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Eastern Kentucky University

Wait, is That Legal?: A Defense of the Rights
of the Mentally Ill in the United States Prison System

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2022

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Abstract

The ever-evolving question of what the legal requirements are regarding providing mental health care in prisons has been debated for decades. This thesis presents a meta-analysis that examines the Eighth Amendment Cruel and Unusual Punishment Clause in regards to the mentally ill in the Criminal Justice System and applies it to present day prison systems in the United States. This research creates a clear picture of the inadequate care that is provided and the systemic issues that allow this level of mistreatment and lack of care to prevail. It examines the requirements for mental health care as set by the Eighth Amendment, as well as how the factors of overcrowding, the privatization of prisons, and the training of correctional officers have on mentally ill inmates. This analysis will also provide research for how the factors listed specifically impact Kentucky. Finally, it will examine potential solutions, such as the development of mental health courts, community programs, and reforms that could be introduced to each systematic issue. This analysis will utilize examples of case law, state statutes, as well as previous studies to not only look at the potential legal defenses of the mentally ill in the United States prison system. But as well as what specific aspects of the Criminal Justice System are the most impactful in the allowance of the abuse and mistreatment of the mentally ill in prisons across the nation.

Introduction and Background

How would one describe a criminal? With words that stir up negative emotions such as corrupt, crooked, heartless, and hardened? The complex views of crime and criminals in the United States tend to revolve around penological purposes and revenge, and in some cases that viewpoint is acceptable, but not all criminals are immoral masterminds bent on the downfall of society. Unfortunately the justice system in the United States contains major flaws that prey upon certain disenfranchised populations, and while the concept of prison and retribution itself is not inherently negative, the overuse of it is. This problem of overuse occurs when punishment, and not rehabilitation, is seen as the primary goal of the Criminal Justice System, and oftentimes, these punishments impact disenfranchised groups more than the historically privileged groups of the population. Those whom society, as well as the justice system itself, swore to protect are often taken advantage of by a social apparatus that inherently works against rehabilitation and recovery, as this analysis will demonstrate. One such population is the mentally ill, whose history of being mistreated and misunderstood is a shocking revelation to no one, inmates who are suffering from mental illness tend to have a higher recidivism rate and struggle to escape the cycle of the justice system.

This struggle can be explained by many issues within the justice system itself, however the most common reason can be found in the form of societal prejudice that is placed upon criminals. Once a negative label such as “criminal” has been placed upon an individual it can be very difficult to escape that influence without outside help, this is known in the scholarly world of the Criminal Justice field as the Labeling Theory. This aptly named theory suggests that the

deviance a person participates in is connected to the label given to them by society, once they have committed a crime they are continually impacted by the stigmatized version of said label. Studies suggest that the stigmatization of crime, especially in young people actually work to imbed them even deeper into the Criminal Justice System(Plummer 191). The idea that once you have committed a crime you are inherently a bad person is a dangerous one and leaves room for little to no consideration of factors outside of the illegal act itself. This negative attitude towards these individuals comes not only out of a desire to purge society of all “evil doers” but also out of the fear of the “abnormal” people who don’t quite fit into societal expectations. The stigmas associated with mental illness find their way into the Criminal Justice System just as they find their way into every other facet of society. To the same degree that the reason for committing crime is often interpreted as a lack of self control and personal responsibility, so is performing these acts with a mental illness(Pustilnik 221).

Once entered into the Criminal Justice System, those suffering from a mental illness have little to no opportunity for recovery and treatment due to a variety of reasons that will be discussed in this analysis. On account of their mental illness, these inmates have more than likely already interpreted their surroundings quite differently from others and often have more trouble adjusting to life in a prison if not given the required, and extremely necessary, assistance(Stringer). This trouble adjusting can cause victimization in the prison, as these individuals essentially label themselves as vulnerable and unable to take care of themselves. For example, inmates who suffer from depressive cognitions, paranoia, or hallucinations are more likely to be victimized or targeted in a prison setting(Daquin and Daigle 148). However the danger involved in a mistreated mental illness can go both ways, if a person suffering from

paranoia and dangerous hallucinations is not treated, that can cause them to violently lash out at other inmates. According to one study they “may respond to perceived threats with aggressive behaviors towards others”(Daquin and Daigle 148), with the key word here being “perceived” as the mental illness has the ability to completely warp their sense of reality, thus creating a dangerous environment for both the suffering individual and those around them.

