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March 2022

Mass Injustice: The Mental Health Crisis in the U.S. Criminal Justice System

By **Tania Calle,** *CHCI-DaVita Health Graduate Fellow*

Executive Summary

The high mental health burden housed within the criminal justice system is a public health crisis. At every point of the criminal justice process, entry, incarceration, and release, individuals experiencing mental illness are underserved and at risk for harm. To address this issue, it is important to consider the diversion of mentally ill individuals away from the criminal justice system, improvement of the mental health service infrastructure within prisons and jails and further development of healthcare and community resources for formerly incarcerated and mentally ill individuals post-release.

Background

Legal Framework

There are various international and domestic laws in place to protect the health and wellbeing of individuals who are mentally ill and incarcerated. The International Covenant on Civil and Political Rights (ICCPR) and the Basic Principles for the Treatment of Prisoners protect inmates from being subject to abusive or inhumane treatment and enlist authorities to ensure that inmates receive quality of care that is comparable to the general population.[1] Domestically, the Eighth Amendment established a prohibition against cruel and unusual punishment which protects inmates' rights to receive health care that meets "minimum constitutional requirements," including mental healthcare.[2] More recently, the American Disabilities Act of 1990 among other laws and Supreme Court decisions have further established the responsibility of correctional facilities to provide medical and mental health services.[3] Given this legal framework, the historic and current state of mental illness among the incarcerated and formerly incarcerated population within the U.S. is of utmost concern.

Historical Context

Beginning in the 1960s, funding cuts associated with the introduction of Medicaid and a public shift towards community-based treatment models for mental health conditions gave rise to the deinstitutionalization movement.[4] This movement moved mentally ill patients out of state-run institutions and subsequently closed these institutions.[5,6] Although this movement was considered a win for the disability rights movement due to the inhumane treatment many mentally ill patients received in state-run institutions, it left many gaps in mental health and general care services.[7] Shortly after, the War on Drugs initiated punitive sentencing policies for drug crimes, nonviolent offenses, and minor infractions that later led to the heightened prosecution of low-income communities and people of color as well as individuals struggling with mental illness.[8,9,10] Both of these movements precipitated the increase of the mentally ill inmate population, prompting a debate on the role of prisons as common yet inadequate asylums that remains relevant in the present day.

Current State

Today, there are approximately 2 million people incarcerated in the U.S., a population size that far exceeds that of any other nation.[12,13] The prevalence of mental illness among the incarcerated population differs across sources. According to a survey conducted by the Bureau of Justice Statistics (BJS) in 2016, it is estimated that 53.9% of prisoners in a national sample of state and federal prisons had an indication of a mental health problem.[14,15] Approximately 43% of state and 23% of federal inmates reported a history of a

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mental health problem.[16] Major depressive disorder was the most commonly reported mental disorder, prevalent among 27.1% state inmates and 23.2% federal inmates, followed by bipolar disorder, anxiety disorder, posttraumatic stress disorder, personality disorder, and lastly, schizophrenia/other psychotic disorders.[17] The BJS also estimated that 14% of state and 8% of federal inmates met the threshold for serious psychological distress in the 30 days prior to their interview.[18] Although general population statistics rely on different data sources, a rough comparison demonstrates that the prevalence of mental illness in prisons is generally two times higher than the estimated 3.4% of U.S. adults who have experienced serious psychological distress and 21% of U.S. adults that experienced any mental illness in 2020.[19,20] See Table 1.

Importantly, the prevalence of mental illness varies across race/ethnicity, sex, and age:

- Race/ethnicity: Among state inmates, inmates of two or more races reported the highest level of historic mental health problems followed by Whites, American Indians/Alaskan Natives, Hispanics, Blacks, and Asians/Native Hawaiians (see Figure 1). This trend was generally reflected among federal inmates (see Figure 2). Additionally, American Indians/Alaskan Natives and inmates of two or more races reported the highest levels of serious psychological distress in the last 30 days (Figure 1-2).
- Sex: In both the state and federal prison context, female inmates indicated a mental health burden greater than male inmates, demonstrated by higher reporting of historic mental health problems and serious psychological distress in the last 30 days (Figure 1-2). [22]
- Age: Lastly, state inmates within the 35 and 44 age band and federal inmates in the 55-64 age band indicated the highest level of mental health problems.[23]

