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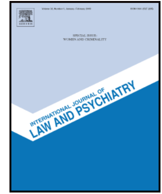
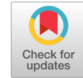


A cyclical path to recovery: Calling into question the wisdom of incarceration after restoration☆



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ABSTRACT

Around 20–25% of the current offenders in Cook County Jail of Chicago Illinois are mentally ill. Each one of these offenders had to be named competent to stand trial when they were first being tried in court. The majority of these offenders that were considered incompetent to stand trial (IST) had to go through the competency restoration process where they were housed in a state hospital and received treatment until the court could deem them to be competent to stand trial. Many defendants with minor offenses that were eventually deemed competent to stand trial, stood trial and were found guilty and sent to jail. Given the quality of psychiatric care and the inherent stress of being incarcerated, our question was, "is it efficient to spend the time and tax dollars on providing necessary treatment to mentally ill with minor offenses so they can stand trial and be sent to jail verses placement in community-based treatment programs?" To answer this question we reviewed the US literature addressing the alternatives to incarceration (i.e., diversion programs), and the success rate of those programs to minimize re-arrests and future criminal behavior. The studies on the efficacy of diversion programs remain sparse. The limited available studies point to a higher success rate in the ability to treat mentally ill misdemeanor offenders as well as prevent future criminal behavior; however these programs must be utilized early. Our conclusions are that diversion programs have the potential to reduce recidivism for misdemeanor offendors but further research needs to be conducted to ascertain the specifics of best practices for implementation of such programs.

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Contents

1. Introduction . . . 100
 1.1. Correctional mental health care . . . 101
 1.2. Non-medical care essential for full recovery . . . 101
2. Methods . . . 102
3. Results . . . 102
 3.1. Studies . . . 102
4. Discussion . . . 104
 4.1. Medical argument . . . 104
 4.2. Moral argument . . . 104
 4.3. Economic argument . . . 104
5. Conclusions . . . 105
Acknowledgements . . . 105
References . . . 105

1. Introduction

It is not uncommon that individuals with mental illness, who commit relatively minor crimes, are placed in state psychiatric facilities in the United States for competency restoration. Once restored they receive a plea bargain or are sent to court where they could possibly serve

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jail time. In this review we call into question the medical as well as the humane wisdom of this practice.

In 2013 there were 91,266 criminal cases filed in court in the United States. In order for all of those 91,266 cases to be heard the criminal defendant had to be legally competent to stand trial (U.S. District Courts - Judicial Business, 2013). Due process requires that a defendant be competent to stand trial because trying a person who is not competent is said to offend the dignity of the court, to undermine the credibility of the State, and to deprive the citizen of essential rights. There is a right for any person who suffers from a mental disease/defect to receive medical care and treatment, at present no such explicit right exists in the U.S. Each state provides some level of care depending upon the state's budget for health care and treatment for persons who are incarcerated as a result of a legal sentence. After a person is charged with a crime it may become obvious that the person is unable to stand trial because of a mental disease or defect that renders them unable to understand the nature of their offense or unable to assist legal counsel with their case (i.e., incompetent to stand trial or IST). This is different from insanity, which is a defense in the criminal code of all states. Usually Not Guilty By Reason of Insanity (NGRI) codes require that a person, at the time of the crime, did not know what he/she was doing and did not know that it was wrong; in the sense that they did not know the meaning/significance of his/her actions. Standards for IST are different since they relate to the person's ability to understand the legal proceedings or to be able to assist counsel in his or her own defense. Insanity and IST exist at two different moments. The first is at the time of the commission of the crime and the second at the time of trial. It is not infrequent that these two moments are separated by years. If the individual has not received adequate medical/psychiatric care in that interval (highly likely to be the case) it is very likely that the same mental condition existing at the time of being declared IST have existed since (or before) the time of the offense. While it is important to understand the difference between these two groups of offenders, the focus of this review is on the misdemeanor offenders that were deemed capable of competency restoration by the court.

