



09: Dealing with the Criminal Justice System

Introduction

If the care recipient experiences a crisis, it may be necessary to call law enforcement for your safety or that of your family member. Depending on the circumstances, you may be relieved, thinking that incarceration would, at least, provide food, shelter, and access to mental health care.

The reality is quite different. Without specialized training, busy court staff may not know how to assist the care recipient. Jails are noisy, crowded, and dangerous: no place for someone who is easily traumatized. Probation or parole may set expectations that cannot be met. People with mental illness can easily get caught in a cycle of arrest, court, and incarceration/punishment rather than the treatment that could improve their lives.

The criminal justice system is not equipped to meet the needs of people with mental illness. Experts on this issue agree that the current approach fails to improve public safety, stresses already strained local resources, and harms people with mental health conditions and their caregivers. To address the problem, diversion models have been developed and are spreading across the country, however, progress is slow and uneven.

Background

Unfortunately, criminal justice intervention has become a primary strategy to patch our nation's fragmented mental health system. Many people with mental health conditions are arrested for minor crimes which are linked to their illness or addiction rather than any intent to harm. Two million Americans with mental health conditions are in jail and prison each year.³⁵ Inmates with mental illness tend to serve longer sentences than others convicted of similar crimes.³⁶ Once released, they are at higher risk of re-arrest and more time behind bars.³⁷

In a national study of mental health caregivers, one third (32%) of the respondents reported that their care recipient had been arrested. Arrest rates were higher for males (45%), individuals with co-occurring addiction (59%), and those with schizophrenia or bipolar disorder (43%). Mental health caregivers whose care recipient had been arrested were more often concerned about victimization (70%) and self-harm (74%) than the overall sample.

The facts are grim, but you are not helpless. There are steps you, as a caregiver, can take to get your care recipient out of this environment and into care.

³⁵ Subramanian R., Delaney R., Roberts S., Fishman N., McGarry P. (2015). "Incarceration's Front Door: The Misuse of Jails in America" Vera Institute of Justice <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>; Jail Inmates at Midyear 2013" US Department of Justice, Bureau of Justice Statistics NCJ 245350. Accessed April 9, 2015 at: <http://www.bjs.gov/content/pub/pdf/jim13st.pdf>.

³⁶ James, DJ; Glaze, LE (2006) Mental Health Problems of Prison and Jail Inmates, Bureau of Justice Statistics <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>

³⁷ Mayor's Task Force on Behavioral Health and the Criminal Justice System (2014). "Action Plan 2014." <http://www1.nyc.gov/assets/criminaljustice/downloads/pdf/annual-report-complete.pdf>.



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The Criminal Justice Process: Tips to Help Your Care Recipient

Although criminal justice systems vary by state, county, and municipality, there are similarities. At each point in the criminal justice process, you can take steps to improve your care recipient's situation. It is important to know that there are many steps after an initial encounter with law enforcement: at every stage, there may be opportunities to help improve your care recipient's situation or reduce their chances of long-term incarceration.

Crisis plan: The best way to deal with the justice system is to avoid it altogether. Planning is key to prevention. A Psychiatric Advanced Directive (PAD), written crisis plan, or a Wellness Recovery Action Plan (WRAP) are good tools to help things go better during a mental health crisis. Developing a crisis plan will help you and your care recipient discuss what to do in a crisis and identify the best support to call on. With a plan, you may be able to get through a mental health crisis without calling the police. Having a crisis plan can also help you decide what to say if you do need to call the police. Learn more: www.nrc-pad.org/ and www.mentalhealthrecovery.com

Law Enforcement: When safety is at stake, law enforcement officers may be called. Although arrest is one possibility, officers may divert the person into mental health care rather than making an arrest.

Tip: When you call law enforcement, mention that your care recipient has a mental illness and provide as much information as possible. Note whether they are, or have been, in treatment. Tell the dispatcher about a crisis plan if there is one. Share this information with the dispatcher, because the officer may not

have time for a detailed conversation. Learn more: www.nami.org/find-support/family-members-and-caregivers/calling-911-and-talking-with-police

Tip: Ask for a Crisis Intervention Team (CIT) officer. Many communities have these specialized officers who are trained to handle mental health crises. Learn more: www.nami.org/cit

Booking and pretrial detention: If arrested, the person you care for could be taken into custody while decisions are made about criminal charges and whether he/she will be jailed or released on bond.

