

**The Bill Blackwood
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**Diverting the Mentally Ill From the
Criminal Justice Process**

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ABSTRACT

Diverting the mentally ill from the criminal justice process is the responsibility of everyone in the community, including law enforcement. The problem with our mental health system is the lack of funding both at the State and local level. The recent cutbacks (in the state system) and closures of private facilities have reduced accessible diversion sites for law enforcement officers to utilize. Since there will always be a percentage of society that suffers from mental illness, it only makes sense that society ensures that resources are available to address this issue. Research indicates that jail diversion is the most appropriate way to deal with this problem. There will always be a need to incarcerate the most dangerous, criminally insane person in order to keep the public safe. However, the vast majority of criminal offenses committed by the people suffering from mental illness are minor. This gives society an opportunity to divert mental health consumers from the criminal justice process and treat their illnesses. Mental health consumers can become productive members of society, with treatment, stabilization and out-patient follow-up. This research concludes that law enforcement officers would be more likely to divert people suffering from mental illness for minor offenses if resources were available in their community. Most officers are aware of the statutes giving them the authority to apprehend and commit mental health consumers in emergency situations yet at the same time, many officers would prefer to have more training in this area. Additionally, professional law enforcement officers recognize that diverting the mentally ill from the criminal justice process is often considered the right thing to do when appropriate. Diverting the mentally ill from the criminal justice process

is consistent with progressive community oriented policing philosophies, which bring law enforcement agencies closer to the people they serve.

TABLE OF CONTENTS

	Page
Abstract	
Introduction.	1
Review of Literature	3
Methodology	6
Findings	7
Discussions/Conclusions	9
References	11

INTRODUCTION

Presently, our country is made up of many different kinds of people from a variety of races, cultures, geographic and socio-economic backgrounds. Mental illness is an issue that affects all people and is not discriminatory to those it affects. Over the years, society has dealt with mental illness in a variety of ways. For instance, persons suffering from mental illness have been either imprisoned or treated as outcasts in their communities and viewed as abnormal citizens. As our society progresses, awareness of mental illness is evolving into a recognizable problem that must be dealt with appropriately. Traditionally, within the last one hundred years, mental health consumers (MHC's) have been treated by governmental agencies or private businesses if people are able to afford it. Due to recent cutbacks in governmental funding, services are not as readily available in local communities as they were in the past. Law enforcement agencies need to educate themselves and their staff on the current statutes and available resources that will assist officers in diverting MHC's from the criminal justice process.

The purpose of this research is to educate and propose alternatives, other than jail, for law enforcement officers dealing with the mentally ill. There is recent legislation (House Bill 2292 2003) that directs agencies to establish jail diversion programs. This is ironic because they are passing these bills, yet at the same time are cutting the funding for resources to divert to. The result is that local governments have to budget for the shortfalls of the state and federal systems in order to help care for these people. Law enforcement agencies are forced to train and certify mental health officers and crisis intervention teams to handle this growing problem. It is imperative that officers learn the

statutes and regulations concerning the mentally ill. The laws that dictate how officer's deal with MHC's is located in the Texas Health and Safety Code, which most officers have had little formal training in. Law enforcement agencies should also form partnerships with the local Mental Health and Mental Retardation (MHMR) authorities to develop as many alternatives as possible for diversion. City and county governments should work together in proposing initiatives that will enhance available resources in the community. The research question to be examined is considers whether or not educating officers in current mental health laws can make a difference in diverting MHC's. The research will also address possible alternatives available to the community and consider whether or not officers will utilize these services instead of taking the MHC's to jail.

There will be several methods of inquiry used in the research. Articles from nationally recognized magazine journals will be utilized, as well as information gathered from the Travis County Sheriff's Office, the Austin Police Department and the Austin/Travis County Mental Health and Retardation Authority (ATCMHMR). Information will also be gathered from the Department of State Health Services (DSHS), and the Austin State Hospital. A survey was also conducted through various law enforcement agencies in the state.

The outcome of this research will demonstrate the need for additional training for all law enforcement agencies, and identify the need to teach their staff to divert MHC's from the criminal justice process when appropriate. It will also serve as a possible proposal to local governments proposing the need for additional resources in the community for the purpose of jail diversion. This research will benefit law enforcement

agencies because it will identify and recognize the need for additional training for their officers. Additionally, the information gained during this training can be utilized to properly handle and divert MHC's from the criminal justice process. This research could attract new attention to alternatives or resources that need to be sought after on a local level in order to compensate for the state and nationwide shortfalls. In the end, diverting the mentally ill from the criminal justice process may provide new information that will enable the law enforcement professional to provide better service to the community.

