Bridging the Gap between the Criminal Justice System and Social Services

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Any experienced prosecutor in Los Angeles could make the argument that Los Angeles County's largest psychiatric care facility is the Los Angeles County Jail. In downtown Los Angeles, County Jail has become the default "warehousing" facility for an overwhelming number of homeless individuals suffering from mental illness and/or addiction. Theories as to why so many homeless individuals end up revolving in and out of criminal justice system abound. While law enforcement efforts to bring order out of the chaos that is Skid Row have consistently come under attack by homeless advocates as "criminalizing" homelessness[1], the major causal factors for the rapid growth of homelessness in Skid Row, and throughout America, include the debilitating personal attributes of the homeless, such as alcoholism, addiction and mental illness; the large-scale deinstitutionalization of the mentally ill; and the impact of increased income inequalities on those at the lower end of the housing market, particularly in Los Angeles.[2] This paper examines these factors as well as diversion tools that can begin to bridge existing gaps between the criminal justice system and the social services system to reverse the trend of incarcerating mentally ill and addicted homeless individuals and move toward more morally accepted and fiscally viable alternatives.

The Debilitating Personal Attributes of the Homeless:

A homeless person is someone living "without a permanent, safe, decent, affordable place to live."[3] Homelessness is not limited to impoverished nations and is a growing worldwide problem in industrialized nations.[4] It is estimated that over one billion people on the planet lack adequate housing while approximately 100 million have no housing at all.[5] In the United States alone, an estimated 700,000 people are homeless every night.[6]

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[1] *See* Skid Row in Rehab article by Heather Mac Donald, Los Angeles Times, November 18, 2007

[2] Homelessness in California, by John M. Quigley, Steven Raphael, Eugene Smolensky with Erin Mansur, Larry A. Rosenthal, 2001 PUBLIC POLICY INSTITUTE OF CALIFORNIA

[3] Solutions for America, Preventing Homelessness in America (2003), http://www.solutionsforamerica.org/thrivingneigh/homelessness.html. Title 42, Chapter 119, Subchapter I, §11302 of the United States Code defines a homeless person as "an individual who lacks a fixed, regular, and adequate nighttime residence; an individual who has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings".

[4] HUMAN RIGHTS: More Than 100 Million Homeless Worldwide, by Gustavo Capdevila

[5] Id.

[6] Almanac of Policy Issues, Homelessness, http://www.policyalmanac.org/social_welfare/homeless.shtml (last visited July 17, 2008); NYPRIG's Homeless Outreach Project, Homeless & Hunger Statistics & Facts, http://www.nypirg.org/homeless/facts.html (last visited July 17, 2008); Substance Abuse and Mental Health Services Administration, Matrix: Homelessness Services (2005), http://www.samhsa.gov/Matrix/matrix_homelessness.aspx.

Approximately 20 to 25 percent of the homeless population in the United States suffers from a serious mental illness.[7] Half of the mentally ill homeless population also suffers from co-occurring disorders caused by drug and/or alcohol abuse.[8] A comparative study of the debilitating personal attributes of America's homeless reveals that other countries have either equal or greater numbers of mentally ill individuals within their homeless population. For example, in Canada, 25 to 50 percent of homeless people have a mental illness and up to 70 percent of those with a severe mental illness also suffer from substance abuse.[9] One study in Canada discovered even higher rates of mental illness and substance abuse, finding that about 66 percent of homeless individuals have a lifetime diagnosis of substance abuse or mental illness.[10] In downtown Los Angeles' Skid Row and other major urban areas, chronically homeless individuals suffering from mental illness take turns resorting to illegal drugs as a way of self-medicating or decompensate further. They cycle through the criminal justice system when they are arrested for a variety of minor crimes.[11] Unsurprisingly, a proportional number of jail and prison inmates suffer from mental illness or addiction problems.[12] The following section reveals the policies contributing to the large numbers of homeless mentally ill, and the consequences of shifting the burden of dealing with the problem onto law enforcement.

Large-scale Deinstitutionalization of the Mentally Ill:

The deiinstitutionalization of the homeless over the last three decades was primarily based on the premises that a shift away from institutions to the community would benefit persons with mental illness, improve their clinical status, and enhance their quality of life and that it would be cost-effective and conserve public funds and resources.[13] The 1963 Community Mental Health Centers Act marked the beginning of deinstitutionalization in the later part of the 20th century.[14] The intent of the Act was to provide Federal funding for community-based care as an alternative to institutionalization but subsequent funding for community-based care did not match the rate of state hospital closures.[15] the 1980s,

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[7] NYPRIG's Homeless Outreach Project, http://www.nypirg.org/homeless/facts.html; Substance Abuse and Mental Health Services Administration, http://www.samhsa.gov/Matrix/matrix_homelessness.aspx.

[8] Substance Abuse and Mental Health Services Administration, http://www.samhsa.gov/Matrix/matrix_homelessness.aspx.

