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# Reimagining Criminal Justice: How We Traded Out Asylums for Prisons

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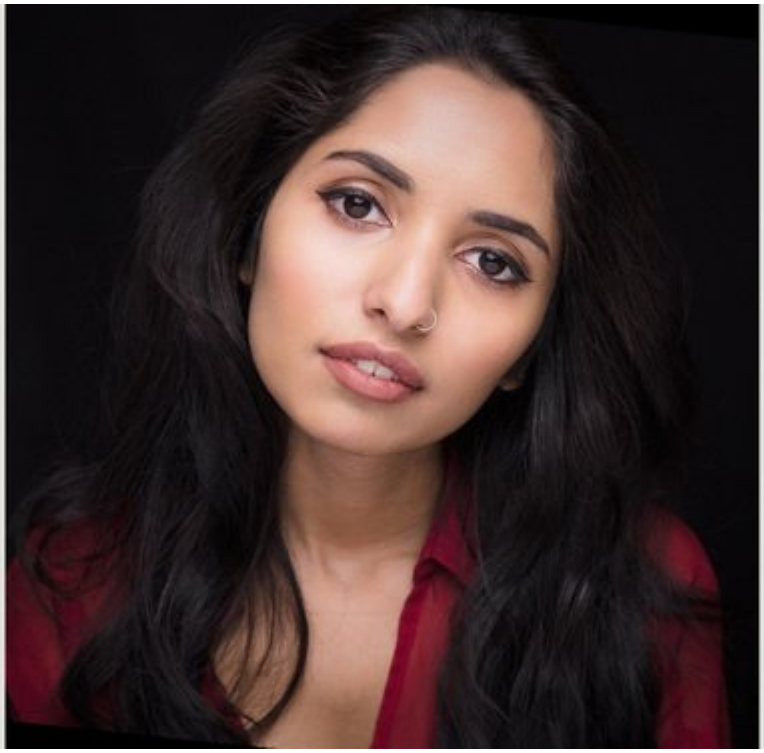
The criminal justice system fails to adopt alternative mental health reforms better equipped to handle mental health crises rather than placing the mentally ill in institutions that have proven to worsen their illness. The criminalization of mental illness must end, says Zaynah Zaman, a student at Golden Gate University School of Law.

By **Zaynah Zaman** | May 20, 2021



**Zaynah Zaman is a student at Golden Gate University School of Law. Courtesy photo.**

*The Recorder has collaborated with students enrolled in Reimagining Criminal Justice, a seminar at Golden Gate University School of Law, to publish this series of student writings. This next generation of lawyers explore a broad range of topics touching on criminal and racial justice, and provide their perspectives and voices on myriad proposals for building a better, more just, system.*

Do you believe history repeats itself? The American criminal justice system has repeatedly failed the most vulnerable members of our society. Seventy years ago, we were horrified to lock away mentally ill people in warehouse asylums that would subject them to horrific abuse; yet today we seem perfectly comfortable

locking them up in jails and prisons despite data highlighting the detrimental effects.

Comparisons show jails and prisons to be tragically similar to asylums. Both institutions are equally ill-equipped to provide anything resembling adequate treatment resulting in a vicious and deleterious cycle for the mentally ill. The criminal justice system fails to adopt alternative mental health reforms better equipped to handle mental health crises rather than placing the mentally ill in institutions that have proven to worsen their illness. The criminalization of mental illness must end.

More mentally ill people are incarcerated instead of receiving proper treatment, making prison reform both a public health issue and a criminal justice issue. Mentally ill people are three times more likely to be incarcerated.

In her book "Insane," author Alisa Roth states, "Correctional facilities are often labeled as the nation's de-facto mental healthcare provider" despite being severely ill-equipped. Darren Rainey served a sentence in Florida for cocaine possession, where he was diagnosed with schizophrenia and housed in a particular unit for the mentally ill. Police found Rainey smearing feces in his cell which is a common practice among mentally ill inmates according to Alisa Roth. As a result, Rainey was punished with a "special" shower where the water temperature was adjusted to 160 degrees for two hours. The shower boiled him alive. Police did not take Rainey out despite his desperate pleas until he died. Other inmates stated his skin appeared severely red and was peeling off like fruit roll-ups.

A 2016 Treatment Advocacy Center report shows (//www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf) 40% of people with mental illness have been incarcerated during their lifetime. While the overall incarceration rate has gone down for the first time in decades, incarceration of the mentally ill has tripled. As the number of incarcerated mentally ill continues to grow, psychiatric facilities have seen a decline in institutionalized patients. Between 1983 and 2016, institutionalized patient populations in psychiatric facilities shrank dramatically from 500,000 to merely 50,000. In 1983 only 6.4% of inmates in jails and prisons were reported to have serious mental illnesses; this number climbed to 16% in 2016. This shift could well indicate that we are replacing the use of institutions designed to treat mental illness with prisons.

Several factors have led to the mass incarceration of the mentally ill. Deinstitutionalization of asylums in the 1950s played a key role. While asylums were shut down to protect patient rights, states failed to create a new and effective system. Per the Harvard Political Review report, deinstitutionalization led to large numbers of asylums closing down, and as a result, large populations of mentally ill were released with little to no resources. Deinstitutionalization was widely pushed by states under the guise that community-based treatment was a superior option as it was far less restrictive.

