Prisons: The New Asylums

Posted by Jenna Bao |

https://harvardpolitics.com/ Mar 9, 2020

\Joshua Francisco was a construction contractor and father of two living in Missouri. In 2010, his family first observed differences in his behavior: he was manic, speaking in tongues, and not sleeping — signs of bipolar disorder, with which he was later diagnosed. As his condition worsened and his family tried to convince him to pursue psychiatric help, his wife filed a restraining order against him. According to his mother, Francisco continued to call his wife, as his condition prevented him from understanding the causes and consequences of the restraining order. This led to the first of several arrests.

Over the next few years, Francisco's family persistently tried to help him get treatment, often struggling to overcome the barrier of keeping him involuntarily admitted in a hospital since he refused to believe that he needed help. After spending more time in jail, moving to California, and refusing to take medication, Francisco's condition worsened to the point that his family could no longer keep him in their home. Eventually, Francisco's mother contacted his probation officer in Missouri, who suggested that sending him back to a state hospital was his best option. During the two months he spent waiting in a jail for a hospital bed to open up, an incident led Francisco to believe he was dying — he called his daughter, once again violating the restraining order and prompting a grand jury to charge him with aggravated stalking. Realizing that he needed help and believing that his best shot at treatment was as a parolee, the judge sentenced him to prison. Francisco never even made it to the prison's mental health department, as the judge intended — instead, he hung himself in his cell on October 22, 2014.

Francisco's is just one of many stories of mental health and criminal justice systems failing to meet the needs of mentally ill Americans. Both inmates and the state suffer from unacceptably high incarceration rates of people with a serious mental illness due to inadequate community care networks. While increasing efforts for reform are spreading across the country, deliberate and widespread change is still beyond reach. Establishing a sustainable alternative for the seriously mentally ill will require collaboration between multiple sectors and systems.

Diagnosing the Problem

With over two million people incarcerated and the highest incarceration rate in the world, the United States has been criticized by academics and advocates alike for critical flaws within its justice system. One of these flaws is the overrepresentation of society's most vulnerable populations within the system — specifically, the mentally ill. People with mental illness are 4.5 times more likely than members of the general population to be arrested. As a result, in 2009, the prevalence of mental illness in prisons and jails was three to six times that of the general population. This overrepresentation reveals a clear relationship between serious mental illness and incarceration, indicating a pseudo-criminalization of illness. These rates were significantly higher for female inmates, a trend often tied to past abuse, trauma, or sexual victimization. Correctional facilities have become our de facto mental health hospitals. Thus, while prison reform is often considered a criminal justice issue, the data indicate an unresolved public health problem as well.

While there are many complex and interconnected causes fueling this phenomenon, the deinstitutionalization seen in the 1950s played a pivotal role in shifting the seriously mentally ill from long term healthcare institutions to the justice system. Deinstitutionalization refers to the policy of moving severely mentally ill people out of large state institutions and then closing those institutions partially or completely. This movement was stimulated by the rise of community-based treatment programs and the belief that the mentally ill could heal best in less restrictive settings that

allowed for greater self-determination. These changes were also motivated in part by states' desire to cut costs since Medicaid, introduced in 1965, did not cover mental health care in hospitals.

However, as traditional institutions were shut down, no effective alternatives were designed to replace them. In an interview with the HPR, Scott Allen, director of the Center for Prisoner Health and Human Rights, said that community networks for treatment were never properly developed. Although the number of institutionalized patients was low for a brief period, the lack of beds in hospitals soon led to growing numbers of mentally ill persons in correctional facilities. As a result, there are three times more mentally ill people in jails than there are in hospitals today. While deinstitutionalization was driven by noble ideals around patients' rights and cost reduction, its faulty execution resulted in a new system that provoked greater ethical concerns and prompted inefficient government spending.

In addition, a complex set of social structures increases the chances of the seriously mentally ill being incarcerated. Rise Haneburg, a senior policy advisor at the Council of State Governments Justice Center, told the HPR that high incarceration rates among the mentally ill today can be attributed to a confluence of different factors including higher arrest rates, difficulty navigating the criminal justice system, and a greater likelihood of homelessness. Due to "the lack of communities being able to really build a continuum of care and support" for the mentally ill, Haneburg explained, the burden of doing so has "fallen to the justice system." Thus, while this trend of incarcerating the mentally ill was triggered by deinstitutionalization, the current reality is perpetuated by inadequate policies throughout society.

Costs and Symptoms

Beyond ethical concerns about incarcerating the seriously mentally ill, there are clear costs for both the individuals and the state associated with relying on the justice system to address mental illness. Allen cited the "counter-therapeutic" nature of the system as burdening the mentally ill: "This is the wrong environment to try to treat people with mental illness. Very likely isolating people from their outside community and confining them to the criminal justice setting has harms, so that when someone returns … they may be worse off than they were, even if mental health care was provided within the facility." Without effective treatment, it is unrealistic to expect improvement, perpetuating a cycle of arrest and incarceration.