Mental Health Indicator	Incarcerated Population			General U.S. Adult Population
	General Prison Population	State Prison Population	Federal Prison Population	
Past 30-day serious psychological distress	13.4%	14.2%	7.9%	3.6%
History of a mental health problem	40.5%	42.9%	23.2%	-
Any mental illness	-			21%
Specific Conditions				
Serious mental illness	-	-	-	5.6%
Major depressive episode	-	27.1%	13.7%	8.4%
Schizophrenia	-	8.8%*	3.2%*	<1%
Bipolar disorder	-	23.3%	9.4%	2.8%
Anxiety disorder	-	22.2%	10.4%	19.1%
Posttraumatic stress disorder	-	14.1%	6.9%	3.6%
Borderline personality disorder	-	11.4%**	4.8%**	1.4%

Notes
*Inclusive of schizophrenia and other psychotic disorders
** Inclusive of both antisocial and borderline personality disorders

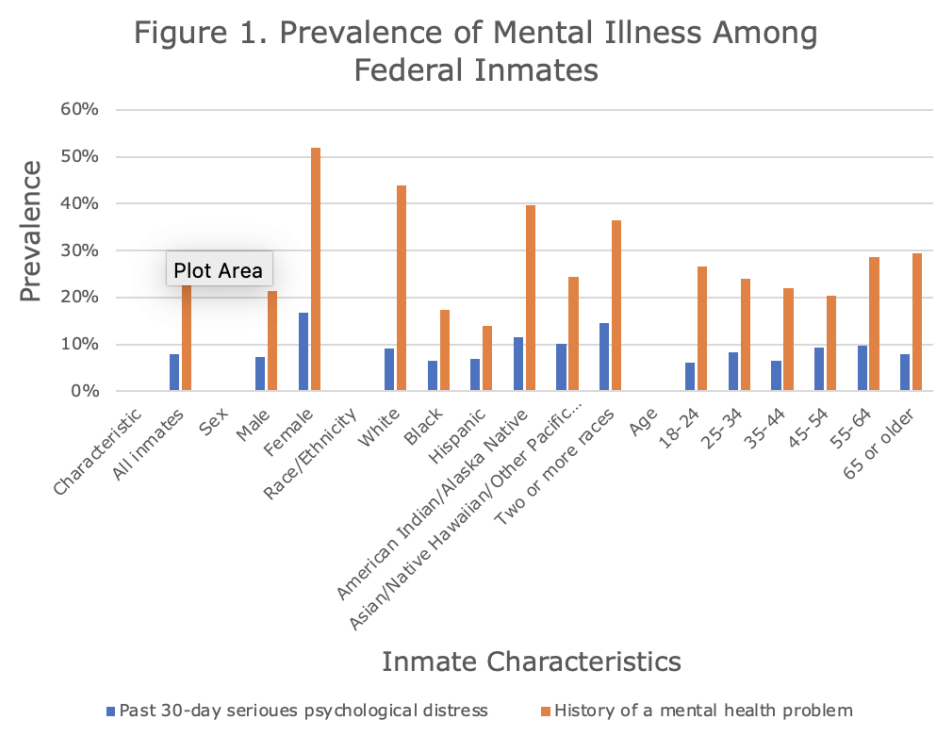
Table 1. A comparison of the prevalence of mental illness across the incarcerated and general U.S. adult population[21]

Evidently, there is a high prevalence of mental illness among the incarcerated community. In order to understand and address the needs of individuals experiencing mental illness and involved with the criminal justice system, this brief will further investigate the interaction between mental illness and incarceration, particularly the risk factors that exacerbate mental illness and the consequences of such risk. For sake of comprehensiveness, this brief will also take a lifespan lens and consider every pivotal stage of incarceration: entry, incarceration, and post-release.

Problem Analysis

Stage One: Entry

Entry into the criminal justice system generally involves arrest.[25] Current research on the likelihood of individuals living with mental illness being arrested is mixed. Some studies show an increased risk while others show no differential risk.[26,27] However, there is evidence that when individuals living with mental illness are arrested, they are more likely to receive a jail sentence for

