

email alert



To: Behavioral Health Task Force Members

From: Behavioral Health Task Force Leadership
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Report Examines Conditions for Mentally Ill Inmates in County Jail System
 By Eric Neiman*

On March 1, Disability Rights Oregon (DRO) released a report entitled *“A Merry Go Round that Never Stops: Mental Illness in the Multnomah County Detention Center.”*¹ Based on an eight-month investigation, the report examined conditions for mentally ill inmates in the county’s two jail facilities, in which ³“somewhere between 400 and 800 of MCDC’s daily 1000+ residents have been diagnosed with mental illness.”²

This very timely report has national implications. According to federal statistics, almost two thirds of inmates in American jails, or a population of more than 450,000, have a mental health problem.³ Many of these people are severely ill. Yet, jails, which have the primary goals of confinement and discipline, are not a therapeutic treatment environment. In recent years, there has been much discussion of the consequences of this situation by advocacy groups, academic writing, and the media, and considerable litigation activity.

The recent DRO report discusses community and social factors, including lack of treatment alternatives, which result in jailing of people with mental illnesses. It further examines the limitations on mental health treatment in the jail environment, resulting in the use of ³“correctional tools”² such as solitary confinement, restraints, discipline, and force.

Woven into the report’s analysis, findings, and recommendations are multiple individual cases of jail inmates with mental disorders who experienced adverse events while in custody. These experiences are described in detail based on incident reports, correctional health records, hospital records, and internal jail investigation findings. A number of the stories involve use of force, including, for example, an actively psychotic schizophrenic inmate who was tazed, then subdued by ³“2-4 focused blows”² to the face resulting in facial fractures. Other stories are equally graphic.

According to the *Oregonian* newspaper, the Multnomah County Sheriff told the paper's editorial board that he does not dispute the findings of the report.⁴

While the report concludes with a set of recommendations to improve conditions and treatment, it recognizes that a jail inherently is not a safe and therapeutic place for people in need of mental health treatment, and urges system changes at the community level to prevent behavior caused by mental illness that often becomes criminalized.

The federal Protection and Advocacy for Individuals with Mental Illness Act (PAIMI Act)⁵ establishes an organization in each state with authority to monitor facilities that care for or confine individuals with disabilities. These organizations have broad ranging investigation powers and have been active in investigating conditions in jails and prisons nationally. DRO is the federally designated Protection and Advocacy System for Oregon.

A media search will identify similar recent reports about jails overwhelmed by increasing mental health needs of inmates. For example, a Human Rights Watch article in 2015 examined experiences of jail and prison inmates nationally, and concluded³the misuse of force against prisoners with mental health problems is widespread and may be increasing.²⁶ There is no reason to think that the prevalence of mental illness in the corrections system will change any time soon. The Cook County jail in Chicago has been described as³America's largest mental hospital.²⁷

Many states and their courts have undertaken initiatives intended to divert individuals with mental illness from the criminal justice system and into treatment, housing, and supported services. Unfortunately, due to decades of cuts to community mental health budgets, those resources are limited. The DRO report quotes one Oregon state court judge as saying, ³if we had the services in the community, I could take 100 people with mental illness out of the jail tomorrow.²

There has been significant litigation, including class actions, in recent years aimed at requiring reform of treatment of the mentally ill jail population. Jail inmates include both individuals convicted of crimes and those awaiting trial. Both have a constitutional right to adequate medical treatment, including mental health treatment.

For example, in an ongoing federal court class action in Washington, a federal judge entered an injunction in April 2015 requiring the state to reform its competency assessment and restoration practices for jail inmates awaiting trial. The court found that ³Defendants have demonstrated a long history of failing to adequately protect the constitutional rights of Plaintiffs and class members, and have acknowledged that this failure is indefensible.²⁸ The court appointed a monitor and has closely followed reform efforts through reports to the court and hearings. The court also imposed a series of fines against the state for noncompliance, which as of February 28, exceeded \$10 million.⁹

Class actions have been filed regarding treatment of mentally ill jail inmates in California, Illinois, Louisiana, New York, Nevada, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and other states. Many of these cases, like the one in Washington, involve delays in pretrial competency assessments, in which class members have been charged but not convicted of any crime.

**We would like to thank Eric J. Neiman (Lewis Brisbois Bisgaard & Smith LLP, Portland, OR) and Suzette E. Gordon (Bronx Partners for Healthy Communities, New York, NY) for respectively authoring and reviewing this email alert.*

¹ Sarah Radcliffe, *A Merry Go Round that Never Stops: Mental Illness in the Multnomah County Detention Center*, Disability Rights Oregon (2017), https://droregon.org/wp-content/uploads/A_Merry_Go_Round_That_Never_Stops_Mental_Illness_in_the_Multnomah_County_Detention_Center.pdf (last accessed Mar. 5, 2017).

² This range is consistent with national estimates of jail inmates with mental illness. In 2006, the Department of Justice estimated that 64.2% of jail inmates met the criteria for a mental health problem. See *Bureau of Justice Statistics Special Report: Mental Health Problems of Prison and Jail Inmates*, 3.

³ See Doris J. James & Lauren E. Glaze, *Bureau of Justice Statistics Special Report: Mental Health Problems of Prison and Jail Inmates*, 1 (2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf> (last accessed Mar. 5, 2017).

⁴ *Time to focus on mentally ill at Multnomah County Detention Center: Editorial*, *Oregonian* (Mar. 5, 2017, 7:00 AM, updated Mar. 5, 2017, 10:42 AM), http://www.oregonlive.com/opinion/index.sst/2017/03/time_to_focus_on_treatment_of.html (last accessed Mar. 5, 2017).

⁵ See 42 U.S.C. §§ 10801 *et seq.*

⁶ *Callous and Cruel: Use of Force Against Inmates with Mental Disabilities in US Jail and Prisons*, Human Rights Watch (May 12, 2015), <https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and> (last accessed Mar. 5, 2017).

⁷ Matt Ford, *America's Largest Mental Hospital Is a Jail*, *The Atlantic* (June 8, 2015), <https://www.theatlantic.com/politics/archive/2015/06/americas-largest-mental-hospital-is-a-jail/395012/> (last accessed Mar. 5, 2017).

⁸ *Trueblood v. Wash. State Dep't of Soc. and Health Serv.*, 101 F. Supp. 3d 1010, 1024 (W.D. Wash. Apr. 2, 2015).

⁹ One part of the injunction, having to do with restoration services, was reversed by the Ninth Circuit, but the trial court's findings of fact, conclusions of law, and remedies were upheld. *Trueblood v. Wash. State Dep't of Soc. and Health Serv.*, 822 F.3d 1037 (9th Cir. 2016), https://scholar.google.com/scholar_case?q=Trueblood+v.+Wash.+Dept.+of+Social+822+F.3d+1037&hl=en&as_sdt=6,38&as_vis=1&case=10948824101954316338&scil=0.