Another barrier to effective treatment within the criminal justice system is the difficulty of providing continuity of care. The timing of one's arrival and release from a jail system is highly unpredictable. Allen explained that care providers in the community rarely know when their patients have been incarcerated, and doctors within these facilitators do not get a smooth handover of their patients' diagnoses and history. According to Kati Habert, the deputy program director of behavioral health at the Council of State Governments Justice Center, people cycle through local jails incredibly quickly, with 30 percent of people going in and out of jail within a few hours. As a result, it is very difficult to grasp who needs treatment and to what extent they need it, and to connect people with support or care in the community after their release. This lack of continuity places a greater burden upon health care providers, families of patients, and the patients themselves.

Keeping the seriously mentally ill in such settings has costly consequences. Correctional facilities often struggle to recruit enough mental health professionals to meet the needs of their population, given limited budgets and a small pool of qualified applicants. This harsh reality leads to real consequences: a 2017 study found that offenders with a serious mental illness were nine percent more likely to recidivate within one year and 15 percent more likely to recidivate within five years. Perhaps even more troublingly, more than half of inmate suicides are committed by the mentally ill. Ultimately, correctional institutions are not designed for treatment, and continuing to use the criminal justice system for this purpose will cause great harm.

Furthermore, providing for mentally ill patients is incredibly costly for state and local correctional facilities. While treatment is fundamentally not part of the purpose of jails and prisons, the 1976

Supreme Court case *Estelle v. Gamble* established that prisons must provide health care for all inmates given their lack of options while incarcerated. Doing so is especially costly with mentally ill patients, who tend to have longer stays and require expensive medication. According to the Department of Justice, incarcerating people with serious mental illnesses costs taxpayers $15 billion per year. Given the inefficiency of incarceration in rehabilitating the mentally ill, these large costs highlight the glaring need for reform.

Steps to Reform

In recent years, individual advocates and communities have called attention to the systemic flaws in how the criminal justice system deals with mentally ill people, leading to strategies that promote treatment over indictment. Communities across the country have taken several approaches to divert people with mental illnesses from jails and into treatment programs, including by training law enforcement officials and pairing them with community mental health professionals as co-responders to de-escalate situations involving the mentally ill. Some communities have also developed crisis stabilization centers to serve as safe alternative locations to care for the seriously mentally ill. One county that received national attention with these measures is Florida's Miami-Dade County, where Judge Steve Leifman piloted the Criminal Mental Health Project. The program has been recognized for its success in preventing people with serious mental illnesses from serving jail time for minor offenses through measures like officer training and voluntary community treatment plans.

Other common measures include the use of mental health courts and Assisted Outpatient Treatment. Since their inception in the 1990s, there are now over 300 mental health courts across the country; while each court is different, they generally approach their dockets with a problem-solving attitude of finding an appropriate treatment plan with court supervision for qualifying individuals. Meanwhile, AOT refers to court supervised treatment within the community, generally with individualized plans meant specifically for those with histories of hospitalization and arrest. AOT has been shown to dramatically reduce homelessness, violence, suicidal risk, and arrest rates (from 30 percent to five percent for the mentally ill where it is implemented.

"The solution isn't found by just one system," according to Habert. Several systems of health care, law enforcement, housing, and more must work together to establish a new way of successfully caring for a community's seriously mentall ill, for which reducing the rate of incarceration is key. The understanding that each community has individual needs and that there is no one-size-fits-all solution undergirds the Stepping Up Initiative, which aims to reduce the number of people with a mental illness in jails by diverting them into treatment and encourage local communities to develop solutions with a data-driven approach. Just as the problem is complex and multi-faceted, so ought to be the solution.

While the Stepping Up Initiative focuses on enacting change at the local level, efforts at reform have also taken place at the state and federal levels. At the state level, the 2017 Sandra Bland Act in Texas made changes including shortening the timeframe that a sheriff had to notify the magistrate of a defendant being suspected of having a mental illness or intellectual disability, requiring good faith efforts to divert people undergoing a mental illness or substance abuse crisis to a care center, granting money to communities working on change, paying more attention to inmate safety, and promoting specialized training for law enforcement and jailers. At the federal level, the 2019 bipartisan First Step Act aimed to reduce recidivism and improve conditions in federal prisons, including provisions that require staff training to respond to individuals with serious mental illnesses. However, the act only applies to federal prisons, which hold only 10 percent of American inmates. While these policies show that lawmakers are taking steps to address mental health in the criminal justice system, it will take time to see the real effects of these changes and whether they will spread.

At the core of America's unprecedented prison population is our society's dangerous tendency to place the most vulnerable and needy groups of people behind bars. Regarding the seriously

mentally ill, it is becoming increasingly clear to experts, policymakers, and even the public that the systems in place are costly and ineffective, hindering both social and individual progress. In an interview with the HPR, DJ Jaffe, CEO of the Mental Health Policy Org, said there have been "pockets of progress" in this area, but there has yet to be a widespread implementation of reform. It is clear that preventing further tragedies, such as that ofFrancisco, for individuals and families across the country will require implementing targeted initiatives to address the mental health crisis within the criminal justice system.