Criminalization of the Mentally Ill

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The interface between mental illness and the criminal justice system highlights challenges for the individual, the family, the community, and the courts.

The overrepresentation of persons with mental illness in US prisons is a longstanding and complex problem. In 1992, researchers led by E. Fuller Torrey, a leading expert in psychiatry and a staunch advocate for persons with mental illness, published a treatise on the growing use of prisons and jails as psychiatric hospitals.[1] Depending on the survey and the state, more-recent studies show that the percentage of mentally ill in the prison population now ranges from 12 percent to over 50 percent.[2]

Since the 1990s, approaches to reducing incarceration have emerged. They include Crisis Intervention Team (CIT) models for training police, court-based jail-diversion programs, and intervention groups in jails and the community for post-prison reintegration. Such programs target critical junctures between mental illness and the criminal justice system to offer treatment alternatives to incarceration and to reduce recidivism.

Nevertheless, a complex confluence of many factors continues to result in prisons housing too many mentally ill persons.

The Nature of Mental Illness

Severe mental illness disrupts personhood. It causes a faltering of confidence in self and others—indeed, of understanding the world. For serious emotional disorders, there are no blood tests, biopsies, or brain scans that identify a diagnosis and track its remission or progression. Rather, mental illness appears in the behavior and experience of the person. Often with a gradual slide into disturbed behavior, the sufferer loses touch with family, function declines, and confidence and identity erode.

In disorders like depression, the suffering is a private affair affecting mainly the person and family. In other illnesses, the struggle plays out in public. Psychotic and paranoid disorders can manifest in disruptive behaviors arising out of mental chaos and fear. In the absence of effective treatment, such disorders can impel a person into confrontations with overwhelmed families and wary communities. Although the majority of persons with mental illness are not violent, bizarre behavior raises concerns.

The brain is an organ of complex electric and biochemical pathways. The complexity makes treatment a challenge. Although advances in psychopharmacology have allowed persons with even the most serious mental illness to live in the community, the medication comes with serious side effects and does not restore all that the mental illness disturbs. None of the drugs are a cure. They primarily manage disruptive behaviors and emotions.

It is difficult for a person with mental illness to even acknowledge the need for treatment. In the psychotic disorders, the seminal symptom is that of impaired reality testing. The person does not perceive the environment as it really is (delusions), thinks thoughts are external phenomena (hallucinations), and communicates in idiosyncratic ways. Because the disorder is embedded in the person's experiences, accepting the illness requires the person to refute experience—essentially to reject the self. Acknowledging that one needs treatment is a monumental achievement toward successful adaptation to the illness. For some, that comes slowly and not before their behavior has brought them and others more suffering.

Noncompliance with psychiatric medication is often a critical factor leading to arrests. Reasons for noncompliance are many: the medication does not work for all; the side effects can be disruptive, severe, and even life threatening. Perhaps most important, the medication in the most serious mental disorders often does not restore full capacity, reduce social alienation, or correct the disrupted sense of self. Medication may also make the suffering more private and

less public, meaning that people around the patient may benefit more than the patient.

Mental Health Law and Criminal Law

An individual's resistance to psychiatric intervention for a disorder that erupts in disruptive and illegal behaviors creates tension between policing and treatment.

United States Supreme Court decisions have established stringent criteria for hospitalizing persons against their will. Danger to self or others, or grave disability, are circumstances that allow involuntary confinement in a treatment facility in most states. However, confinement criteria are no more objective than criteria for the disorders themselves.

Similarly, discharge decisions are made without objective measures that guide other medical specialties. The matters of dangerousness, suicidality, and inability to care for oneself are left to the discretion of the treating psychiatrists. They use the best evidence at hand but lack the advantage of research and feedback that are available for other medical professionals.

The involvement of law enforcement often occurs when the person has rejected psychiatric treatment without meeting the criteria for involuntary commitment. The person's behavior may be disruptive (say, preaching loudly on the street corner or aggressive panhandling) and may warrant arrest.

Fortunately, recent innovations are addressing the interface between disruptive behavior and the criminal justice system. The programs include police training to manage the behavior (the Memphis CIT Model), mental health courts, and mental health probation programs. All are geared toward engagement in treatment in lieu of incarceration and arrest. They are effective as long as there are robust mental-health and wrap-around services (such as supportive housing and supportive employment).[3] In states that employ such programs, incarceration of persons with mental illness for misdemeanors and low-level crimes has decreased by 15 percent to 32 percent as measured by surveys that tracked programs five to seven years after initiation.[4]

Other efforts focus on substance-abuse treatment and specialized drug courts. Adding mental health treatment for persons with dual diagnoses of addiction and psychiatric disorders has helped reduce reincarceration as well as the initial jail sentence. In Connecticut, court-supervised mental health and substance abuse treatment reduced the rate of reincarceration within two years of release by 39 percent.[5]

Society's Contribution

The impact of a psychiatric disorder is often determined by available supports and services. Poverty, homelessness, and joblessness destabilize people, even without mental illness. With a psychiatric disorder, such stressors may defeat treatment or lead to arrest.

Stigma is a further destabilizer—and a barrier to early diagnosis, engagement in treatment, and recovery. The diagnosis evokes shame for both the individual and the family. Many view mental illness as a failure of character, or a psychiatric diagnosis as a declaration of pervasive incompetence in a family. Despite protection under the Americans with Disabilities Act, persons with psychiatric illness still find discrimination in workplaces, housing, and even medical care.

Media attention to perpetrators of major tragedies like the Sandy Hook killings and the deliberate crashing of a Lufthansa plane frequently links mental illness with monstrosity. That distorts the suffering and nonviolence of the vast majority of those diagnosed with mental illness and may keep them and their families some from seeking help.

One new approach to care is addressing the societal stigma. The Recovery Movement, a consumer-driven and -run model, emphasizes the strengths, talents, and expertise of those who carry the diagnosis of mental illness. The method has already influenced models of care, engagement in treatment, and expanded services. For example, in Connecticut, a mental-health project adopts the concept of "citizenship" to empower persons with mental illness and emphasize that they can have a significant place in their communities. The program prepares and engages peer mentors to aid persons with mental illness who are involved in the criminal justice system. It emphasizes citizenship around "five Rs"—rights, responsibilities, roles, relationships, and resources. Although traditional psychotherapy and psychopharmacology are included, the consumer-led approach emphasizes engagement, belonging, and relevance to the community. [6]

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Redirecting persons with mental illness into treatment requires recognizing all contributing factors. It takes collaboration, patience, empathy, and commitment from many constituencies.

It is time to go beyond the traditional services. A truly integrated approach will require unraveling the basis for the disorders, establishing new interventions, making the criminal justice system more flexible, engaging communities in finding solutions, and seeing through people's differences to their strengths.

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Endnotes

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6 M. Rowe et al., "Reducing Alcohol Use, Drug Use, and Criminality among Persons with Severe Mental Illness: Outcomes of a Group- and Peer-Based Intervention," *Psychiatric Services* 58 (2007): 955–961; and M. Rowe and M. Baranoski, "Citizenship, Mental Illness, and the Criminal Justice System," *Journal of the American Academy of Psychiatry Law* 34 (2011): 303–308.