Mental illness is a taboo topic in and of itself, with stereotypes and stigmas surrounding it even now in an age with a much more advanced understanding of it, combining those stigmas with the label of being a criminal, creates an environment for injustice to thrive. For Jamycheal Mitchelle, who was 24 when he was arrested for stealing five dollars worth of snacks from a convenience store, this environment of injustice ultimately took his life. While in jail, Mitchelle was denied access to his schizophrenia medication until he was convicted, and while the court recommended a stay at a state psychiatric hospital, no beds were available. During this time of receiving no medication, Mitchelle’s mental state had deteriorated rapidly and while he waited for there to be room in the hospital, he soon began refusing medication as well as food. A mere four months later Mitchelle was found dead in his cell due to complications caused by his mental condition(Stringer). Now there is no way to say indefinitely that the outcome could have been avoided given different circumstances, but perhaps it would have if there was a more urgent approach to providing Mitchelle with the mental health care that he desperately needed. Jamycheal’s tragic story is just one example of the many individuals suffering mental illness that have endured unspeakably harsh treatments at the hands of the Criminal Justice System. Situations like this beg the question of whether or not protection for inmates suffering from mental illness even exists, and if so, why on earth is it so difficult to implement?

An investigation into the reasoning behind the amount of mentally ill inmates in the prison system suggests that the societal view of mental illness, more specifically its inability to recognize that mental illness can be a factor in deviance rates, can be particularly harmful (Lovell and Remelka 55). This perception of danger comes from the aforementioned stereotypes that can be explained by a long history of a lack of understanding of mental health issues. This is perfectly exemplified in the mental disorder of Post Traumatic Stress Disorder, or PTSD, whose history is full of misconceptions as well as extremely harmful stigmas. Although it is well known today, this disorder has not always been properly acknowledged. For instance, when World War I ended, veterans began returning with “shell shock” where they had symptoms such as violent breakdowns and night terrors and were often treated with electric shock and chloroform (McKenzie). Because of the lack of effective treatment available at the time, these taxing symptoms led to a high rate of alcoholism and divorce amongst veterans who were suffering from what is now known as PTSD (Friedman et al 265). Given this information, it can be inferred that if this factor continues to go unrecognized and treatment continues to be denied, the symptoms have the potential to do great harm to the suffering individual.

This analysis presents an investigation into the legality of the mistreatment of mentally ill inmates, including how this mistreatment has been enabled by certain variables in the United States Criminal Justice System and the Corrections System. A meta-analysis of case law and previous studies shall demonstrate not only that the current United States Criminal Justice and Corrections Systems are ill equipped to address the needs of mentally ill inmates, but also that the denial of adequate treatment, mental or physical, is a violation of the “cruel and unusual

punishment” clause of the Eighth Amendment. Furthermore, this analysis addresses aspects of the issue and how they are connected in terms of an overarching solution. In essence, in order to solve the overall conflict, solutions for every single facet must be institutionalized. Issues such as rampant overcrowding, the extremely questionable private prison corporations, the neglected mental health training of correctional officers, and the informality and lack of unification among United States mental health courts. The examination of each of these factors will elucidate how one impacts the other.

It must be first addressed that the term mental illness is extremely broad and there must be acknowledgment that a mental illness does not necessarily equate to an individual who relies on medical or psychotherapeutic care in order to live safely. Therefore not every inmate in the Criminal Justice System who suffers from a mental illness is in danger of immediate harm, but the resources do need to be available for them to prevent their mental state from worsening over time. However, in order to better conceptualize the context for this analysis, mental illness in the cases and examples that this analysis discusses will be defined as a state of being that could potentially harm the individual themselves or those around them if not given necessary mental health care.

Legal Protections

With the issues identified, there must be some legal protections that can be implemented to protect the mentally ill who find themselves involved in the Criminal Justice System. Although state legislation is mostly responsible for determining the training requirements for mental health and prison staff, as well as treatment practices for inmates, the Supreme Court has

made decisions that identify a lack of mental health care as a constitutional violation. In the case of *Estelle v. Gamble* the Supreme Court held that the “cruel and unusual punishment” clause of the Eighth Amendment applies not only to the denial of treatment, but also to the “deliberate indifference to serious medical needs”. Although this ruling was presented in 1979, over thirty years ago, the basic principle of what defines “cruel and unusual” in terms of physical and mental health care still applies.

