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Background Brief on...

Mentally Ill in Prisons and Jails

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Background

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 19th 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. Now, Oregon has approximately 790 people in the state hospital. 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. With the proper medication and assistance, many can live and work in the community. With these significant medical advancements, the treatment of mentally ill shifted from state institutions to community-based programs. Consequently, Oregon significantly reduced the number of beds within the state hospital system. It did so with the intent of shifting resources to community-based programs. However, many mental health advocates contend that adequate resources were never transferred to community-based programs.

One study, using the 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 is reduced, the other will increase. 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 May 21, 2004, Oregon's prison population was 12,615 inmates including:

- 11,698 men
- 917 women
- approximately 19 percent of the men and 54 percent of the women, for a total of 23 percent of the prison population, were classified as mentally ill

- 11 percent of incarcerated men were diagnosed with severe mental illness while 24 percent of the women were diagnosed with severe mental illness

Marion County conducted a study of its jail population for 2003-04 and found that approximately 40 percent of all inmates lodged have a diagnosable mental illness.

How the Mentally Ill go to the Oregon State Hospital

There are three potential routes to the state hospital:

- Civil commitment
- The person is unable to assist in their own defense to a criminal charge
- The person is found guilty but for insanity.

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

- A) Dangerous to self or others;
- B) Unable to provide for the basic personal needs and is not receiving such care as is necessary for health or safety; or
- C) A person who:
 - i. Is chronically mentally ill;
 - ii. Within the previously three years, has been placed in hospital or inpatient facility for mental illness;
 - iii. Is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements; and
 - iv. Unless treated, will continue to physically or mentally deteriorate.

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

- Understand the nature of the proceedings against the defendant
- Assist and cooperate with his or her attorney
- Participate in his or her own defense

If a person is found to be incapacitated, then the criminal proceedings against the person are suspended until such time as the person is found capable. This person is then sent to the state hospital.

A person charged with a crime can be found guilty but for insanity if the person, as a result of mental disease or defect, at the time of engaging in criminal conduct: 1) lacks the substantial capacity to understand what he or she is doing; or 2) is unable to control his or her conduct. Mental disease or defect does not include antisocial behavior. If a court finds a person guilty but for insanity, that person is given over to the care and custody of the Psychiatric Security Review Board. The Board may then place them in the Oregon State Hospital or under supervised treatment in the community.

How the Mentally Ill Go to Jail or Prison

Many mentally ill people charged with crimes refuse to enter a plea of guilty but for insanity.

Consequently, when found guilty, many are sent to prison. Many mentally ill do not represent a sufficient enough danger to self or others to warrant civil commitment. The crimes they commit are often not serious enough to warrant incarceration.

However, they sometimes commit these crimes so often that a court may feel compelled to place the offender in jail. Finally, though not officially stated, the law enforcement community and the courts will incarcerate a mentally ill person because it is the only way to get this individual the treatment they need. For example, a person may trespass numerous times in a particular place and be arrested each time for doing so. Both the police and the courts see a significant physical deterioration in the individual. The deterioration may not be sufficient to warrant civil commitment. However, 30 days in jail on medication may, at least for a short period of time, give the person a chance to physically and mentally recuperate.

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