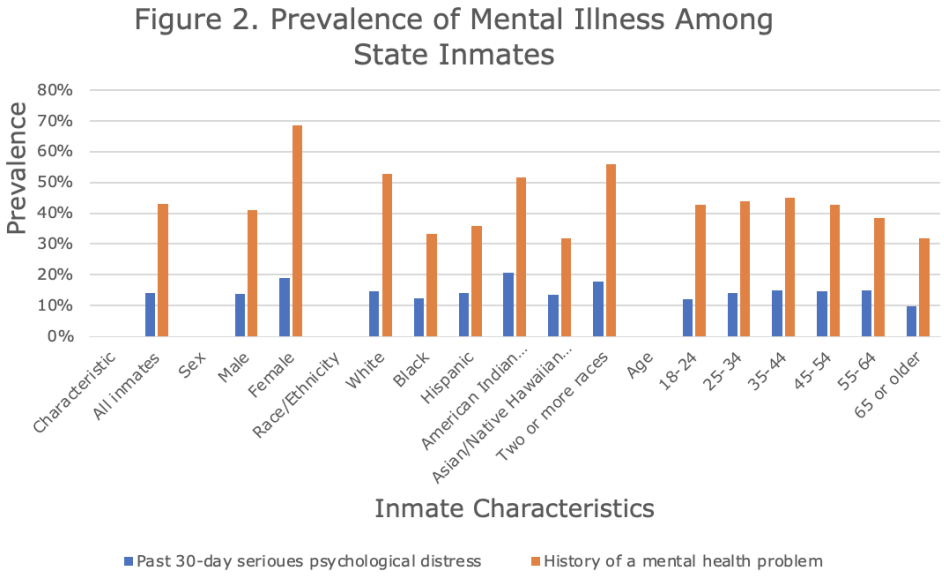


misdemeanors and in certain circumstances, a prison sentence for felonies relative to individuals without mental illness.[28] Worse yet, when arrested, individuals with mental illness are also at higher risk for injury and death. Individuals with untreated serious mental illness are 16 times more likely than other civilians to be killed while being approached or stopped by law enforcement.[29] Further, some conservative estimates suggest that at least 1 in 4 fatal law enforcement encounters involve an individual with serious mental illness, however, there is evidence that closer to half as many of all law enforcement homicides involve an individual with severe psychiatric disease.[30] So, while it remains unclear whether individuals with mental illness are being arrested at higher rates than those without mental illness, these individuals are more likely to be incarcerated following arrest, if not harmed while arrested.

Stage Two: Incarceration

When incarcerated, there are various features of jails and prisons that can trigger mental distress among all inmates, but especially inmates with pre-existing mental illness. For example, overcrowding, prison punitiveness,[31] and inmate boredom[32] are significantly associated with inmate depression and hostility.[33] Average distance from home is also positively associated with an inmate's risk for depression.[34] Solitary confinement has also been found to be positively associated with adverse psychological conditions including but not limited to anxiety, depression, hostility, and other symptoms.[35] Paradoxically, it is estimated that at least 30% of inmates held in solitary confinement suffer from mental illness.[36, 37] Lastly, inmates with mental illness face a heightened risk for sexual abuse, an exacerbating and traumatic experience.[38,39]

Despite the high burden of mental illness faced by the incarcerated community and the characteristics of prisons that lead them to become sites of harm, there are insufficient mental health care resources available in federal and state prisons. According to the previously cited BJS report, only about 60% of surveyed state inmates and 42% of federal inmates who met the threshold for past 30-day serious psychological distress reported having received mental health treatment at some time since admission.[40] Among those with a history of a mental health problem, 63% of state and 58% of federal inmates reported receiving treatment since admission.[41] Worst yet, there is evidence that entry into prison may lead to the discontinuation of treatment: a study based on 2004 data found that only 50% of inmates who entered prison on medication continued to receive



Given that one of the aims of incarceration is to "support rehabilitation and social reintegration of inmates into the community," addressing the mental health needs of individuals at risk for incarceration, currently incarcerated, and formerly incarcerated is vital.

medication while in prison.[42] Recent studies on disruption to treatment are not available. Nevertheless, treatment is critical to ensuring better clinical outcomes and reducing future recidivism.[43] The widespread lack of access to treatment is attributed to the shortage of psychologists and psychiatrists who are able to diagnose mental illness in the prison setting;[44] the use of screening tools for the purposes of security rather than medical diagnosis; and limited correctional budgets that may only be able to deliver treatment to inmates with the most serious mental health conditions.[45]

For all of these reasons and more, inmates living with mental illness do not thrive in prisons and jails. In the nation's largest state prison system, inmates with a diagnosis of a serious mental illness made up slightly more than half of inmates who died by suicide.[46] Additionally, inmates with major depressive disorder, bipolar disorder, and schizophrenia were 5.1, 4.6, and 7.3 times, respectively, more likely to die by suicide than inmates living without these conditions.[47] Globally, there is evidence that inmates with any current psychiatric diagnosis are at elevated risk for self -harm.[48]

