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Background Brief on ...

# Mentally Ill in Prisons and Jails

Since the late 1970s, the number of mentally ill persons in the nation's jails and prisons has increased to a level not seen since the 19<sup>th</sup> century. At the same time, the number of persons committed to mental hospitals has dropped dramatically. In 1958, Oregon had over 5,000 people committed to the State Hospital; that number has dropped to a current patient level of 790. An additional 500 beds are available for community-based mental health programs and are used for short-term commitments.

Over the last 25 years, significant medical advancements have allowed for the better management of mentally ill individuals, many of whom can live and work in the community with proper medication and support. With these medical advancements, treatment of the mentally ill shifted from state institutions to community-based programs. Consequently, Oregon significantly reduced the number of beds within the state hospital system with the intent of shifting resources to community-based programs. Many mental health advocates, however, contend that adequate resources were never shifted.

One study, using prison and mental health census data from 18 European countries, found an inverse relationship between prison and mental health hospital populations. The study concluded that if one of these forms of confinement was reduced, the need for the other increased. Accordingly, where prison populations are extensive, mental hospital populations should be small. If mental health resources are reduced, involvement with the criminal courts will increase.

## **Mentally Ill within Prisons and Jails**

As of March 1, 2010, Oregon's prison population was 14,347 inmates, comprised of 13,169 men and 1,178 women. Approximately 33 percent of the prison population needs mental health treatment (32 percent of the men and 68.3 percent of the women). Of the total men and women incarcerated, 13.2 percent of the men and 42.4 percent of the women were diagnosed with severe mental illnesses.

Marion County conducted a study of its jail population for 2003-2004 and found that approximately 40 percent of all inmates had a diagnosable mental illness.

## **How the Mentally Ill enter Oregon State Hospital**

There are three potential routes to the state hospital:

- Civil commitment (ORS Title 35);
- Being found "incapacitated" or unable to assist in one's own defense to a criminal charge (ORS 161.360); or,
- Being found guilty of a crime, but insane ("guilty except for insanity" (ORS 161.295)).

To be civilly committed, a person must be found "mentally ill." This means that the person is:

- A danger to self or others;
- Unable to provide for basic personal needs and not receiving the care necessary for health or safety; or,
- Someone who:
  - Is chronically mentally ill;
  - Has been placed in a hospital or inpatient facility for mental illness within the previous three years;
  - Is exhibiting symptoms or behaviors substantially similar to those that preceded or led to previous hospitalizations or inpatient placements; and,
  - Will continue to deteriorate physically or mentally if untreated.

A person charged with a crime may be found incapacitated if, as a result of mental disease or defect, the person is unable to:

- Understand the nature of the proceedings;
- Assist and cooperate with his or her attorney; and,
- Participate in his or her defense.

If a person is found to be incapacitated, then the criminal proceedings are suspended, and the person is admitted to the State Hospital until such time as they are determined to be capable to proceed.

A person charged with a crime can be found "guilty except for insanity" if the person, as a result of mental disease or defect, at the time of engaging in criminal conduct lacks the substantial capacity to understand what he or she was doing or was unable to control his or her conduct.

Mental disease or defect does not include antisocial behavior. If a court finds a person "guilty except for insanity," they are given over to the care and custody of the Psychiatric Security Review Board, who may then place the individual in either the State Hospital or under supervised treatment in the community.

## **Recent Legislation**

House Bill 2141 (2005) authorized the DOC and the Oregon Youth Authority to transfer inmates to a hospital if they are severely mentally ill. If a person is transferred, they are entitled to a hearing similar to those provided for civilly-committed persons including the right to a hearing every 180 days.

## **How the Mentally Ill go to Jail or Prison**

Many mentally ill persons do not represent a sufficient enough danger to self or others to satisfy the civil commitment standard. Some persons with mental illness do not enter a plea of "guilty except for insanity;" and still others who do enter such a plea, do not meet the criminal standard.

In such cases, the individuals are subject to the same sentencing provisions as any other convicted person, including potential incarceration in a jail or prison facility if the

crime is serious enough, or, if the crime is minor, but committed repeatedly.

Finally, although not officially stated, courts may incarcerate mentally ill persons if it is the only way they can obtain needed treatment. For example, a person trespasses repeatedly in a particular place over a period of months and is arrested each time. Significant deterioration is observed by law enforcement and the courts, but it is not enough to satisfy the standard for civil commitment. Upon conviction a court may impose a 30-day jail sentence, during which time the person has an opportunity to stabilize with appropriate treatment.

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