This finding is further represented in the case of *Braggs v. Dunn*, which supports the idea that inadequate mental and physical health care equates to an Eighth Amendment Violation. The plaintiffs, a group of state prisoners and the Alabama Disability Advocacy Program, presented a civil suit on the grounds of an Eighth Amendment Violation against the commissioner of the Alabama Department of Corrections, Jefferson Dunn, and the Associate Commissioner of Health Services, Ruth Naglich. A member of the group of state prisoners, Wallace, testified that he had multiple suicide attempts while incarcerated and was still denied mental health treatment, sadly Wallace committed suicide ten days after testifying in this case. The court held that the inmate's Eighth Amendment rights were indeed violated due to a lack of adequate treatment and attention, with the judge stating that the mental health care system in the Alabama Department of Corrections was “horribly inadequate”(SPLC), as demonstrated in the monumentous suicide rate amongst inmates in Alabama prisons. In his ruling, the U.S District Attorney Judge Thompson identified situations where the Alabama Department of Corrections did not screen inmates for serious mental illness, and refused to adequately treat obviously suicidal inmates, such as Wallace(SPLC). As demonstrated through *Braggs v. Dunn*, the Eighth Amendment is extremely important in the argument for better and more thorough mental health care in the prison system.

This amendment states that “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” The lack of any form of necessary health care is interpreted as cruel and unusual because the denial of certain treatments and medication could result in extreme harm or even death for the suffering individual or those around them, as previously demonstrated in the Jamycheal Mitchell case.

Although the denial of mental health care has not always been deemed as “cruel or unusual punishment”, the Supreme Court held in the 1958 case of *Trop v. Dulles* that the standard of punishment evolves as society evolves, otherwise known as “evolving standards of decency”(Matusiak et al 253-254). Given this interpretation, a lack of mental health care can be translated as an Eighth Amendment violation as societal views and the understanding of mental illness have developed overtime, as seen in the history of Post Traumatic Stress Disorder. As a society, we can agree that a number of those suffering from extreme mental illness require treatment in order to not be considered a threat to themselves, or in some cases, others. For individuals such as Mitchell, who had previously been taking his medication, a sudden lack of said medication had the effect of exacerbating the symptoms that were previously under control, ultimately leading to his death. For others who may be suffering from mental illness but have learned coping skills, the shock of prison life and lack of the familiar have the capacity to result in the aggravation of the illness.

A possible argument could be made for the potential impact that the Fifth Amendment could have on the defense of the mentally ill in the prison system under the Double Jeopardy clause. As it was established in the analysis of the “cruel and unusual punishment” clause of the

Eighth Amendment, the denial of treatment classifies as another form of punishment, whether intentionally punitive in nature or not. The Double Jeopardy clause of the Fifth Amendment protects individuals from being punished twice for the same offense, therefore it can be reasoned that the denial of mental health care is a violation of this clause as it states that “nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb”(“Double Jeopardy”). The extreme importance of said treatment, whether in the form of a medication or psychotherapeutic care must be considered in determining whether or not the absence of the treatment is a constitutional violation. Who is the justice system to deny it?

However, because of how deep the systematic issues in the Criminal Justice System are, this denial of treatment is often explained as occurring because of a rampant lack of resources and funding that are applied to health care including psychiatric treatments. These reasons, many of which will be examined in this analysis, are often chalked up to being out of the administrators control, therefore such mistreatment cannot be considered as a punishment. The 1979 case of *Estelle v Gamble* also applies to the interpretation of punishment, as the Supreme Court held that the “inadvertent failure to provide adequate medical care” cannot be found liable with the Eighth Amendment. It becomes extremely important to distinguish exactly what actions were taken, or not taken, and why and while this statement is true regarding the lack of funding, there is no viable excuse that can be made for inhumane treatment being allowed at such a large extent. The language of the clause explains that the act must be punitive in nature in order to be considered a direct violation. While the denial of such treatment may not be explicit and purposeful in every account, those without necessary psychiatric treatment and medication are often put into positions that they would not have been in if not for the Criminal Justice

System (“Double Jeopardy”). For instance, in the case of Jamycheal Mitchell, his life could have been saved if he only had access to the lifesaving treatments that he needed. Instead, because he was forced to wait for weeks in a cell for a bed in the psychiatric facility, the state of his mental health deteriorated to the point of his death.

