

The Shift of Psychiatric Inpatient Care From Hospitals to Jails and Prisons

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Far-reaching structural changes have been made in the mental health system. Many severely mentally ill persons who come to the attention of law enforcement now receive their inpatient treatment in jails and prisons, at least in part, because of a dramatic reduction of psychiatric inpatient beds. While more high-quality community treatment, such as intensive case management and assertive community treatment, is needed, the authors believe that for many, 24-hour structured care is needed in the mental health system for various lengths of time to decrease criminalization. Another central theme of this article is that when a mentally ill individual is arrested, that person now has a computerized criminal record, which is easily accessed by the police and the courts in subsequent encounters. This may influence their decisions and reinforce the tendency to choose the criminal justice system over the mental health system.

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Over the past few decades in the United States, there has been a profound paradigm or model shift in the care of persons with severe mental illness. For many, their psychiatric inpatient care is now provided in jails and prisons. This, in large part, may be the result of structural changes that have been made in the mental health system—namely, a radical reduction in long-term, intermediate, and short-term psychiatric inpatient treatment under mental health's jurisdiction. Moreover, few in the mental health field discuss the need for inpatient treatment, despite evidence that some persons with severe mental illness cannot be effectively treated and/or managed in the community and require 24-hour structured care.¹

Shifting Populations

As shown in Tables 1 and 2, by the year 2000, the number of state hospital beds had dropped from its high in 1955 of 339 per 100,000 to just 22 per 100,000 on any given day.² Some states have gone even further. For instance, in California there are currently fewer than two nonforensic state hospital beds per 100,000 population.³ Statistics from the

criminal justice system are also striking. The total number of inmates, including those who are mentally ill, in federal and state prisons and local jails rose from 209 per 100,000 population in 1978 (465,760 inmates) to 708 per 100,000 population in 2000 (1,937,482 inmates).⁴ (The earliest data available from the Bureau of Justice Statistics on all inmates under federal, state, and local jurisdictions is for 1978.)

How many of the almost 2,000,000 inmates in jails and prisons are severely mentally ill? The latest methodologically sound estimates of the number of persons in jails and prisons diagnosed with major depression, schizophrenia, and other psychotic disorders, and bipolar disorder yielded percentages that ranged from 16 to 24 percent.⁵ By using the lower percentage (16%) in order to avoid overstating this phenomenon, as well as using the last year for which we have reliable state hospital data (2000), we show in Table 3 that the estimates of severely mentally ill inmates in jails and prisons in 2000 was at least 310,000 or 113 per 100,000 population. The estimate of 113 per 100,000 is approximately half of all inmates who were in federal, state, and local custody in 1978 (209 per 100,000 population)—it is highly unlikely that half the jail and prison population in 1978 had severe mental illness.

Adding the number of persons in state hospitals in 2000 (22 per 100,000 population) and the number of severely mentally ill persons in jails and prisons in

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Table 1 Changes in State Mental Hospital Beds Based on the Years 1955 and 2000

Year	1955	2000 (December)
Number of beds	559,000	59,403
U.S. population	165,000,000	273,600,000
Beds/100,000 population	339	22

that same year (at least 113 per 100,000) shows that the number of severely mentally ill persons in locked, 24-hour, involuntary, structured settings is at least 135 persons per 100,000 population or almost 370,000 persons. It is clear, then, from these numbers that the deinstitutionalization of persons with severe mental illness has amounted to far fewer persons than is commonly believed.

Severely mentally ill individuals who formerly would have been psychiatrically hospitalized when there were a sufficient number of psychiatric inpatient beds are now entering the criminal justice system for a variety of reasons.⁶ Those most commonly cited are: (1) deinstitutionalization in terms of the limited availability of psychiatric hospital beds; (2) the lack of access to adequate treatment for mentally ill persons in the community; (3) the interactions between severely mentally ill persons and law enforcement personnel; and (4) more formal and rigid criteria for civil commitment.

The Lack of Inpatient Treatment

Closure of nonforensic state psychiatric hospital beds has resulted in a limited ability of the mental health system to provide intermediate and long-term structured care for those severely mentally ill persons who may need it. Moreover, the number of these beds continues to be reduced.