Stage Three: Release

Incarceration has a lasting and generally negative impact that extends beyond prison walls. Exposure to victimizing and traumatic events such as solitary confinement, abuse, and/or coercion while incarcerated are associated with a cluster of Post-Traumatic Stress Disorder symptoms upon release; some researchers have begun to refer to this condition as Post-Incarceration Syndrome.[2] Additionally, formerly incarcerated individuals often experience difficulty finding employment, housing, and re-establishing or rebuilding familial relationships as well as face many barriers to Medicaid enrollment, a key resource for accessing healthcare services.[50] Consequently, the formerly incarcerated can face a 12.7 higher risk of death in the first two weeks following release than other state residents with the leading cause of death being drug overdose, homicide, and suicide.[51] While these circumstances are dire, former inmates living with mental illness have even bleaker prospects. This population tends to have worse employment and housing outcomes than the general ex-inmate population and faces great barriers to necessary health care.[52] As a result, rates of recidivism for former inmates are between 50% and 230% higher for persons with mental health conditions than for those without any mental health conditions, regardless of the diagnosis.[53]

Conclusion

The criminal justice system, as it exists, is ill-equipped to support the needs of mentally ill individuals. Prior to arrest, criminal justice involvement may pose a lethal threat to individuals living with mental illness, meanwhile many aspects of prisons can under serve the needs of those who enter with mental illness and/or exacerbate their illness. Following release, all inmates but especially inmates with mental illness struggle to start a new life. Given that one of the aims of incarceration is to "support rehabilitation and social reintegration of inmates into the community," addressing the mental health needs of individuals at risk for incarceration, currently incarcerated, and formerly incarcerated is vital.[54]

Recommendations

While the urgency of this matter is clear, the path forward is less so. Numerous criminal justice and mental health related organizations have offered different interventions to support the mental health needs of inmates at each stage of incarceration. They are described below:

Prior to arrest

Most interventions that take place prior to arrest involve diversion away from jails/prisons and harm prevention. Some interventions that have been successful in accomplishing these ends include mental health courts and crisis intervention teams.

- *Mental Health Courts*

Mental health courts are a "specialized court docket established for defendants with a mental illness."[55] Through participation in a mental health court, a client may receive a judicially supervised treatment plan that allows the client to forgo criminal processing or sentencing or receive a more favorable sentence upon completion of the program.[56] These programs have been found to generally reduce recidivism. [57]

- *Crisis Intervention Teams*

Crisis Intervention Teams (CIT) are "formal partnerships among police departments and mental health providers that ensure responding personnel are trained to identify, assess,

and de-escalate mental health crisis situations.[58]" These programs have been found to improve officer attitude and knowledge about mental illness, reduce officer injuries by 80% (when responding to mental health crisis calls), and produce significant cost savings since individuals are referred to community-based treatment programs before incarceration.[59]

During Incarceration

Interventions that take place at the incarceration stage of the criminal justice process are typically intended to increase access to treatment as well as limit or end exacerbating conditions.

- *Eliminating solitary confinement for mentally ill inmates*

There has been a long-time movement to end solitary confinement in prisons.[60] Some cities and states have already taken steps to end solitary confinement by limiting maximum time inmates can be held in solitary confinement or ending solitary confinement entirely.[61,62] Federal and local changes eliminating solitary confinement hold great potential to improve the conditions for inmates generally but especially inmates with mental illness.

- *Improving access to mental health treatment*

Many state and federal prison systems have implemented innovative solutions to increase the availability of mental health treatment for inmates. Some notable examples include the construction of an on-site treatment center to treat inmates experiencing mental illness,[63] creation of an Inmate Stabilization and Assessment Team for the purpose of monitoring inmates' mental health,[64] use of telemedicine for diagnostic and treatment delivery services, and improved mental health screening.

Post-Release

Following release, it is important to ensure that individuals who are struggling/have struggled with their mental health have sufficient support to start a new life. Some programs that have been successful in providing this necessary support to former inmates include re-entry programs and forensic assertive community treatment.

- *Re-entry programs*

These programs are "designed to help returning citizens successfully 'reenter' society following release."[67] Research suggests that reentry programs are most effective when they begin prior to release while an individual is incarcerated, consist of at least 200-300 hours of clinical programming, and use therapeutic modalities such as cognitive behavioral therapy and therapeutic communities.[68] Reentry programs that involve both pre and post-release programming were found to reduce recidivism by 11%.[69]

- *Forensic assertive community treatment (FACT)*

For former inmates experiencing serious mental illness, FACT provides individualized psychiatric treatment and social services as well as forensic services that address criminogenic risks and needs.[70] Evidence so far demonstrates a reduction in rearrest and incarcerations among FACT participants. [71]

Endnotes

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