

Dual Diagnosis Patients in Dire Need of Established Mental Health Court System

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Patients suffering from both a mental illness and substance abuse (often called “dual diagnosis” patients) face a particularly harsh reality in many Texas counties. While efforts have been made to provide integrated care to the mentally ill, the system has failed to address many of its patients’ needs. Historically, mental health care in Texas has been under-funded; it is currently ranked 49th among the states in per capita mental health expenditures.¹ The Texas Legislature’s proposed cut backs for the next budget cycle threaten to further reduce the mental health services available to Texans.² Mental health diversion programs—providing treatment-based alternatives to criminal sanctions by diverting the mentally ill who come into conflict with the law—have, over the last decade, steadily proliferated throughout the world. Since lack of funding is one of our greatest—if not our greatest—problems, implementation of mental health court systems in every county is not currently feasible. The best solution for now might instead be to add a mental health liaison—a psychologist, psychiatrist, or trained nurse—into the court system to assess the mentally ill that are arrested and brought into court, and to divert them from incarceration to therapeutic rehabilitation. If this method proves inadequate, Texas counties might adopt structures that have been effective in other states or countries.³

An Illustration of the Mentally Ill’s Current Treatment in Travis County

Although mental health care is generally underfunded, understaffed, and underutilized in every Texas county, Travis County presents an interesting case study because of its modern urban center, coupled with its not-so-unique status as a city that is simultaneously over-crowded by mentally ill patients and limited government funds to provide residents with proper health care. In providing an illustration of the deplorable state of mental health treatment for dual diagnosis patients, this article will assume that Mike is a 34 year-old dual diagnosis patient currently residing in Travis County. He was diagnosed with paranoid schizophrenia at age 21 and, since that time, he has been stuck in the so-called “revolving door.” The revolving door consists of a cycle wherein the mentally ill person gets sick enough to require hospitalization, enters an inpatient psychiatric facility where he is stabilized with medication, and following a brief stay, is discharged.

¹ National Alliance on Mental Illness, *Grading the States 2009 Report Card: Texas*, http://www.nami.org/gtsTemplate09.cfm?Section=Texas_Grades09&template=/contentmanagement/contentdisplay.cfm&contentID=74732 (last visited Sept. 30, 2010).

² Richard Longoria, *State Plans Mental Health Cut Backs*, KIII-TV, July 8, 2010, <http://www.kiiitv.com/news/txstatenews/State-Plans-Mental-Health-Cut-Backs--98038564.html> (noting that the Texas Dept. of State Health Servs. “has proposed an \$80 million cut to the state’s 39 publicly supported mental health centers” and that a \$40 million cut from psychiatric hospitals in, among others, Austin and San Antonio, will result in elimination of 12% of their current capacity).

³ Due to the limited focus of this article, other state or country mental health system structures will not be discussed.

Concluding he is “better,” Mike stops taking his medication, and spends his modest monthly money allowance—provided by Supplemental Security Income (SSI)—on street drugs. Having no money to pay for a place to stay, the *now* psychotic schizophrenic Mike roams around the streets and is soon arrested and put into jail or readmitted into a mental health hospital—the former being the more likely.⁴

Upon arrest, Mike faces the notoriously inadequate mental health care services offered in most⁵ jail systems. The main goals of such jail systems include incarceration, deterrence, and retribution.⁶ Since treatment is not one of the criminal justice systems’ main goals, it is not ordinarily armed with the necessary tools to assist and care for mentally ill offenders. These inmates are, therefore, often subject to victimization by fellow inmates, punishment by prison staff that is ill-equipped to understand and adequately handle behavior associated with mental illness, and isolation for misbehaving.⁷ Except for having access to their anti-psychotic medications while in jail, mentally ill inmates generally receive no other form of treatment tailored to their specific conditions. The problem is further exacerbated by the lack of follow-up treatment or medication being provided upon release.⁸ The result is the revolving door which could have been avoided if the mentally ill person had been receiving adequate mental health treatment.⁹

How do the Mentally Ill End up in the Revolving Door?

As noted above, mental health care in Texas is hindered by its lack of funding. To make matters worse, the scant money allocated is spent reactively, rather than proactively.¹⁰ The system is flawed in that it focuses only on those in current crisis, rather than providing long-term stabilization.¹¹ Essentially, our system provides the mentally ill with a band-aid, rather than any meaningful treatment to help heal the underlying wound.

⁴ Melissa Fletcher Stoeltje, *Mental Health System Leaves Gap*, San Antonio Express-News, (Aug. 2, 2009), available at <http://www.mysanantonio.com/health/52274877.html>.