Intermediate care facilities have been used to replace state hospital beds in many states.⁷ These facilities provide a lesser degree of structure than do state hospitals. However, there is also a shortage of intermediate-care beds. These shortages of long-term and intermediate-care beds have had important effects on many severely mentally ill persons who need this kind of care. They have not been able to adjust to community living and thus frequently require acute psychiatric hospitalization.⁸ This results in an overtaxing of the increasingly limited number of acute psychiatric beds in the mental health system. Consequently, psychiatric hospital staff must set priorities on whom they admit and the length of their stay, and

as such, many persons who need acute inpatient care are either turned away or discharged early.

Further problems may develop from very short hospital stays. For example, the patient's mental condition may not be fully stabilized. In addition, there may not be sufficient time to involve the patient's family or other caretakers in the treatment and to help them learn how to manage the patient's behavior, such as how best to encourage the patient to attend outpatient treatment and to assure adherence to medication.

Treatment in the Community

It is frequently asserted that the increased availability of high-quality community treatment, such as intensive case management⁹ and assertive community treatment,¹⁰ would result in very few persons with severe mental illness who needed intermediate or long-term psychiatric hospitalization.¹¹ Moreover, a variety of tools are being used as leverage in the United States to improve adherence to psychiatric treatment in the community: e.g., requiring adherence to medications or psychosocial treatment as a condition for living in a therapeutic residential community program, making the receipt of mental health services a condition of probation, and outpatient commitment.¹²

There is evidence that suggests that representative payee programs can be effective in reducing hospital stays.¹³ Outpatient commitment is another form of leveraged community treatment that has been shown to be effective.¹⁴ Outpatient commitment or assisted community treatment refers to:

... a court order directing a person suffering from severe mental illness to comply with a specified, individualized treatment plan that has been designed to prevent relapse and deterioration. Persons appropriate for this intervention are those who need ongoing psychiatric care owing to severe illness but who are unable or unwilling to engage in ongoing, voluntary, outpatient care" [Ref. 15, pp 128–9].

Results of a recent study showed that outpatient commitment, if it is both sustained and combined with intensive case management, significantly re-

Table 2 Changes in Number of Inmates in Jails and State and Federal Prisons Based on the Years 1978 and 2000

Year	1978	2000
Number of inmates	465,760	1,937,482
U.S. population	223,000,000	273,600,000
Inmates/100,000 population	209	708

Table 3 Severely Mentally Ill Persons in Jails and Prisons in 2000

Year	2000
Total number of inmates	1,937,482
Number of severely mentally ill inmates, according to the lowest estimated percentage (16%)*	309,997
U.S. population	273,600,000
Severely mentally ill inmates/100,000 population	113

* According to the most recent methodologically sound estimate of the number of severely mentally ill (major depression, schizophrenia and other psychotic disorders, and bipolar disorder) inmates, which ranged from 16% to 24%.

duces the need for hospitalization among people with serious mental illness who are resistant to treatment, and reduces the incidence of arrests.¹⁴ It should be noted, however, that some oppose outpatient commitment because of its limitations regarding civil liberties.¹⁶

More community treatment, such as intensive case management and assertive community treatment is clearly needed. However, we know of no evidence that these treatments, even if they are accompanied by various forms of leverage, are sufficient to maintain all persons with serious mental illness in the community and can completely solve the problem of the very large number of seriously mentally ill persons entering our jails and prisons. Thus, if we are truly committed to eliminating the criminalization of persons with serious mental illness, it seems reasonable to assume that in addition to intensive community treatment enhanced by the kinds of leverage mentioned earlier, 24-hour hospital care should be another readily available resource.

Interaction With Law Enforcement

Many severely mentally ill persons now living in the community are not receiving adequate, if any, psychiatric treatment. This increases the likelihood that these individuals may come to the attention of law enforcement. In such instances, the police may not recognize that they are dealing with a mentally ill person.¹⁷ However, even when the police believe that a person's bizarre and/or aggressive behavior is the result of mental illness, the police may not choose, or be able to choose, a mental health disposition because of many problems and irritants. These include more formal and rigid criteria for involuntary psychiatric hospitalization; a shortage of psychiatric inpatient beds; long waiting periods in psychiatric emergency rooms; mental health professionals' reluctance

to admit aggressive persons to the relatively few beds they have; and what the police see as premature discharge from the emergency room or hospital of persons whom the police believe are still dangerous to the community.^{18,19} As a result, law enforcement may be more inclined to arrest these individuals and take them to jail to manage their psychotic and problematic behavior.