[9] News-Medical.Net, Mental Health Commission of Canada Outlines Startling Statistics on Homelessness and Mental Illness (2008), http://www.news-medical.net/print_article.asp?id=37855.

[10] Tim Riordan, Exploring the Circle: Mental Illness, Homelessness and the Criminal Justice System in Canada (2004), http://www.parl.gc.ca/information/library/PRBpubs/prb0402-e.pdf.

[11] Criminal Justice Policy Foundation, Prevention Issues: Is the Local Jail Your Local Mental Hospital? http://www.cjpf.org/drug/prevention.htm (last visited July 9, 2008); The Bazelon Center for Mental Health Law, Criminalization of People with Mental Illnesses: The Role of Mental Health Courts in System Reform, http://www.bazelon.org/issues/criminalization/publications/mentalhealthcourts/ (last visited July 8, 2008).

[12] Bernard S. Arons, Mental Health and Criminal Justice (2000), http://www.hhs.gov/asl/testify/t000921a.html.

[13] The Impact of Closing a State Psychiatric Hospital on the County Mental Health System and Its Clients Edna Kamis-Gould, Ph.D., Fredrick Snyder, M.A., Trevor R. Hadley, Ph.D. and Timothy Casey, M.A., Psychiatr Serv 50:1297-1302, October 1999, © 1999 American Psychiatric Association

[14] Encyclopedia of Mental Disorders: Deinstitutionalization, http://www.minddisorders.com/Br-Del/Deinstitutionalization.html

[15] Id.

managed care systems review of inpatient hospital care for mental health led to admission of fewer people and more rapid discharge of inpatients.[16] As a result, deinstitutionalization led to what has been termed "transinstutionalization" or "the transfer of institutional populations from hospitals to jails, nursing homes, and shelters."[17] In other words, "[j]ails have become the only facilities still open to indigent mentally ill persons 24 hours a day."[18] According to Dr. Eugene Kunzman, a former medical director of the mental health program at the Los Angeles County Jail, "[t]he inmates we see today in jail are the same people I used to see in psychiatric hospitals"[19] Other factors contributing to deinstitutionalization include cutbacks in Federal mental health funding and changes in the legal code governing patient rights and affirming the rights of mentally ill persons to live in the community without psychiatric treatment.[20]

Given the enormity of the above policy shifts at the state and Federal level, it hardly seems fair to lay the blame on the feet of law enforcement. Mentally ill individuals discharged from in-patient care and living on the streets often lack follow-up services and intensive case management and stop taking their medication, leading them to engage in criminal conduct resulting in frequent contact with the police.[21] Police officers in Skid Row are forced to be trained to identify behaviors suggesting the possibility of mental illness and work with scarce mental health resources to appropriately diagnose and provide treatment in lieu of arrest. Between September 2006 and July 2007 alone, a collaborative effort between LAPD and the County Department of Mental Health's Downtown Mental Health Center (DMHC) to provide such dedicated services resulted in 5,171 total in-the-field contacts, 293 5150 evaluations, 135 transports to DMHC, 58 psychiatric consultations and medication, 131 transport and placements in local shelters, 4 placements in older adult programs, 2,828 referrals to other services and only 2 LAPD/SMART team arrests.[22] Despite these best efforts to keep mentally ill individuals out of the criminal justice system, the concentrated presence of chronically homeless addicts and the mentally ill in a place like Skid Row acts as a powerful magnet for drug dealers and other criminals who seek to profit from the vulnerability of others, forcing deployment of additional enforcement resources and, consequently, arrests.

The Impact of Increased Income Inequalities on the Homeless

In California, the growing gap between rich and poor, higher housing prices and rapidly rising rents force more and more low-income families to "buy down", further increasing demand for substandard units and displacing the lowest-income renters onto the streets.[23] Many of those at the lowest rung of the housing market are technically

[16] Id.
[17] Id.
[18] Decreased Budgets Result in Jails Becoming Mental Institutions, by S. Van McCrary, Health Law & Policy Institute, http://www.law.uh.edu/healthlaw/perspectives/Mental/980401Jails.html
[19] Id.
[20] Keeping the Peace: Police Discretion and Mentally Ill Persons, by Linda A. Teplin, http://www.ncjrs.gov/pdffiles1/jr000244c.pdf
[21] *See* http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=185431
[22] Source: Data provided by LAPD and the Los Angeles County Department of Mental Health
[23] Id.

homeless, moving in and out of Single Room Occupancy hotels.[24] Federal law requires that tenants evicted for "drug-related criminal activity" not be allowed access to federally-funded housing for three years following eviction.[25] Addicts, the mentally ill, and those suffering from co-occurring disorders are thus further adversely affected by housing laws and policies. Once an individual has been committed to and released from state prison, he/she may be more likely to become homeless due to the difficulty of obtaining housing, employment and social services. Public housing authorities and housing developers may deny admission to both project-based public housing, and Section 8 tenant-based housing assistance programs based on an applicant's prior conviction, or current use of a controlled substance, in order to comply with Federal law. Although denials of eligibility can be contested, and an informal hearing requested, contesting denials is labor-intensive and a complicated process. A policy of "containment" in Skid Row has also contributed to an influx of homeless from elsewhere in the City, County and State, further straining local housing/shelter resources.[26]