Tip: If your care recipient is in treatment, call the detention facility and give contact information for their case manager or primary mental health professional.

Defense attorney: The court can play a valuable role in getting mental health care for the care recipient, however, obtaining legal counsel is a critical first step. When it comes to a lawyer, cost does not necessarily mean quality. A public defender may often be the best choice unless the care recipient already has a criminal defense attorney. Be aware that public defenders have heavy caseloads, so your job is to share information in a polite and helpful manner.

Tip: You can improve the outcome by informing the defense attorney about the care recipient, what you hope for, and providers who can help. If the lawyer is not available, leave a detailed voice message and follow up in writing. Remember that the attorney does not work for you, so they may not be able to share information with you. But you can share information with them that may strengthen the case.

Tip: Encourage the care recipient to be honest with the lawyer even if details are embarrassing or shocking. The defense



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attorney needs to know any complications in order to build a solid case.

Tip: Encourage your care recipient to sign a release allowing their attorney to discuss their case with you.

Criminal charges: A criminal charge is a formal claim by a government official that a person has broken the law. A misdemeanor charge for a less serious crime carries a maximum sentence of one year or less. All other crimes are charged as felonies. Most crimes linked to untreated mental illness are misdemeanors, although it is common to have felony charges for resisting arrest, assault, or drug related crimes. A felony conviction severely limits options for housing and other public benefits after release from jail or prison. Many charges, however, are dismissed, or downgraded, before the individual goes to trial.

The courts: If your care recipient is charged with a crime, they will go before a court. If the crime was serious or complex, the care recipient may have a number of hearings. The process can take months. If they plead 'not guilty' and choose a jury trial, the process can take longer. If your family member chooses a plea bargain, it means they plead guilty or 'no contest' and may receive a more lenient sentence.

- **Arraignment:** Within a few days of arrest, the care recipient must appear before the Court to hear charges and their legal rights, enter a plea, and receive legal counsel, if needed. If the plea is 'not guilty' a preliminary hearing date will be set. If the charge carries jail time, the care recipient may be required to stay in jail until the court date unless bail has been set.
- **Recovery court:** Many jurisdictions have specialty courts for defendants with

mental health or substance use conditions. These courts offer a choice to participate in community treatment under court supervision or serve jail time. The court has staff who work with service providers to develop a plan. The plan often includes treatment, housing, supported employment, peer support, or other services. Goals of the court are to promote recovery, while holding the defendant accountable for breaking the law.

Tip: By showing up in court you can boost the care recipient's morale. You also show that the defendant has people to help them keep things stable, which may influence the judge's sentence.

Psychological evaluation: The U.S. Constitution bans courts from trying individuals or otherwise resolving cases of persons who may not be competent to understand the nature of the charges that have been filed against them or to participate meaningfully in their own defense. At any point, the judge can order a psychological evaluation to decide whether a defendant is competent to stand trial. These evaluations sometimes take place in hospitals, in jails, and for less serious crimes, in the community. During a forensic or psychological evaluation, the case is on hold. At that point, the defendant may wait in jail for weeks or months.

For serious crimes, the defense may request an evaluation to determine whether a person's mental health status at the time of the crime was so severe that an insanity defense, or another defense raising mental illness as a mitigating or justifying factor, may be used. 'Competency' and 'insanity' are different legal issues. 'Competency' pertains to a person's capacity to proceed to



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trial. 'Insanity' addresses whether a person's psychiatric condition at the time of the crime can be used as a defense.

Sentences are a legal order for punishment. The purpose is to hold the person accountable for the crime and to discourage further criminal activity. Frequently, sentences include fines, probation, mental health or substance abuse treatment, community service, or incarceration.

Tip: Work with the defense attorney to advocate for mental health treatment as part of the sentence. Share information on treatment, training, or self-help groups the care recipient has attended.

Tip: If appropriate, offer to vouch for the care recipient's character. Provide contact information for other character witnesses.

Probation is a suspended jail sentence that allows the defendant to serve time in the community under a court order and supervision by a probation officer. Court requirements may include participation in treatment, staying clean and sober, community service, meeting with the probation officer, or attending court hearings. Probation can be revoked if the conditions are not met. The judge could order the probationer to jail or add requirements to the probation.