⁵ See H. Richard Lamb & Linda E. Weinberger, *The Shift of Psychiatric Inpatient Care From Hospitals to Jails and Prisons*, 33 J. AM. ACAD. PSYCHIATRY L. 529, 534 (2005) (acknowledging that “some institutions provide structured psychiatric services, including the use of trained mental health professionals, appropriate medications, law enforcement officers and aides able to deal with physically challenging patients, and a range of therapeutic activities that structure the patients’ day”), available at <http://www.jaapl.org/cgi/content/full/33/4/529>.

⁶ E.g., H. Richard Lamb & Linda E. Weinberger, *The Shift of Psychiatric Inpatient Care From Hospitals to Jails and Prisons*, 33 J. AM. ACAD. PSYCHIATRY L. 529, 534 (2005) (noting that “jails and prisons have been established to mete out punishment and to protect society; the corrections milieu is limited in its ability to be therapeutic”), available at <http://www.jaapl.org/cgi/content/full/33/4/529>.

⁷ William Kanapaux, *Guilty of Mental Illness*, PSYCHIATRIC TIMES, Jan. 1, 2009, available at <http://www.psychiatristimes.com/forensic-psych/content/article/10168/47631>.

⁸ See e.g., Jay M. Pomerantz, *Treatment of Mentally Ill in Prisons and Jails: Follow-up Care Needed*, MEDSCAPE TODAY, Aug. 11, 2003, available at <http://www.medscape.com/viewarticle/458600>.

⁹ H. Richard Lamb & Linda E. Weinberger, *Persons With Severe Mental Illness in Jails and Prisons: A Review*, PSYCHIATRIC SERVICES, Apr. 1998, available at <http://psychservices.psychiatryonline.org/cgi/content/full/49/4/483>.

¹⁰ *Id.*

¹¹ *Id.*

In 2007, the Local Mental Health Authorities across the state received funding to create a mental health crisis response system—the “Crisis Services Redesign” (“CRS”). During 2009, while CRS funding was at \$109 million, Texas A&M University conducted a study which revealed that the system had failed to expand service capacity at a pace commensurate with the increased rate of people using long-term mental health care.¹² As a result of this shortage in services, people in need of care were “increasingly placed on waiting lists or served below the clinically recommended level.”¹³ The study concluded that a parallel system offering similar services would be needed to diminish the current encumbrance on emergency rooms, law enforcement, and the courts—all of which currently share the burden of dealing with mentally ill persons in crisis.¹⁴

Currently, Austin Travis County Integral Care (ATCIC) offers a number of services for people who are in situations similar to Mike’s. The problem, as A&M noted in its findings, is that the system falls short in capacity to serve the mental health needs for an entire county’s population. Specifically, Mike has utilized ATCIC’s Psychiatric Emergency Services (PES) and has resided briefly at “The Inn,” ATCIC’s crisis residence. However, due to ATCIC’s lack of adequate resources, Mike, and presumably many others similarly situated, has occasionally been asked to wait outside of PES overnight in order to be evaluated for admission to The Inn. Additionally, Mike’s doctor has stopped giving Mike his medications because he knows that Mike is unstable and merely cycling through the system; and medicating Mike sporadically would, in the doctor’s opinion, essentially amount to a waste of resources. Because this is such a common cycle for most mentally ill/dual diagnosis persons, it is difficult to see the current situation in Travis County as anything other than a cry for reform. As illustrated by Mike’s life, ATCIC’s “Jail Diversion Services” are not accomplishing what they were meant to do which is to, “work[] closely with criminal justice partners to align existing resources” as well as aid with “[j]ail and detention interventions” and provide “[r]e-entry and community supervision services.”¹⁵

A Proposed Solution to Travis County’s “Revolving Door”

Ideally, every city in Texas would have a mental health court structured after an integrated dual disorder treatment model “designed to address mental health and substance abuse issues at the same time.”¹⁶ A large percentage of mentally ill persons are also substance abusers, this seems to be a more efficient model than one merely

¹² AUSTIN TRAVIS COUNTY INTEGRAL CARE: BEHAVIORAL HEALTH & DEVELOPMENTAL DISABILITIES SERVICES, NEW PSYCHIATRIC CRISIS SERVICES STUDY (2010), www.integralcare.org/?nd=crisis_study_update.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ AUSTIN TRAVIS COUNTY INTEGRAL CARE: BEHAVIORAL HEALTH & DEVELOPMENTAL DISABILITIES SERVICES, PSYCHIATRIC CRISIS AND JAIL DIVERSION SERVICES, http://www.integralcare.org/?nd=crisis_index.