Bridging the Gap between the Criminal Justice and Social Services Systems

Public safety is not protected when the root cause of homeless defendants' criminal actions, their mental illness, deteriorates further within a system designed for punishment instead of treatment. Research indicates incarcerating homeless individuals suffering from mental disorders only serves to exacerbate the severity of their mental condition that resulted in their arrest in the first place.[27] Meanwhile, accumulating criminal records amassed by homeless individuals repeatedly arrested for nuisance crimes can create additional barriers to housing, employment, public benefits or treatment services. However, the above causal factors suggest that the chronically homeless need more than just affordable housing.

Many models exist to help the homeless off the streets and back into society. Zero coercion models focus on street-level outreach into supportive housing to reduce the risk of incarceration and typically do not involve prosecutors.

Within the criminal justice system, there are both low coercion (pre-filing or pre-plea diversion) and high coercion (post-plea diversion) models to re-engage homeless addicts and mentally ill. Most programs allow for non-violent misdemeanors,[28] whereas

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[24] In 1977, the City of Los Angeles adopted a redevelopment plan for the downtown Los Angeles Central City East area to preserve and expand the single room occupancy hotels in the area. Single Room Occupancy (SRO) Housing Corporation was founded in 1984 by the Community Redevelopment Agency (CRA) to acquire and rehabilitate single room occupancy hotels in the area and provide clean, safe and affordable housing. *See* http://www.srohousing.org/history.asp

[25] HACLA rules deny waiting-list preference for three years to anyone who has previously been evicted from housing due to drug use.

[26] For details on LA's containment policy, see A History of Skid Row, Los Angeles: A Series of Perspectives by Donald Spivack

[27] According to the U.S. Department of Health and Human Services, prisoners with mental illness who are left untreated re-enter their communities with the same or worse mental illness and psychosocial illness stressors they had prior to being jailed.

[28] Bernard S. Arons, http://www.hhs.gov/asl/testify/t000921a.html; John Clark, Non-Specialty First Appearance Court Models for Diverting Persons with Mental Illness: Alternatives to Mental Health Courts (2004), http://gainscenter.samhsa.gov/pdfs/jail_diversion/pre_trial_nocover.pdf.

some jurisdictions allow defendants who commit felonies to be eligible for diversion.[29] When deciding what level of crime to divert, a primary consideration must be public safety.[30] Diversion models are based on the principle of therapeutic jurisprudence that linking an individual offender to therapeutic options can promote health without conflicting with other legal system values.[31] "Therapeutic jurisprudence claims that attending to the individuals as well as the issues involved in a case leads to more effective dispositions and such efforts typically involve have five essential elements: immediate intervention; non-adversarial adjudication; hands-on judicial involvement; treatment programs with clear rules and structured goals; and a team approach that brings together the judge, prosecutor, defense counsel, treatment provider, and correctional staff.[32]

Since 2003, the Los Angeles City Attorney's Office (CA), LAPD and People Assisting the Homeless (PATH) have collaborated on Streets or Services (SOS), a low coercion tool to offer non-violent homeless arrestees the option to enter into shelter plus care environments in lieu of prosecution. To-date, SOS has placed over 1,600 homeless Skid Row arrestees into shelters plus care facilities directly from the Central LAPD booking room.[33] In 2007, after identifying a need to provide a diversion continuum for homeless arrestees too high or unstable to opt into services directly from the police station, the CA began collaborating with the Los Angeles County Public Defender's Office to launch Project HALO (Homeless Alternatives to Living On the street). This added a post-filing point of entry into social services for in-custody homeless misdemeanor arrestees. Defendants are assessed by Public Defender Social Workers at the earliest stage in the criminal proceedings to determine their need for services. The "client" is then simultaneously referred to DMH for linkage with a County-approved Full Service Partnership service provider and to the CA for a public safety review. Assigned prosecutors and deputy public defenders develop an engagement plan that involves a conditional release and completion of a minimum engagement period in either a residential or out-patient treatment facility. Upon successful completion, the defendant's open charge is dismissed.

Conclusion:

Both SOS and HALO have proven to be effective gateways from the criminal justice system to the social services system. However, the debilitating personal attributes of the chronically homeless, their need for more significant engagement than mere temporary shelter and the lack of access to conventional housing opportunities dictate that City and County policy makers must work together to dedicate scattered permanent supportive housing buildings complete with a wide array of on-site social services in order to give homeless addicts and the mentally ill a greater chance of success as members of our community.

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[29] Id.
[30] Id.
[31] Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts By David Rottman and Pamela Casey, National Institute of Justice Journal July 1999
[32] Id.
[33] Source: Data from People Assisting the Homeless (PATH)