REVIEW OF LITERATURE

Diverting persons with mental illness from the criminal justice system has been discussed and documented throughout the nation's history. According to the book "Criminalizing the Seriously Mentally Ill", a joint report (1992) of the National Alliance for the Mentally Ill (NAMI) and Public Citizen's Health Research Group (PCHRG), thousands of individuals with serious mental illnesses have been unnecessarily and inappropriately put in jail throughout history. From the point of view of the affected individuals and their families, it is personal tragedy. From the point of view of the law enforcement and jail system, it is an undue management and economic burden. From the point of view of society as a whole, it is a throwback to the early nineteenth century, a barbarous custom of putting individuals with brain disorders into jail rather than into hospitals or treating them as outpatients. For all, it is a stain on the nation's pretense of being civilized. A complete solution to the predicament of jailing mentally ill individuals will require fundamental change in our inpatient and outpatient treatment systems, which appears unlikely to take place in the immediate future. According to this 1992

report, 69% of jails report seeing far more inmates with serious mental illnesses now compared to with ten years ago, including a majority of jails in 41 states. The United States needs to fundamentally reform its public mental health system to emphasize high-quality outpatient services for mental health consumers. This report recommends the following steps to guarantee basic rights and humane treatment for seriously mentally ill individuals in jail. First, states with laws permitting jails to be used for emergency detention of mental health consumers not charged with any crime should immediately amend such laws to clearly prohibit this practice. Second, jail diversion programs should be set up to minimize the number of individuals with serious mental illness who end up in jail. Third, all inmates with a mental illness should be evaluated by a mental health professional within 24 hours of admission to jail. Ongoing psychiatric services, including medications if necessary, should be available in the jails on a timely basis. Fourth, Inmates with serious mental illnesses in jail who need medication and have no insight into their mental illness should be medicated involuntarily if necessary to protect themselves and others. Fifth, in counties or states where mental health authorities have failed to set up jail diversion programs and where significant numbers of mental health consumers continue to be jailed on misdemeanor charges or without charges, that mental health authority should be required to transfer funds to the department of corrections. Sixth, when inmates with serious mental illness are released from jails, follow-up psychiatric care as needed should be mandated by the courts as a condition of parole or probation. Seventh, corrections officers who work in jails and police officers in the community should receive training on serious mental illnesses. Eighth, all state or federally supported training programs for mental health professionals

should require trainees to spend a minimum of 6 hours in on-site training in jails. Ninth, mental health professionals should be required to provide pro bono services for 2 hours per week to public mental facilities, including jails, as a condition of licensure. Tenth, increased resources under the Protection and Advocacy Act of 1986 should be devoted to assisting mental health consumers in jails. Eleventh, relevant federal and state statistical reporting systems should be modified to reflect the existence of seriously mentally ill persons in jails. Twelfth, for each jail in the United States there should be a standing mental health committee, including representatives from the jail, the local department of mental health, the local public psychiatric inpatient unit, and the local chapter of NAMI. Lastly, local chapters of NAMI should be encouraged to closely monitor what is happening in local jails and, when reform efforts fail, seek class action relief through the courts.

According to Sigurdson (2000), the United States currently has more mentally ill men and women in jails and prisons than in all State hospitals combined. Up to 15% of incarcerated men and women have severe acute and chronic mental illnesses. Jails and prisons are poorly equipped to recognize and treat these inmates and it often takes the threat of lawsuit before enough resources are allocated to correctional institutions to adequately care for mentally ill offenders. The article suggests that the first step in addressing the crisis in mental health care is to end the stigmatization and discrimination that surround mental illness. Further, making mental health care more accessible and providing timely care to a small subset of the severely mentally ill will require rewriting civil commitment laws. Many states are implementing outpatient commitment procedures that allow some mentally ill persons to live freely in their

communities, with provisions for rapid intervention if they begin to deteriorate. In addition, some communities are developing alliances between their mental health and criminal justice systems and jail diversion programs which provide both legal sanctions and appropriate mental health care to mentally ill offenders.

In 2003, the Texas Legislature reorganized the state's health and human services system. House Bill 2292 consolidated the state's twelve human services agencies into four new departments. The services previously provided by the former Texas Department of Mental Health and Mental Retardation (TDMHMR) were divided between two new departments or agencies. The new Department of Aging and Disability Services (DADS) received responsibility for mental retardation services. The Department of State Health Services (DSHS) took over the state's mental health program. Substantial funding cuts accompanied this consolidation. Due to these cuts in funding, and the evaporation of other resources, local agencies have had to re-examine the way they deal with the mentally ill. Deinstitutionalization, a lack of adequate community programs and limits imposed by private insurance plans all have increased the burden on local authorities.

