

On the Over-Valuation of Risk for People with Mental Illnesses

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An estimated two million people with serious mental illnesses are booked into jail each year, making prevalence rates for people with serious mental illnesses in jails three to six times higher than for the general population. Almost three-quarters of these adults have co-occurring substance use disorders. Once incarcerated, they tend to stay longer in jail and are at a higher risk of recidivism upon release than individuals without these disorders.

There are many reasons for this situation, including a shortage of accessible, high-quality community-based behavioral health treatment services, diversion programs, and specialized community supervision (pretrial/probation/parole). The common perception that people with mental illnesses pose a greater risk to public safety than those without these illnesses is a contributing factor as well. In particular, judges who are responsible for making decisions about pretrial release and sentencing often believe that people with mental illnesses pose a greater risk of failing to appear in court or committing new crimes, particularly violent crimes.

The Council of State Governments Justice Center and the American Psychiatric Association Foundation, in partnership with the National Judicial College, convened a national expert panel of leading researchers, judges, and forensic psychiatrists to consider the current state of the research on the assessment of the risk of violence, failure to appear in court, and recidivism for people with serious mental illnesses (SMI).¹ Judicial advisors responded to the presentations from these experts and provided input on key judicial considerations about this issue.

Consequently, members of the panel agreed on the following consensus statements:

1. People with serious mental illnesses (SMI), including those with co-occurring substance use disorders, are over-represented among people involved in the criminal justice system for a variety of complex reasons.
2. The direct link between active symptoms of serious mental illness and risk of engaging in criminal behavior applies to a relatively small number of people. The same is true for the link between serious mental illness and risk of violence.
3. For people with mental illnesses, judges (and others) should consider the same factors used to assess risk for all other defendants. Past behavior should be considered as judges try to predict future behavior, and judges should be informed most by risk factors that are associated with threats to public safety.
4. Empirically developed, validated assessment tools have identified factors that are truly predictive and relevant to various judicial decisions at different stages of a criminal case. These tools are carefully designed to appropriately account for predictive factors, such as past behavior.
5. There is a small portion of the population for whom the presence of active symptoms of SMI is itself a direct risk factor for crime and violence that should be taken into account when making release and detention decisions for this population.
 - SMI is relevant to release and detention decisions only when the crime appears to be directly related to or the result of the mental illness, which may be difficult to determine in time for an initial decision about pretrial release.
 - The most important and relevant risk factors that should be considered are those shared by defendants with or without SMI. These are the factors discussed above, which can be identified in a timely manner at different stages of a criminal case.
6. When people have an SMI that is not clearly linked to crime and violence, care should be taken to ensure the presence of an SMI is not used to justify more severe criminal justice sanctions, especially incarceration. When possible, connections should be made with appropriate community-based treatment providers. Addressing mental health symptoms can help individuals respond to interventions directly targeted to reduce future criminal activity.
7. A better understanding about these issues among judges and other decision makers can have a significant impact on reducing the over-representation of people with SMI in the criminal justice system.

1. The Substance Abuse and Mental Health Services Administration defines people with serious mental illnesses (SMI) as those age 18 and over who currently or at any time during the past year have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria, resulting in a functional impairment that substantially interferes with or limits one or more major life activities.

Membership of the National Expert Panel*

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* All titles are as of June 2015