It is crucial to recognize that, as a consequence of the police officer's arresting the mentally ill individual, the individual now has a criminal record that is entered into the criminal justice computerized record system. This may influence the actions of the police in subsequent encounters with the individual and reinforce the tendency to choose the criminal justice system over the mental health system. The mentally ill person has now been criminalized.

Once severely mentally ill persons are labeled as offenders, the label may determine not only future law enforcement decisions but court dispositions as well. It has been our experience that after such individuals commit a number of petty and/or nonviolent "crimes," which may well be related to their mental illness, it is not uncommon for the courts to be more influenced by the defendants' long "criminal" history than by their psychiatric illness, and thus sentence them to jail or state prison. Not only is such a disposition highly inappropriate and harmful to persons with severe mental illness, but the label of criminal is further reinforced. It should be emphasized, however, that we are not referring to persons who have committed serious crimes, even if they have a major mental illness. It may well be more appropriate for such persons to be arrested and possibly remain within the criminal justice system.

Are there severely mentally ill persons who are especially likely to be criminalized? It has long been known that severely mentally ill persons in jails and prisons tend to be very resistant to treatment, to be substance abusers, and to be assaultive.²⁰ However, it should be noted that in the 1970s and 1980s, when there was still a substantial number of patients in the state hospitals, assaultive behavior was not only quite common in these patients, especially in men, but was frequently a major reason for admission and continued hospitalization.²¹⁻²⁴ Today, severely mentally ill persons who demonstrate assaultive behavior are frequently arrested and treated in the criminal justice system. There, assaultive behavior can result in a listing of charges of assault and battery on a mentally ill

person's computerized criminal history that catch the attention of any police officer or judge.

It is not surprising, then, that a police officer or a judge may be inclined to choose jail and/or prison as a placement for a severely mentally ill individual—particularly, if the individual has a history of nonadherence to community treatment and assaultive behavior. The criminal justice system can provide a high degree of structure in a locked facility, which may be similar to that found in acute, intermediate, and long-term hospitalization settings. Moreover, given the lack of alternatives in the mental health system, the criminal justice system has become the system that “cannot say no.”²⁵

There are many law enforcement, legal, and mental health professionals who are concerned that the criminal justice system has become a predominant disposition for many difficult-to-manage mentally ill persons in need of treatment.¹⁸ It must be recognized that even when quality psychiatric care is provided by psychiatrists and other mental health professionals in jails and prisons, the individual has still been doubly stigmatized as both a mentally ill person and a criminal. Moreover, jails and prisons have been established to mete out punishment and to protect society; the corrections milieu is limited in its ability to be therapeutic.

Society's Priorities

In recent years, there has been a reluctance on the part of society to fund additional mental health services or even to maintain existing ones, including community treatment, nonforensic state hospital beds, intermediate care facilities, and acute community inpatient beds.²⁶ Another problem is that within the mental health systems themselves, state and local mental health departments want to limit or reduce the few remaining state hospital beds in order to use scarce mental health funds for community outpatient programs.²⁷ However, while all these reductions and diversions of monies from inpatient psychiatric hospitalization within mental health systems are occurring, there has been relatively little difficulty persuading citizens and legislators to appropriate funds to expand the criminal justice system.

It is commendable that there are jails and prisons where the quality of psychiatric care is good. That is, some institutions provide structured psychiatric services, including the use of trained mental health professionals, appropriate medications, law enforcement

officers and aides able to deal with physically challenging patients, and a range of therapeutic activities that structure the patients' day.^{28,29} However, it is unfortunate that when many mental health professionals are asked whether the placement of severely mentally ill persons in criminal justice facilities that have quality psychiatric services is appropriate, the answer may be, “Sadly, these are the only places we have where we can give them the equivalent of good inpatient treatment.” It has now been left to the criminal justice system to provide the high-caliber and humane level of services that was once the domain of the mental health system.

