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Background Brief on ...

# Mentally Ill in Prisons and Jails

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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 the proper medication and assistance. With these 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 need for 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 March 2008, Oregon's prison population was 13,621 inmates including 12,555 men and 1,066 women. Approximately 28 percent of the prison population needs mental health treatment (25.5 percent of the men and 63 percent of the women). Eleven and one-half percent of incarcerated men were diagnosed with severe mental illness while 37 percent of the women were diagnosed with severe mental illness.

Marion County conducted a study of its jail population for 2003-2004 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
- Inability to assist in one's own defense to a criminal charge
- Being found guilty but for insanity

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

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

- 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 lacks the substantial capacity

to understand what he or she is doing or is unable to control his or her conduct. Mental disease or defect does not include anti-social behavior. If a court finds a person guilty but for insanity, they are given over to the care and custody of the Psychiatric Security Review Board, who may then place the individual either in the State Hospital or under supervised treatment in the community.

## **Recent Legislation**

House Bill 2141 (2005) authorized the Department of Corrections 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 one given to a civilly committed person including the right to a hearing every 180 days.

## **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, but 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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