METHODOLOGY

The question considering whether or not the mentally ill should be diverted from the criminal justice process has been answered in numerous past and present research documents. There is overwhelming evidence that supports that this is not only the humane thing to do, but the right thing to do. There is no single or simple answer to this question. It will take a combined effort by everyone involved in the process to change the way we handle people suffering from serious mental illness. Additional resources

will have to be initiated at all levels of government. There must be additional funding to support the state and local mental health authorities. Law enforcement agencies need to recognize their role in this process. They have to educate their officers in recognition and detection techniques that will enable them to do a better job of handling the mentally ill. Agencies that operate jails and prisons have to implement diversion programs that address these issues before, during and after incarceration. But in order to divert mental health consumers from the criminal justice process there must be additional resources to divert to. It is hypothesized that police officers would divert mental health consumers if they were properly trained and resources were available to divert to. That is the real problem that needs to be addressed by all parties involved in a collaborative effort in order to be successful.

The researcher will conduct a survey of LEMIT Module II (2006) classmates. All of the participants being surveyed will be employed as licensed peace officers. The size of the survey will be among eighteen law enforcement agencies with an anticipated 100% rate of response from those agencies to be surveyed. The researcher will review and analyze the data collected from the surveys and ideally come up with several significant findings.

FINDINGS

There were ten questions posed to the participants in the survey. All of the participants are currently employed as peace officers that deal with mental health consumers either directly or indirectly as supervisors. The first question asked is if their agency had a full-time mental health unit or Crisis Intervention Team (CIT). Approximately 83% surveyed said they did not have a specialized unit or specially

trained officers to respond and deal with mental health consumers in crisis. Agencies were asked if they had a jail diversion program currently implemented. Only two (approximately 11%) agencies had a jail diversion program. This number may be distorted due to the fact that most police agencies do not operate long term jails. The agencies that do operate a long term jail (Sheriff's Offices) had a jail diversion program at some level, 100% compliance rate; it is required by state law. The next question the survey posed asked whether or not the officer's agency was having any problems due to the lack of mental health resources in their community. Approximately 66% said they were experiencing problems regarding the lack of resources available to them in their communities. Participants were asked if a Crisis Stabilization Center was available in their area would they utilize that facility rather than taking mental health consumers that had committed minor crimes to jail. One-hundred percent of those surveyed said they would utilize such a facility if it existed. They were then asked if it took less time to process a subject into a Crisis Stabilization Center rather than jail, do you think officers would be more inclined to utilize that resource. One-hundred percent of those surveyed thought their officers utilize the facility if that were the case. Participants were asked if they would like more training in this field. Ninety-four of those surveyed said they would like more training in the mental health field. The question was posed asking whether or not the officer thinks it is important to know how to deal with somebody that is in mental crisis or at least recognize it. One-hundred percent of them responded that they did believe it was important to them. The last question asked was if the officer was aware (as a licensed Texas peace officer) that they have the authority to commit a person to a licensed mental health facility if they believe a person has a mental illness and an

emergency exists. Approximately 83% said they knew they have the authority to commit a person to a licensed mental health facility as needed. The percentages in this survey were rounded off to the nearest number for simplicity. The findings of this survey confirm the researcher's belief that law enforcement officers would prefer using stabilization centers, clinics and hospitals, rather than jail these individuals. They want more training in this area and feel it is important to recognize when mental health consumers are in crisis. The researcher found that a number of resources, both past and present, support and mandate the need for diverting persons suffering from serious mental health illness from the criminal justice process when appropriate. Subsequently, laws have been passed mandating that local jails must have a jail diversion plan in place.

CONCLUSIONS

There is no question that there are people in today's society who suffer from a variety of mental illnesses. This is well documented and has been the case throughout history. Many of those people, due to their mental illness, violate established laws that bring them into contact with law enforcement and many of those suffering from mental illness have found their way into the criminal justice process. Many of those arrested have committed relatively minor offenses, adding to the overcrowding problems that already exist in the nation's detention systems. Recent data indicates that as much as 16% of those incarcerated in the nation's detention systems suffer from serious mental illness. Most will agree that jail is not the best place to treat these people. Diverting seriously mentally ill people from the criminal justice process when appropriate is the right thing to do as a progressive society. Due to funding cutbacks at all levels, law

enforcement agencies have been forced to establish policies and procedures to deal with this growing problem. Additional resources such as Crisis Stabilization Centers (CSC) and Sobering Up (SU) stations are alternatives that need to be funded.

Collaborative efforts by city, county and state agencies involved in the process are recommended by most as the best way to help resolve this problem. Diverting the mentally ill from the criminal justice process is relevant to law enforcement in a number of ways. By learning about this subject officers will increase their knowledge and awareness of people in a society they deal with on a routine basis. If officers divert mental health consumers from the criminal justice process then it will help with jail overcrowding issues and reduce court proceedings. Law enforcement agencies stand to benefit from jail diversion because it will place the burden of care back into the hands of the mental health system where it belongs. Mental health consumers and their families stand to benefit from jail diversion. They will have peace of mind that their loved ones are being treated for their illness and not condemned for it. Modern community policing includes properly dealing with mental health consumers, which make up a part of the community. A progressive law enforcement organization will embrace diverting mental health consumers from the criminal justice process. Diversion is another way that a modern day peace officer can provide the most professional services to the people they serve.

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