Out of our Minds: The Case For Mental Health Care

By “Coach Vance” Trefethen

***Resolved: The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction.***

Case Summary: This plan reforms and increases mental health care treatment for federal prisoners. A federal Bureau of Prison (BOP) policy change in 2014 plus Trump budget cuts in 2016 led to a massive reduction in mental health care services for federal inmates. BOP responded to the changes by simply reclassifying most of the mental cases as not serious enough and cut them out of the treatment. That’s a bad idea because untreated mental illness is a really bad problem inside prison and leads to more problems after they get out.

This plan goes back to the pre-2014 standards and increases funding to get all necessary mental health care provided to federal prisoners. If Neg argues that there are more prisoners needing treatment than our plan accounts for, the funding will more than cover it, and such an argument will only increase the validity of the AFF harms. It costs about $71,000/year above normal costs to properly treat a prisoner for mental illness.

This plan also invokes the 8th Amendment (prohibition against “cruel and unusual punishment”) for enforcement, as advocated by our evidence. The Supreme Court did something similar to our Plan in 2011 when the state of California’s prisons were massively overcrowded. The overcrowding led to denial of physical and mental health care, and state prisoners were suffering and dying. Federal courts ordered California to either increase the capacity of its prisons, transfer prisoners elsewhere, or release some early.

When California dragged their feet, the Court told them to start sending them home early because the 8th Amendment violations were so awful. Details on this are in the Brown v. Plata decision quoted in this case. Our experts argue that the 8th Amendment and its remedies should apply to lack of mental health care, not only lack of physical health care (although *Brown v. Plata* touched on both). In *Brown v Plata*, the Court left it up to the State of California as to which prisoners would be released early, and California was able to release the least violent, least dangerous, least time left on their sentence, etc. prisoners, without creating any public safety crisis. This is important because it’s a precedent where the plan has been tried before and in the extreme scenario where the enforcement really has to kick in, it will work.  
  
Note: “DSM” is the Diagnostic and Statistical Manual of Mental Disorders. Considered the “bible” of the psychiatric profession, it’s an official definition of the diagnosis and symptoms of mental illness.

Out of our Minds: The Case for Mental Health Care 4

OBSERVATION 1. DEFINITIONS 4

Significant 4

Reform 4

OBSERVATION 2. INHERENCY, the structure of the Status Quo. It’s about neglected mental health care. 4

FACT 1. Denial. 23% of federal inmates need mental health care, but the Federal Bureau of Prisons (BOP) only accepts 3% 4

FACT 2. The 2014 policy. A 2014 BOP policy substantially decreased mental health care 5

OBSERVATION 3. We offer the following PLAN implemented by Congress, the President, and the federal courts. 5

OBSERVATION 4. ADVANTAGES 5

ADVANTAGE 1. Reduce prison violence 5

Untreated mental illness increases prison violence 5

ADVANTAGE 2. Safer communities 6

A. 96% of all federal prisoners will rejoin society some day. It’s critical they come out better than they went in 6

B. Mental illness treatment is essential for successful re-entry after release 6

ADVANTAGE 3. Increasing human rights and reducing human suffering 6

A. We increase human rights because mental illness treatment is key to upholding the 8th Amendment’s protection against cruel and unusual punishment 6

B. We reduce human suffering because mentally ill prisoners suffer greatly without treatment 6

2A Evidence: Mental Health Care 7

BACKGROUND 7

Bureau of Prisons’ definition of “mental illness” 7

INHERENCY 7

Denial of the problem since 2014 7

BOP treats only 3% for mental illness. But BOP 2016 study found 19%. Bureau of Justice Statistics study found 45% 7

BOP has low numbers of mental illness reported because they don’t bother documenting all the cases 7

Details about the 2014 policy change that cut mental health care in federal prisons 8

Number of federal prisoners getting mental health treatment went down 35% after 2014 policy change 8

Lack of resources 9

Mental health needs are denied because BOP lacks the resources 9

In some federal prisons, mental health treatment dropped by 80% or more after 2014 9

Trump’s budget cuts eliminated a lot of mental health treatment in federal prisons 9

Schizophrenics are likely to get arrested, and government is not prepared to address their illness 9

Bipolar disorder leads to imprisonment, and a lot of problems for the incarcerated because help may not be available 10

8th Amendment 10

8th Amendment should require mental health care, but we don’t know how Supreme Court will rule (new Trump appointees) 10

HARMS / SIGNIFICANCE 11

Cutting mental health care = Eliminating it. Half-done mental health = not doing it at all 11

More federal prisoners are turning to self-harm and suicide since mental health care was cut 11

Untreated mental illness violates the 8th Amendment and is as cruel as physical injury 11

California Study found suicide rate 80% higher than national prison average due to lack of mental health treatment 12

Suicide rates in federal prison are rising. 19 suicides per 100,000 prisoners as of 2018 12

A/T “Mentally ill are acquitted by reason of insanity, so not in prison” – Doesn’t work that way. 13

A/T “Inflated diagnoses” - It seems like psych diagnoses have been inflated, but overall they actually haven’t 13

A/T “Inflated diagnoses” – Not a problem, and some expansion is normal 14

SOLVENCY / ADVOCACY 14

Increased enforcement of existing tax laws would increase federal revenues by $1 trillion over the next decade 14

How much does mental health treatment cost? About $71,000 extra per mentally ill inmate (from Washington State prison numbers) 14

How many prisoners? (See FACT 1. Treatment would go from 3% to 23% of prisoners) 20% of 153,248 would start getting treatment= 30,650 14

How much does the plan cost? Do the math. 30,650 prisoners x $71,000 = $2.18 billion 15

Mental health care in prison should be constitutionally required based on the 8th Amendment 15