Tip: Work with the defense attorney to advocate for treatment as a condition of probation. Provide contact information for service providers. Give specific names, phone numbers, and emails to make it as easy as possible to reach these providers. If possible, offer options for housing and employment.

Incarceration may require the care recipient to spend time in jail or prison. There are significant differences between the two, especially when it comes to someone with mental illness.

Jails are secure facilities operated by a city or county for pre-trial detention, incarceration for misdemeanors, or temporary placement prior to a prison term. Jails are crowded and noisy with people coming and going at all hours. Larger jails may have a mental health specialist and limited capacity to provide psychiatric medications. Some large jails have medical units with mental health services and protection from the general inmate population. Small rural jails may not be prepared to offer mental health care at all or may contract with an independent correctional health company. Release from jail happens suddenly with little or no time for planning.

Prisons are secure state or federal facilities that house individuals sentenced to one year or more for a felony conviction. The time served depends on the crime, the person's criminal record, and their behavior while locked up. Prisons are required to assess inmates for mental health and addiction and to offer basic treatment such as counseling, self-help groups, and a limited list of psychiatric medications. Special needs prisons offer more intensive treatment.

Tip: Regular letters, phone calls, and visits will boost the care recipient's spirits. Also, prison staff may treat them with more respect if the family is paying attention.

Tip: When communicating with prison staff, be polite. Make any necessary requests in a respectful manner and observe prison procedures.

Tip: You can request a check-up for your relative if you are concerned at any point.

Tip: Encourage the care recipient to take part in education training programs while in prison. These will increase post-release job opportunities and will count as 'good time' toward a reduced sentence.



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Solitary confinement, or segregation, is used to manage difficult or dangerous prisoners. Inmates with mental illness are more likely to be segregated in isolation cells, often for months or years, with little or no treatment.³⁸ Solitary confinement is hard on anyone, but people with mental illness suffer terribly, often to the point of self-harm or suicide.

Tip: If your relative is in solitary confinement, do whatever you can to get them out. For expert help, contact your state's:

- American Civil Liberties Union (ACLU)
www.aclu.org/about/affiliates
- Protection and Advocacy Agency:
www.ndrn.org/about/paacap-network.html

Reentry: Jail release can happen within hours of the order. You can prepare by gathering a set of clothes, toiletries, birth certificate, driver's license or state photo ID, social security card, and a pre-paid mobile phone with numbers for family, friends, and service providers. It is also wise to gather information to help the care recipient apply for income support, health benefits, food, housing, treatment, transportation, education, and other basic necessities.

A prison release date is known in advance. Prison personnel should help the care recipient with transitional housing and other benefits and services, but your assistance can further ensure that needed supports are in place. Re-entry after a prison sentence is difficult because certain crimes, such as felony drug crimes, impact eligibility for essential services such as housing, food, income, and employment. Learn more: www.nami.org/Find-Support/Living-with-a-Mental-Health-Condition/Reentry-After-a-Period-of-Incarceration

Conclusion

The criminal justice system can be traumatic and dangerous, but your support can make a difference. Research shows that people involved in the criminal justice system are more likely to succeed in the community and less likely to re-offend, if they have at least one person who stands by them. You can make that difference by staying connected to the care recipient, and by offering to help law enforcement, legal, and mental health personnel obtain information and assistance to strengthen the case.

Helpful Websites

Council of State Governments, The Stepping Up Initiative to Reduce the Number of People with Mental Illness in County Jails

stepuptogether.org

GAINS Center for Behavioral Health and Justice Transformation

www.samhsa.gov/gains-center

Mental Health America: Benefits for Prisoners with Mental Illness

www.mentalhealthamerica.net/issues/criminal-justice

National Alliance on Mental Illness (NAMI), Handling the Arrest of a Family Member

www.nami.org/Find-Support/Family-Members-and-Caregivers/Handling-the-Arrest-of-a-Family-Member

The Bazelon Center for Mental Health Law

www.bazelon.org/our-work/criminal-justice-2

³⁸ Metzner JL; Fellner J; Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics. *Journal of the American Academy of Psychiatry and the Law* Online Mar 2010, 38 (1) 104-108. Accessed 8/29/2017: <http://jaapl.org/content/38/1/104>