State Expenditure Report" series; Inflation adjusted figures are based on a reanalysis of data in this series.

NOTE: These figures represent state general funds. They do not include federal or local government corrections expenditures and typically do not include funding from other state sources.
Rising Correctional Healthcare Costs

Spending on Inmate Health Care Rose in 42 of the 44 States, With Median Growth of 52 Percent Over 7 Years

Correctional health care spending change by state, 2001–08

Categories:
- 90% and above
- 0 to 30%
- 31 to 69%
- -7 to 1%
- No data available

<table>
<thead>
<tr>
<th><strong>Psychiatric Hospital</strong></th>
<th><strong>Correctional Facility</strong></th>
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| Treatment facility with security presence  
  - Care and treatment is primary  
  - Hospital Director is administrative leader  
  - Treatment staff > security staff  
  - Therapeutic milieu  
  - Health professionals are first responders to behavioral disturbance  
  - “Negligence” standard of civil liability  
  - Discharge based on clinical readiness  
  - JCAHO and CMS standards | Secure facility with treatment available  
  - Care and treatment is secondary  
  - Warden is administrative leader  
  - Security staff > treatment staff  
  - Generally unstructured milieu  
  - Correctional officers are first responders to behavioral disturbance  
  - “Deliberate indifference” standard  
  - Discharge based on resolution of criminal matter  
  - NCCHC and ACA standards |
Constitutional Right to Treatment

The good news is that I have found a way for us to receive free health care. The bad news is that we'll be spending some time in prison.
• Estelle v. Gamble (1976): Deliberate Indifference standard of care
  • Bowring v. Godwin (1977): extends to psychiatric care

• Ruiz v. Estelle (1980): Six explicit criteria for mental health services
  1) Systematic screening and evaluation
  2) Treatment that is not just close observation or seclusion
  3) Trained mental health professionals
  4) Confidential and complete medical records
  5) Safeguards governing the use of psychotropic medications
  6) A Suicide Prevention Program
1) Inmate must have a means to have his/her needs known to medical staff
2) Individualized treatment for persons with serious mental illness
   - Sufficient staffing to meet this objective
   - Competent and well-trained
3) Prompt access to mental health services
4) The facility must have a system of quality assurance
5) System for responding to emergencies and preventing suicide

Other Legal Requirements:
1) Americans with Disabilities Act
2) Prison Rape Elimination Act
3) State and Federal regulations and statutes
American Correctional Association

National Commission on Correctional Health Care

U.S. Dept. of Justice, National Institute of Corrections
Jail Standards and Inspection Programs
BJS Mental Health Treatment in State Prisons-2000 Report

For state adult correctional facilities:

- 95% screen for mental health problems
- 79% conduct psychiatric assessments
- 63% provide 24hr care
- 84% provide therapy or counseling
- 83% distribute psychotropic medications
- 79% assisted releasees
• Significant variability in the type and quality of treatment provided among correctional facilities
• Mental health services most commonly seen in high-security confinement facilities and all-female facilities, though general confinement facilities provide most mental health treatment
• Most common forms of treatment:
  • Therapy/counseling (13% of population)
  • Psychotropic medications (10% of population)
Goals and Benefits:

- Modify behaviors
- Improve mood and overall level of functioning
- Insight development
- Skills acquisition
  - Social
  - Vocational
- Increase the likelihood of medication compliance
- Long-term symptom remission

Therapeutic Modalities

- Individual Psychotherapy
- Group Therapy
- Recreational/Rehabilitative Therapy
  - Living Skills
  - Vocational
- Substance Abuse Programs
- Therapeutic Community
- Behavioral Incentive Programs
Medication Use

• Medications should be narrowly tailored to treat the inmate’s condition
  • Informed consent is required, except in emergencies or court order
  • Clear documentation for rationale of Rx
  • Monitor for side effects

• Procedural due process protections for involuntary medication
  • Harper process
  • Judicial review
  • Sell hearing

• Potential for medication diversion and misuse

• Should be prescribed as a component of a comprehensive treatment plan

• Should provide an adequate supply of medications at release

Suicide rate, 1980-2003
Suicides per 100,000 inmates

Jails

Prisons

Suicide Prevention

• Means Reduction
• Close monitoring
• Frequent mental health assessment
• Management of withdrawal, if applicable
• Interventions to reduce suicidality
  • Calls to family
  • Movement to a different pod
  • Continuance of court date
Administrative Segregation

Any unit that confines inmates to their cells for more than 23hrs/day

- Disruptive, violent behavior
- Fewer due process protections since it is administrative
- Diminished human contact
- Limited to no access to work or other programming
- Reduced or excessive environmental stimuli
- Restricted personal belongings
- Adverse psychological effects


Mental Illness and Ad Seg

- Persons with mental illness are over-represented
  - Regressive behaviors and emotional lability
  - Impaired executive functioning
  - Paranoia
  - Hopelessness

- Ad seg may exacerbate the pre-existing mental condition
- Limited access to beneficial therapeutic modalities
- May lead to a downward spiral of decompensation, prolonging administrative segregation

Hope
NEXT EXIT
Restorative Justice Just Ahead
Progressive Programs with Promise

- Shift to a Restorative Justice Model
  - Emotional Literacy Programs
  - Meditation
  - Prison education programs and life skills training

- Special Management Units for behavioral health disorders

- Specially designed high-security facilities purpose-built to treat inmates with a mental disorder
  - Adequately staffed with trained treatment professionals
  - Treatment-focused programming with the expectation that inmates will step-down
Progressive Programs with Promise

- Increased collaboration between state mental health and correctional systems
  - Jail-based continuity of care with community mental health
  - Healthcare navigators/facilitators
  - More uniform Rx formulary between systems of care
  - Prison-based offender re-entry programs
  - Improved data sharing/integration
Summary

• Population and cost shift from hospitals to jails/prisons
• Jails and prisons historically ill-equipped/staffed to address the mental health needs of inmates
• Recent change in approach with better understanding of the true costs to society by not providing adequate treatment and the factors that contribute to recidivism
• Innovative new programs to address these needs
• Still more work to be done.