If a person is found IST that person will be confined to a state institute and be given medical care and treatment in light of the funding available from the state. If after a period of treatment/rehabilitation a person is found competent that person will be brought to trial, and if suffering from a qualifying mental disease or defect that person may still be found guilty and sent to jail even after being restored to competency after treatment (Bassiouni, 1966). This scenario is the central question raised in this article: is community-based diversion superior to incarceration following competency restoration? The hypothesis being advanced here is that community-based mental health treatment is superior to jail sentencing given the environment which is both stressful and often lacks adequate mental health services. The purpose of the current effort is to review available evidence for and against efficacy of diversion programs that have been employed to serve as an alternative to jail sentencing.

1.1. Correctional mental health care

Inside of a state hospital, the most common psychiatric conditions encountered in IST patients are schizophrenia, delusional disorder (DD), Bipolar disorder (BD), and organic cognitive disorders (RSMO 552.010, 2016). The presence of co-morbid developmental disability tends to complicate the management and restoration of those individuals (RSMO 552.010, 2016). Each one of these mental illnesses has been found to be controllable, in the majority of patients, through continuous thorough treatment and care from adequately resourced mental health provider systems. IST patients who go through competency restoration are placed on treatment regimens that are essential for their continued competence.

Due to the "deinstitutionalization" process, psychiatric hospitals have been rapidly shut down, as well as other facilities that housed and treated the mentally ill. "What was really happening was more akin to a transfer – out of hospitals and into jails. In the mid-1950s, more than 500,000 people were held in state psychiatric hospitals. By the 1980s, that number had fallen to around 70,000" (Buntin, 2015). During this period, the number of people with mental illnesses who were arrested and ended up in local jails surged. This has led to a massive increase in mental health demands in the correctional system that was not paralleled by a similar increase in the resources (Buntin, 2015).

There is a lot of controversy in regards to the incarceration of previously IST patients. Some believe these people are still criminals, yes they got treatment, but they still committed a crime, and it is believed that any person that commits a crime should be held accountable and punished. However, the environment in jails due to, inter alia, the violation of the right to health and the right to treatment and rehabilitation, may lead to the worsening of mental disabilities and the probability of committing another criminal act and then re incarceration increases. A volatile and expensive outcome then being that the number of IST patients stuck in this never ending correctional/rehabilitation loop exponentially increases at a very fast rate; the old IST patients never leave the correctional cycle and new IST patients enter. With every new mentally ill inmate the cost of medicine throughout the correctional system, both jail and prison. Jail being where pre-trial detainees and many misdemeanor offenders are held and policy can vary by county, and prison being where other misdemeanor and violent offenders are sent and is under state or federal jurisdiction. Through the process of recidivism, many people are not only cycled through jail but potentially prison as well if one's mental illness is not treated while in jail. It is imperative that the treatment is continued at the same standard and checked on as regular as during their competency restoration process once they are placed into the correctional system. Thus examples of the mental health treatment provided in prisons are important to understand the possible impact on misdemeanor offender's long term competency. In 1976, the Court explained in Estelle v. Gamble that "deliberate indifference"—purposely ignoring the "serious medical needs" of inmates— amounts to "cruel and unusual punishment" forbidden by the Eighth Amendment (Estelle v. Gamble, 1992). The Southern Poverty Law Center (SPLC) and the Alabama Disabilities Advocacy Program (ADAP) uncovered instances of mentally ill prisoners being denied access to necessary psychiatric medication as well as issues with medication management. Failures, such as by the Alabama Department of Corrections (ADOC) to provide, prescribe, and manage necessary psychiatric medications to its prisoners violate the Eighth Amendment (SPLC, 2014).

One possible underlying reason for the lack of adequate medication in both jail and prison is that the new generations of psychotropic medications are significantly more expensive than the older psychotropic medications, thus it is logical that many agencies, particularly correctional agencies, do not have enough funds to support all the patients in their custody that are in need of such medications.

1.2. Non-medical care essential for full recovery

The U.S. Constitution does not guarantee comfortable prisons; prison conditions may be restrictive and even harsh. However, the medical care provided should meet an acceptable standard of treatment and care in terms of modern medicine and technology and current beliefs about human decency. Adequate and state of the art psychiatric care (to which every patient is entitled; see Bassiouni below) is not limited to medication administration. Psychological as well as rehabilitative services (e.g., work therapy) are essential elements for the full and sustained recovery. This is particularly important in view of the added stressful and harsh jail environment (at least as compared to the environment in psychiatric facilities).

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