While this may be true, states had ulterior motives in promoting community-based treatments, as they wanted to slash the Medicaid budget. The budget cut took place in 1965, resulting in Medicaid users being denied in-hospital mental health coverage. This further limited resources for the mentally ill, as no alternative treatments were designed post budget cuts and deinstitutionalization. For a short period, after the closure of asylums, a small number of patients were being institutionalized in psychiatric facilities, this quickly changed due to the lack of available beds. As a result, more mentally ill were being sent to correctional facilities all across the nation, according to a 2020 Harvard Political Review (https://harvardpolitics.com/prisons-the-new-asylums/) article.

Many complex social structures contribute to higher incarceration rates of mentally ill people. Some factors include lack of housing and employment, substance abuse to "self-medicate," lack of accessible treatment, and poverty. These factors force the justice system to take charge of the fate of the mentally ill, and they have done so through incarceration.

Incarceration only exacerbates mental illness, and the common use of solitary confinement of mentally ill inmates further amplifies the damage to these inmates. A Federal Watchdog report (https://www.themarshallproject.org/2017/07/12/federal-watchdog-finds-mentally-ill-are-stuck-in-solitary)found that many severely mentally ill patients are subjected to long periods of solitary confinement across various facilities despite policy changes put in place to ensure better treatment of these inmates, as there are many objections to the use of solitary confinement for all inmates. The Bureau of Prisons' claims of not using solitary confinement were debunked through this report when several facilities were found to hold severely mentally ill inmates in solitary confinement.

At ADX Florence, a supermax prison, two mentally ill inmates were confined to solitary 22 hours a day, and for the remaining two hours, they were not allowed to engage with any other inmates. Another inmate was in solitary confinement for years. While another had spent two decades in solitary confinement. The report concluded, at Florence, mentally ill inmates were found to be in solitary confinement for an average of 69 months when, on average, many states limit solitary confinement to 30 days. Out of 154,000 inmates in federal custody, 6% of the population are in some sort of solitary confinement or restrictive housing.

Inmates in solitary confinement often receive even less mental health care compared to other mentally ill inmates. They are limited to psychotropic medication, mental health rounds, and occasional meetings with a private clinician but are barred from participating in individual therapy; group therapy; structured educational, recreational, or life-skill-enhancing activities; and other therapeutic interventions due to lack of resources. Solitary confinement has proven to have adverse effects on mentally ill inmates as it can often exacerbate their illness.

Despite correctional facilities' efforts to improve mental health services, conditions remain inadequate (http://v) for various reasons, such as insufficient qualified staff, too few specialized facilities, and few programs due to budget constraints. Solitary confinement is one example of the brutality the mentally ill face in prison. Other forms of abuse (https://www.hrw.org/news/2003/10/22/united-states-mentally-ill-mistreated-prison) include physical and sexual assault, exploitation of the mentally ill by other inmates, which can lead to suicide and self-mutilation among the mentally ill.

Decriminalization of mental illness doesn't have to be rocket science, but commitment is critical. Judge Leifman, an administrative judge of Miami-Dade County, seems to have the right formula pegged. Under his guidance, the Criminal Mental Health Project in Miami-Dade County has successfully created an alternative program that could reshape policies around the mental health crises and end the vicious cycle. The three-component program consists of the following:

1. **Pre-Arrest System:** A special Crisis Intervention Police Team who receive 40-hour training to identify people with mental illness; learn to deescalate the situation and connect them to treatment options. Data shows total arrests in Miami-Dade have gone down from 118,000 per year to 56,000, nearly 50%, after this initiative launched, and the jail population was cut in half from 7,200 to 4,000, saving the county $12 million per year for the last six years.
2. **Post Arrest Diversion System:** This allows anyone arrested on misdemeanor charges to be released within three days if diagnosed with a severe mental illness. Upon release, the mentally ill are transferred to crisis stabilization units where they are held for up to two weeks instead of the standard 72-hour hold time. The longer hold time allows the mentally ill patients to stabilize and receive the necessary support. After the stabilization period, the patients go through a transition phase where they receive additional care. Within two years of the launch of this program, the recidivism rate for misdemeanants dropped from about 72% to 20%.
3. **Competency Restoration Alternative Program:** Judge Leifman expanded this pre-existing program to non-violent criminal offenders for crimes such as burglary and drug possession. This category of offenders remain at the facility after their stabilization period until their court date. After court hearings, offenders are monitored for up to a year if released, during which time they

receive treatment, and help with finding jobs and housing. This program allows offenders to stand trial competently and integrate back into society efficiently. Based on data, the program has helped people reach competency levels, on average, 52 days sooner with 32% less cost associated, compared to people committed to hospitals. This program dropped recidivism by 25%.

More than 46 states have adopted this three-step initiative, and there are now over 2600 local CIT programs. The answer to successfully decriminalize mental health is before us, but there are still many challenges. The program has to be enforced county-by-county and may not be easily replicable. It requires a considerable commitment from local authorities to dedicate time and resources to mold the program in a way that will fit their individual community's needs.

Judge Leifman's reform is merely one step in the right direction. While his reform keeps the mentally ill out of jails and prison, it does not help the incarcerated mentally ill. Further reforms need to be established that provide better treatment for mentally ill inmates serving prison sentences. This reform is only applicable to people who have been charged with a misdemeanor, and it doesn't help the large population of mentally ill who don't fit in this bracket. We now must adopt policies to seek further reforms and right the decades of wrong.

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