Although the lack of resources is indeed a noteworthy issue in the Criminal Justice System, treatment itself should not be seen as a rare commodity that labels an inmate as lucky if they are given access. Those cases should not be the outliers, they should be the status quo. Although there are many aspects that contribute to the denial of treatment, not only should more responsibility be held by the institutions themselves, but this additional legal protection has the possibility of preventing and discouraging future abuse and neglect by adding extra legal barriers. However, due to the lack of application on the matter as well as the numerous outside influences, such as a lack of resources, the effectiveness of this defense cannot be ensured but it is worth future research.

Overcrowding

As it has been established, there are indeed legal protections for this vulnerable group, however this does not resolve the systematic issues that contribute to the continuation of abuse. One answer to the mystery of the missing health care is the seemingly insurmountable issue of overcrowding in the penal system. The extremely compelling case, *Brown v. Plata* portrays how immense overcrowding led the Supreme Court to uphold a remedial order that sanctioned the potential release of a large number of inmates in the state of California. Not only did the court hold that the deteriorating mental health of the inmates incarcerated in the California prison

system was a violation of the Eighth Amendment, but also that it was the responsibility of the courts to remedy the issue. During an investigation of the conditions of the prisons, it was found that one preventable death occurred every single week because of inadequate medical care and rampant mistreatment of the inmates. Correctional officers even testified that fifty sick patients could be crammed into a twelve-by-twenty cage and would be forced to wait for hours in order to receive medical treatment (Bower 556).

Nevertheless, the opportunities for seeking medical treatment were very slim due to the abnormally high vacancy percentages for both medical professionals as well as psychiatrists, with the latter having a vacancy percentage of fifty-four percent (*Brown v Plata*). Judges that had overseen previous Californian cases acknowledged that the unchecked overcrowding of prisons in the state completely prevented sufficient care from being provided. This resulted in them agreeing that a remedial order was needed to reduce the population, as it would be the only effective response given the totality of the circumstances, as well as the seriousness of the matter (Bower 558). In this instance, the totality of the circumstances refers to the immediate danger that the inmates were subject to, the amount of preventable deaths that occurred, as well as the lack of staff that were able to meet the needs of said inmates. Although the initial findings of this case were discovered in 2001, the issue has still not been solved twenty-two years later. The Bureau of Justice Statistics found that by the end of the year 2020 5, 500, 600 adults were involved in federal prisons across the United States, with approximately thirty-seven percent of those inmates suffering from a mental disorder.

With such intense overcrowding comes a population of staff that has suddenly become too small and ill equipped to handle such numbers, particularly when these numbers contain individuals suffering from serious mental health conditions. In terms of the mentally ill population, because of the general lack of mental health institutions that are readily available, the prison system is treated as a de facto healthcare system, and that in turn leads to a higher demand for resources that are simply not available. During the 1960's as psychotropic drugs became more readily available, psychiatric institutions were seen as less necessary and shut down, however psychotherapeutic research demonstrates that solely relying on drugs to provide adequate care is not very effective (Easley). Research indicates that for every one person that is treated in a psychiatric facility five people are incarcerated, with or without treatment(Pustilnik 218). Therefore it can be assumed that the emphasis is not entirely on the act of providing treatment, but on the confinement of what is perceived as a dangerous issue.

Private Prisons

The desperation of the Criminal Justice System to house the overabundance of prisoners resulted in it reaching for outside sources to solve the problem. This immense overcrowding is no new issue, and it has encouraged the development of the private prison industry. A private prison is a facility being run by a third party that has been contracted by a government agency, and since these institutions are no longer under the direct purview of the government, the same rules and restrictions do not apply. Therefore, because these institutions are not held to the same legal standard as federal prisons, this has the potential to lead to the lack of constitutional checks which can result in mistreatment, a lack of general safety, and a rampant use of inadequate care to run these institutions(Waks 1070). Without the direct supervision of the federal government,

prisoners, specifically those suffering from mental illness, are more likely to be abused in these private institutions. This is perfectly exemplified in the case of *Minneeci v. Pollard* , in which the defendant claimed that he was denied health care that resulted in extreme pain and discomfort for him and that such a denial was a restriction of his Eighth Amendment rights. However, the court held that individuals who have the misfortune of being placed in a private prison have a restriction of their constitutional rights due to the fact that an Eighth Amendment violation can only be brought against government actors and not private agencies(*Minneeci v. Pollard*).