¹⁶ Interview by Ctr. for Court Innovation with Sherri Crock-Carsey, Mental Health Court Liaison, Athens County Mun. Court Substance Abusing/Mentally Ill (SAMI) Court, <http://www.courtinnovation.org/index.cfm?fuseaction=Document.viewDocument&documentID=726&documentTopicID=25&documentTypeID=8> (last visited Sept. 30, 2010).

addressing mental illnesses.¹⁷ Under this approach, all mentally ill offenders determined to be non-threatening to society would be diverted from jail and prison systems with the goal of extracting them from the revolving door. The problem is that Texas lacks sufficient funds to implement a state-wide system like this. State-wide implementation of mental health court systems would be very costly, as it requires an entirely separate team of attorneys, mental health professionals, social workers, and judges to undertake a series of time-consuming, work-intensive tasks including designing a treatment plan tailored to each mentally ill person that appears before the court, heavy monitoring by a designated agent of the court, continuous interaction with the judge, and confirming that the person is provided with proper housing, psychological treatment, and medication. Upon successful completion of the treatment plan, the “graduate” would have the initial charges dismissed or the sentence reduced, and would be aided in reintegrating into the community.

Because the budget allocated for mental health services is disproportionately low when viewed in light of the number of people suffering from a mental illness,¹⁸ Texas counties seeking a reform for mentally ill offenders would be well-advised to consider less costly methods of tackling this seemingly insurmountable task. The following options may prove helpful to the current revolving door cycle present in many Texas counties:

- The county court system could employ a forensic court liaison officer—either a mental health nurse, psychologist, or psychiatrist—who would be “available to identify mentally ill offenders, provide on-the-spot mental health assessment, prepare psychological reports, develop treatment plans and give advice to the court on community-based treatment options for mentally ill offenders.”¹⁹ This approach may be complicated, however, because in order to divert mentally ill defendants from jail, “community services must be available to support the recommendations of court liaison officers.”²⁰
- The county could establish a system within its police department wherein a few officers volunteer to serve as liaisons to “mental health consumers, mental health service providers, and fellow district officers.”²¹ These officers would have to be specially trained to work proactively with local mental health authorities,

¹⁷ Interview by Ctr. for Court Innovation with Stephen V. Manley, Judge, Mental Health Treatment Court of Santa Clara County, Cal., <http://www.communitycourts.org/index.cfm?fuseaction=Document.viewDocument&documentID=618&documentTopicID=25&documentTypeID=8>; *see also* Integrated Disorder Dual Treatment Introductory Slides (2001), http://www.governorsinstitute.org/index.php?option=com_docman&task=doc_download&gid=98&Itemid=65 (estimating that over 50 percent of schizophrenics, bipolars, and others with severe mood disorders as well as one-third of people with anxiety and depression are substance abusers).

¹⁸ *See, e.g.*, David Pittman, *Mental Health Funding Low*, AMARILLO GLOBE-NEWS, Dec. 30, 2007, available at http://amarillo.com/stories/123007/new_9192616.shtml.

¹⁹ Tamara Walsh, *Diverting Mentally Ill Women Away from Prison in New South Wales: Building on the Existing System*, 10 PSYCHIATRY, PSYCHOL. & L. 227 (2003).

²⁰ *Id.* (Among others, community service programs should provide the mentally ill with the ability of acquiring living skills, encouraging personal development, supervision of controlled substances related to their illness, treatment service for substance abuse, and assistance in finding employment.)

²¹ *Madison Police Department Mental Health Liaison Program Recognized*, US FED. NEWS, Apr. 14, 2010.

hospitals, and mental health providers to coordinate services for those who come across the court system by virtue of a mental illness.

- The court could implement an intensive probation scheme in lieu of putting the mentally ill in jail. This system would require frequent reporting to a designated person at the court, regular attendance at therapy sessions, and submission to random testing to ensure compliance with a drug-free plan and proper administration of psychotropic medication.
- A system akin to that used in Merseyside, England, would create a liaison service involving a nurse trained in mental health to answer important questions regarding an individual's mental health. Essentially, when one who appears to be mentally ill comes before the court, the court staff contacts the liaison service over the phone, and the nurse, relying on a mental health database, shares information about the patient that would allow the court to determine what mental illness the person has, who his/her psychiatrist is, and whether he/she should be admitted to a hospital. Further, the liaison would present the court with "an assessment of [the] defendant's risk to the public or [himself]."²² This approach, however, might prove unrealistic in light of the United States' health information privacy act, i.e., HIPAA, and our delay in broad implementation of intercommunicating electronic medical records.

Regardless of the approach that the county chooses, all police departments should require all officers to complete mental health courses in order to better understand and address the issues they face when they arrest someone suffering from a mental illness.

Conclusion

Many counties in Texas, including Travis County, are in dire need of reform of the mental health system. Ideally, each county would be able to implement an integrated dual disorder treatment model. Because of the economic crisis and proposed cut backs in the budget available for mental health, counties must resort to less costly alternatives to temporarily ease the problem discussed in this article. Nevertheless, the goal of reforming Texas's system to include mental health courts in every county should remain at the top of the list of high-priority needs to be addressed once the economy begins to recover and larger funds are allocated to the health of the mentally ill.

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²² Adam James, *A Liaison Service that Shares Information with the Police on People's Mental Health has Won Respect*, GUARDIAN, Oct. 2, 2002.

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