Diversion and Cost-Shifting

The criminal justice system with its increasing population of severely mentally ill persons has had to develop specialized programs for this population. Jails and prisons have expanded and improved their psychiatric services.²⁸ Mobile police emergency teams consisting of specially trained law enforcement personnel, who may or may not be accompanied by mental health professionals, have been developed in several jurisdictions to divert mentally ill persons encountered in the community into the mental health system.^{30–33}

Mental health courts are also among the newest diversion efforts designed to decrease criminalization. Mental health courts are special courts that hear cases of persons with mental illness who are charged with crimes.^{34–36} These courts work with mental health professionals in a collaborative effort to devise and implement a treatment plan that includes medications, therapy, housing, and social and vocational rehabilitation, all in an effort to address the individuals' mental illnesses and reduce their risk for recidivism. However, there may be unforeseen limitations of these programs with respect to available resources. For instance, while effective diversion programs may be established, there are usually insufficient resources in the existing mental health system to accommodate those mentally ill persons diverted from the criminal justice system.³⁷ Another problem resulting from the services recommended by these courts for mentally ill offenders is the possibility that they might be provided at the expense of existing programs for mentally ill persons who have not committed crimes.³⁴

These specialized mental health courts have been given high priority, for they appear to be part of the answer to the problem of criminalization. However,

in order for these diversionary programs to be truly effective and not overwhelm the already limited budgets of the Departments of Mental Health, the treatment should be funded by additional monies, which could come from savings in a criminal justice system that would no longer have to incarcerate and treat these persons.

Decreasing monies from the criminal justice system and transferring them to the mental health system, even if justified by the savings of diversion, may not be easy to accomplish. There has already been significant cost-shifting from the mental health to the criminal justice system. This has been detrimental to persons with mental illness,³⁷ and should be reversed. Moreover, if the true costs of criminalization were reduced (to law enforcement, to the courts, to jails and prisons, to probation and parole, etc.), there might not be additional costs to the taxpayer.^{26,38} Such an argument has been successfully used in Texas, where new funding for services in the mental health system has been approved recently by the State Legislature with the rationale that decreasing the number of severely mentally ill inmates would eliminate the need to build a new prison.³⁹

Summary and Conclusions

Most of the discussion in the field for solving the problem of the criminalization of persons with severe mental illness has centered on the establishment of additional intensive mental health services in the community.⁴⁰ Also advocated have been various forms of leverage, including outpatient commitment and payees for the person's money, which are designed to induce mentally ill persons to participate in community treatment. While such initiatives are crucial, they may be insufficient for many individuals who need more structure than can be provided in intensive community treatment, even if outpatient commitment and other forms of leverage are included.

In California, there are private, long-term, 24-hour facilities, with highly structured, locked beds, that are similar to state hospitals in their capacity to treat and manage many, but by no means all, severely mentally ill persons in need of psychiatric inpatient care.⁷ These facilities are of high quality and are cost effective (though in some states such facilities have been problematic) and were established to contract with local jurisdictions to provide such care at *per*

diem costs that are much less than those of state hospitals.

Funding such facilities and programs that have proven effective should be supported; however, this is only a partial solution to the problems previously discussed. There remains a relatively small group of extremely treatment-resistant, severely mentally ill persons who have not demonstrated an ability to be treated, even in an intermediate care setting. Clinically, it appears that they cannot manage without the degree of structure and security that can only be provided in a state hospital⁸ or alternatively, in a jail or prison. Thus, if the need to use the jail or prison alternative is to be minimized for as many severely mentally ill persons as possible, there should be an expansion of state psychiatric hospital beds in addition to the development of more intensive community treatment and private, highly structured, locked intermediate psychiatric facilities.

In our opinion, such resources would allow for a range of inpatient and outpatient treatment in the mental health system for severely mentally ill persons and thus would effectively divert those individuals who are most difficult to treat and manage away from jails and prisons. It would not only be more appropriate to treat this population in the mental health system and avoid labeling them as criminals, but also it would probably not cost more, and might even cost less, than doing so in the criminal justice system.⁴¹

The shortage of psychiatric beds in the mental health system is an extremely serious issue, and, in our opinion, has been one of the key factors contributing to persons with severe mental illness entering and remaining in the criminal justice system. Unfortunately, too few people have advocated for establishing more nonforensic, long-term, intermediate, and acute psychiatric beds. Without such efforts, we believe that the criminalization of large numbers of severely mentally ill persons will continue.

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