According to the Prison Policy Initiative, the private prison sector has built up an industry worth 374 million dollars in 2017. The very first company to take advantage of this market was the Corrections Corporation of America, otherwise known as the CCA, who entered the scene in 1983 and has since continued to dominate the market. Although the original goals of the private prison industry were to run prisons that cost taxpayers less, and provided improved services, these good intentions did not stay good for very long as it became obvious that this industry had the potential to create multi-millionaires(Schultz 94). An unfortunate part of the Criminal Justice System is the potential that human error can have a resounding negative impact on not only the quality of care being provided, but also the reasoning behind that care. In this case, individuals suffering from a mental illness who are involved in the penal system are solely reliant on those running said prisons. However, when greed manipulates the initial goal of an improved quality of care, more suffering ensues and the cycle of injustice continues. With the ruling held in *Minneeci v Pollard*, this injustice can be nearly impossible to escape as even defending oneself against abuse and mistreatment is made more difficult than is necessary.

In a similar way that societal views impacted the closing of psychiatric facilities in the 1960s, they also encouraged the increased privatization as the “tough on crime” movement made the idea of individual responsibility for crime more popular (Schultz 95). Therefore, the sympathy of the public towards criminals dissipated as there was more effort to invest in punitive measures than into rehabilitative efforts. Converting corrections into a business decreases the likelihood of in depth care being provided as the business model of these facilities count on filling up beds and profiting off of crime instead of caring for the needs of the individual (Waks 1071). With this mindset that presents inmates as a commodity, working towards more rehabilitative efforts and inmate care becomes far more difficult. As previously stated, the seclusive nature of private prisons becomes a breeding ground for potential mistreatment and abuse, for an already vulnerable population like the mentally ill, this is particularly dangerous.

The Training of Correctional Officers

Because the focus of the prison system has been on finding a place to store inmates, the training of correctional officers is often lacking in terms of handling those suffering from a severe mental illness. On one hand, it could be argued that because the primary focus of a correctional officer is to enforce safety and security, therefore it is not their job to know how to properly handle a severely mentally ill inmate. In a similar way, no one would expect a security guard at a hospital to know how to treat the patients. However, due to the lack of available psychiatric help in the United States Criminal Justice System, mental health training has become a necessity for correctional officers and is of vital importance.

Due to the nature of the job, correctional officers have the most contact with mentally ill inmates, but they are shockingly given the least amount of training, the first priority of a prison is for a penological purpose, safety and security training will always come before mental health training(Wygant). While these are extremely important for a penal institute to run smoothly and safely, because of the amount of contact that correctional officers have with mentally ill inmates it is essential that the officer knows the safest way to address a mental health related emergency. While the argument can be made that the job of correctional officers is already filled with enough stress and complications, this type of training has the potential to assist in their own mental health needs, and not just the inmates. A recent study of the efficiency and thoroughness of correctional officer training addresses the important first step of breaking down stigmas associated with mental illness.

The more thorough the mental health training is, the less likely that the correctional officer will feel overwhelmed and out of control on the job, and will have more of an understanding of the mentally ill inmates themselves(Kois et al). However, this clear lack of comprehension in the training of correctional officers does not mean that no mental health education is provided whatsoever. The scale of this particular training varies quite widely from state to state with the required training ranging from one and a half hours to eighty hours with the average being slightly lower than ten hours(Kois et al). This drastic difference in just the course requirements for mental health training demonstrates the lack of cohesion amongst jurisdictions.

The Aspects in Relation to Kentucky

In order to fully conceptualize how these factors impact a region or community, they shall all be described in terms of how they relate to Kentucky. When dealing with a subject as

controversial and varying as the care of the mentally ill, the definitions included in state statutes are of great importance as different statutes may demand a more or less intensive form of care than another. In this state, mental illness is defined as the “substantially impaired capacity to use self-control, judgment, or discretion in the conduct of one’s own affairs and social relations” with symptoms that can be related to “physiological, psychological or social factors”(Ky. Rev. Stat. § 504.060). Therefore, if not treated, according to the state of Kentucky, mental illness has the potential to cause adverse effects on individuals and those around them. Another important definition in regard to this analysis is what defines treatment, in Kentucky the definition of treatment involves “medication or counseling, co counseling, psychotherapy and other professional services provided by or at the direction of psychologists or psychiatrists”(Ky. Rev. Stat. § 504.060). These definitions set the guidelines for the required mental health care in Kentucky, as it will become clear later in this section.

Beginning with the issue of overcrowding, Kentucky is not faring any better in the hard fight against this epidemic. The National Institute of Corrections database reported that by the end of the year 2019 Kentucky had incarcerated 23, 082 individuals, while the Kentucky Center for Economic Policy reports that the statewide incarceration capacity is only 21, 303. The latter number should be attentively abided by, the higher the number of incarcerated individuals the higher the chance that they will not be given the opportunity to receive adequate mental health care. This difference of approximately 2,000 individuals resulted in thirty-seven percent of jails being used at 140 percent of capacity. Given these percentages, it cannot be assumed that the treatment that is included in the Kentucky statute will be provided to every individual suffering from a severe mental illness(Reutter).

In terms of private prisons, Kentucky's history with the industry is quite a bit rocky. The state had a previous contract with one of the most prominent private prison businesses in the country, the Corrections Corporation of America. However the partnership was terminated in 2012 when it was proven that there was rampant abuse occurring in the prisons, and the CCA faced a very large lawsuit. In spite of that, because of the ever growing problem of overcrowding, Kentucky contracted the CCA again, but this time they went by another name, CoreCivic. CoreCivic currently runs two prisons in Kentucky, the Southeast State Correctional Complex in Wheelwright and the Lee Adjustment Center located in Beattyville. Prisoners were originally removed from the facility in Wheelwright, formerly known as the Otter Creek Correctional Center, after immense abuse of both employees and inmates resulted in an employee shooting herself in the warden's office(Lyon). Although the renewal of the contract was an extremely controversial move on Kentucky's part, CoreCivic justifies this re-installation of the two facilities by claiming that it will create more jobs for the area. Now whether or not these jobs are safer than they were previously is yet to be determined.

As previously stated, the primary use of the correctional officer is to provide safety and security in the institution, and it must be acknowledged that this is indeed an important aspect of their job. In Kentucky the majority of training surrounds the use of tactical gear and how to physically shut down an emergency, however there is mandatory annual mental health training. With four hours being required the first year and one hour being required every consecutive year. While it is extremely important to have yearly training about mental health, the curriculum should require more than one hour a year in order to ensure that the correctional officers are

being given the best education possible surrounding this issue. Learning about mental health is not the only aspect that goes into this issue, the correctional officers own mental health, and their perspective of it can greatly impact how they treat inmates who are suffering. As one national jail consultant put it, the constant stressors that correctional faculty experience can work to erode positive mental health(Kentucky Association of Counties). In order to address this side of the conflict, Kentucky has accessible, free mental health hotlines specifically for first responders located on The Kentucky Association of Counties website.

Potential Solutions

This analysis demonstrated that the denial of necessary mental health care is considered a violation of the “cruel and unusual punishment” clause of the 8th Amendment. So with this constitutional legal defense, why do these cases of mistreatment keep occurring? This resurgence of abuse has a large amount to do with the fact that the facets of the issue are systematically embedded into the entirety of the criminal justice and prison structure itself due to a combination of societal views and stigmas. Not to mention an overall lack of funding for any form of medical care and the scarcity of resources intended to assist those suffering from mental illness in general, particularly those who also have a criminal record. With that said, and with all of the aspects of the issue having been named and examined in depth, can we even fix them? And if so, how on earth do we go about that? Because each factor is so interconnected and embedded into the system itself, complete change and improvement is a daunting task to face, however if simple solutions are applied to each aspect, overtime reform is possible.

Regarding overcrowding, because it is such a fargone issue already more remedial orders of release, just like in *Brown v Plata* need to be considered. Future remedial orders would result not only in the reduction of the overall prison population, but hopefully it would encourage a change in mindset surrounding ex-convicts. With this development of the use of remedial orders, more emphasis would be placed on rehabilitative measures because if the inmates aren't being held, rehabilitative programs based on reducing recidivism as well as recovery would become the most viable option. This would inevitably impact the funding of community resources that are designed to create a smooth reentry for ex-convicts, and help to prevent any further deviance which would do wonders for those in the mentally ill community involved in the Criminal Justice System. As these community resources would bring better and more reliable access to the therapy and medication that is necessary for them to live safely.

The relationship between overcrowding and the private prison industry is quite direct, when the rate of overcrowding increases, so does the need to reach out to private facilities. Once the root of the cause of the privatization of prisons, the overcrowding, has been addressed, state and federal governments will find it less necessary to employ these companies. For instance, in the portion of this analysis that addressed the prevalence of the private prison industry within the state of Kentucky, the reason given for the reopening of the CCA private prisons was that the amount of inmates being admitted into federal prisons created serious health and safety concerns for all involved parties. Just as creating more of an emphasis upon rehabilitative efforts rather than punitive measures impacts overcrowding, a change in the societal view of prisons as the only option for offenders would decrease the public's perceived reliance upon prisons.

Although the training of correctional officers has improved drastically with the improvement of mental health education and the development in the field of the treatment of such issues, more change is absolutely necessary. Because the goal of complete reform will not happen overnight, properly training correctional officers will help them to be more comfortable around inmates suffering from mental illness, as well as decrease the amount of mistreatment and abuse of the mentally ill. One implementation in the training regimen that could be particularly useful for correctional officers is the technique of Trauma Informed Care. Which, in the recent years, has been growing momentum as an effective way for law enforcement to not only identify trauma in anyone involved in the system but also prevent retraumatization from occurring(Freeze). As discussed previously, the mental health of the correctional officers themselves is an extremely important aspect in their comfortability with the job itself, which in turn impacts how they respond to a mental health related emergency. Trauma Informed Response has been proven to increase the amount of trust between the officers and the offenders that have been put into their care, without having to turn to violent alternatives(Freeze). Using less physical based methods includes deescalation techniques that have the potential to improve upon the communication between correctional officers and the mentally ill offender.

The Use of Mental Health Courts

A more modern solution that has been modeled after the drug courts in the criminal justice system are mental health courts. The goals of mental health courts include the reduction of recidivism rates as well as implementing a variety of treatments that replace penological purposes, while taking a more therapeutic approach. One study of the success rates of mental health courts states “Though the purpose of all mental health courts is the same, the structure of

each court can differ because each court can be strongly influenced by available funding, resources, and partners.”(Warnke). There are virtually no consistent regulatory procedures regarding mental health courts across the nation and there tends to be very little known about this development in the Criminal Justice System.(Redlich et al). However, because of the lack of unification, the effectiveness of each court varies significantly because it depends on a number of influential factors. Such as the amount of cooperation between the prosecution and defense attorneys, both sides have to agree to send or recommend an individual for mental health courts. Another aspect is the behavioral health professionals that it includes, Criminal Justice administrators are not necessarily experts in the field of psychiatry and mental health. In order to create an in-depth and personalized treatment plan for each individual, experts in the field are needed to ensure proper care is being taken.

The final, and quite possibly the most important aspect are community mental health agencies. Community resources span from housing and job assistance to easy access to treatment, including medications(Easley). With the implementation of mental health courts the issue of overcrowding would be alleviated somewhat, and correctional officers would not be burdened with the task of acting as a pseudo psychiatrist or first responder in a mental health related emergency. However, in order to one, implement effective mental health courts, and two, lower the recidivism rates of the mentally ill, quality community resources need to be a priority. The lack of emphasis on the importance of community resources deals partly with societal stigma of ex-inmates, those suffering from mental illness, as well as the funds that are available to a particular community. This access to resources varies not only from state to state, but from

city to city as well, generally underserved areas of the state, usually rural, do not have access to the same resources that an urban community does.

Thankfully, there is a nationwide organization, the National Alliance of Mental Illness, whose focus is providing free education and support for those suffering from mental illness as well as their families. For instance, the most recent assistance technique they have implemented is the “998” which was developed with the idea of targeting the mental health crisis that may result in imprisonment or hospitalization. As of July 2022, this number was available across the United States by text or call and is manned by licensed mental health professionals as well as crisis response teams who seek to work directly with the communities that they are serving. The primary goal of this new response system is to implement 24/7 crisis call centers manned with professionals experienced in suicide, substance abuse disorders, as well as other mental health emergencies(NAMI). As well as mobile crisis teams who work with law enforcement to provide needed emergency care that cannot be given over the phone. The final aspect are the Crisis Stabilization Programs that include short-term direct observation and emphasize the importance of after-care, peer support, and even hospitalization if needed(NAMI).

There is one existing mental health court in Kentucky located in Hardin County and it works by implementing a complete dismissal of the charges once the individual has completed the program, or the individual is placed on CD time, or conditional discharge, after completing the program. Whichever route they take, they are given treatment and a second chance instead of direct incarceration that could have long lasting, negative impacts on their already precarious mental health. As previously discussed, due to the lack of uniformity amongst mental health

courts across the nation, each state is responsible for determining the guidelines for said court system. In 2011 the guidelines for the mental health court in Hardin County were approved by the Kentucky Supreme Court and outline the key components, referral process, eligibility assessment as well as the participant requirements. In order for an individual to successfully complete this diversion program, they must undergo four stages.

Phase one, which lasts for approximately three months, is the stabilization phase in which the participant is expected to maintain stability, sobriety, and display a willingness to fully participate. In terms of this diversion program “stability” refers to consistent housing, income, as well as employment. After this phase is completed, phase two, or the treatment phase is begun. For the next three months the individual must continue to make docket appearances, maintain sobriety, work with any and all forms of treatment needed, and attempt to improve upon social relationships and interactions. Phase three is labeled as the “self-motivating phase”, during this phase the participant will have an official check in once a month, gain more independence in maintaining sobriety and stability, have no arrests, and complete the treatment/maintenance plan required. The fourth and final phase is the wellness phase that also lasts approximately three months and requires the individual to participate in the aftercare services, as well as act as a mentor for new mental health court participants. The added mentee requirement is an excellent way to not only encourage new participants to go complete the program but it also holds the program graduate accountable for maintaining their own sobriety.

Although Kentucky is home to multiple disenfranchised and poverty stricken counties, there are many community resources that have greatly improved the accessibility of mental

health care and education. NAMI Kentucky is a non-profit organization that advocates for those suffering from severe mental illness as well as educate the community about mental illness and how to assist those with mental health problems. Although they rely on volunteers, NAMI Kentucky provides an extensive amount of programs such as family therapy that seeks to assist those living with a mentally ill individual. The most influential programs for ex-convicts are the support groups that are peer led and have the goal to provide assistance and care. Having a supportive network of peers assists these individuals in learning positive coping mechanisms and having people to reach out to. The other prominent resource is Kentucky Reentry Resources, not only do they act as a database for useful programs, such as food banks and housing sites, they also offer assistance to find insurance and provide help for drug addiction and self harm. There is a specific database included in Kentucky Reentry Resources that address mental health needs including crisis lines, which are often on the front lines of the crisis for those with limited resources.

Conclusion

In essence the mistreatment and the denial of treatment of the mentally ill population in the prison system is connected to multiple institutionalized factors that are in need of immense reform in order to encourage the application of safe and consistent treatment for those with a mental illness. However, in order for reforms to be introduced into the system, the public discussion of mental illness and criminality itself needs to change to create a safer environment for both inmates as well as the staff of these facilities. The purpose of this analysis is to spread awareness about the importance of this topic, and although it is a daunting topic that addresses both systematic and societal issues, short term solutions such as the ones mentioned in this

analysis can be used to kickstart this reform. As seen in this analysis, the implementation of relatively small, yet effective methods, such as Trauma Informed Care, start a snowball effect that has the potential to cause complete reform overtime. However, this is no small task, and multiple changes need to be made in public education of mental illness, overcrowding, private prisons, the training of correctional officers, as well as the formality of mental health courts across the nation. Instead of seeing each of these factors as entirely separate issues within the United States Criminal Justice System, they must be viewed as different symptoms of the same illness in order to emphasize how each is equally important to address.

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