Supreme Court should rule the 8th Amendment requires mental health care, and send prisoners home if it’s not provided 15

A/T “Court can’t just order prisons to do it” –Supreme Court ordered California to fix it when they couldn’t provide adequate health care under the 8th Amendment 16

Federal government has responsibility for mental health care of prisoners 16

Supreme Court could order prisons to release inmates early if they can’t comply with 8th Amendment on mental illness 17

In *Brown v. Plata*, Supreme Court gave California 3 options for complying with 8th Amendment on inadequate health care: 1) Reduce the prison population. 2) Increase prison capacity. 3) Transfer prisoners to other facilities 17

ADVANTAGES 18

Psychiatric treatment reduces crime 18

Mental health care in prison makes a difference in re-integration after release 18

DISAD RESPONSES 18

A/T “Might release some prisoners” – Same thing happened when Supreme Court ordered California to reduce overcrowding due to lack of medical care. But there was no public safety impact 18

Out of our Minds: The Case for Mental Health Care

Prison isn’t a vacation or a hotel, we all know that. But regardless of why someone ends up in federal prison, no matter what they’ve done, the 8th Amendment’s prohibition against “cruel and unusual punishment” applies. It requires us to hold on to our humanity and our civilization by putting some minimum standards of decency in the way we punish offenders. Please join us in affirming that: The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction.

OBSERVATION 1. DEFINITIONS

Significant

Merriam Webster Online Dictionary copyright 2021. <https://www.merriam-webster.com/dictionary/significant> (accessed 26 June 2021)

2 a: having or likely to have [influence](https://www.merriam-webster.com/dictionary/influence#h1) or effect

Reform

Merriam Webster Online Dictionary copyright 2021 <https://www.merriam-webster.com/dictionary/reform> (accessed 28 May 2021)

**:**to put or change into an improved form or condition

OBSERVATION 2. INHERENCY, the structure of the Status Quo. It’s about neglected mental health care.

**We see this in 2 FACTS:**

FACT 1. Denial. 23% of federal inmates need mental health care, but the Federal Bureau of Prisons (BOP) only accepts 3%

WASHINGTON POST 2018 (journalists Christie Thompson and Taylor Elizabeth Eldridge) 21 Nov 2018 “‘NO ONE TO TALK YOU DOWN’” (accessed 7 July 2021) <https://www.washingtonpost.com/news/national/wp/2018/11/21/feature/federal-prisons-were-told-to-improve-inmates-access-to-mental-health-care-theyve-failed-miserably/>

In 2014, amid mounting criticism and legal pressure, the Federal Bureau of Prisons imposed a new policy promising better care and oversight for inmates with mental-health issues. But data obtained by [the Marshall Project](https://www.themarshallproject.org/2018/11/21/treatment-denied-the-mental-health-crisis-in-federal-prisons?ref=hp-1-100%20%5bthemarshallproject.org%5d) through a Freedom of Information Act request shows that instead of expanding treatment, the bureau has lowered the number of inmates designated for higher care levels by more than 35 percent. Increasingly, prison staff are determining that prisoners — some with long histories of psychiatric problems — don’t require any routine care at all. As of February, the Bureau of Prisons classified just 3 percent of inmates as having a mental illness serious enough to require regular treatment. By comparison, [more than 30 percent](https://www.themarshallproject.org/documents/4901382-Prevalence-of-Mental-Illness-among-California) of those incarcerated in California state prisons receive care for a “serious mental disorder.” In New York, 21 percent of inmates are on the mental-health caseload. Texas prisons provide treatment for roughly 20 percent.  
  
**END QUOTE. THEY GO ON LATER IN THE CONTEXT TO SAY QUOTE:**  
Although only a small fraction of federal inmates are deemed ill enough to merit regular therapy, officials acknowledged that 23 percent have been diagnosed with some mental illness.

FACT 2. The 2014 policy. A 2014 BOP policy substantially decreased mental health care

Office of the Inspector General, US Dept of Justice 2017. “Review of the Federal Bureau of Prisons’ Use of Restrictive Housing for Inmates with Mental Illness” July 2017 <https://oig.justice.gov/reports/2017/e1705.pdf> (accessed 8 July 2021) (brackets added)

The BOP adopted a new mental health policy in 2014, increasing the standards of care for inmates with mental illness. However, since the policy was issued, the total number of inmates who receive regular mental health treatment decreased by approximately 30 percent, including 56 percent for inmates in SMUs, and about 20 percent overall for inmates in RHUs during the scope of our review. Based on our review, it appears that mental health staff may have reduced the number of inmates, including those in RHUs [Restrictive Housing Units], who must receive regular mental health treatment because they did not have the necessary staffing resources to meet the policy’s increased treatment standards. Indeed, we found that, as of October 2015, the BOP had filled only 57 percent of its authorized full-time Psychiatrist positions nationwide and that it had significant staffing issues with regard to Psychologist positions as well.

OBSERVATION 3. We offer the following PLAN implemented by Congress, the President, and the federal courts.

1. The federal Bureau of Prisons reverts to the pre-2014 standards for determining eligibility for mental illness treatment.  
2. Enforcement through the federal courts. Denial of mental health care will be treated as an 8th Amendment violation for cruel and unusual punishment. Prisoners improperly denied will either be transferred to facilities where treatment is available or released. Federal officials willfully in violation will be found in contempt of court and sanctioned accordingly.  
3. Funding through increased enforcement of existing tax laws.  
4. Plan takes effect 60 days after an affirmative ballot.   
5. All Affirmative speeches may clarify

OBSERVATION 4. ADVANTAGES

ADVANTAGE 1. Reduce prison violence

Untreated mental illness increases prison violence

WASHINGTON POST 2018 (journalists Christie Thompson and Taylor Elizabeth Eldridge) 21 Nov 2018 “‘NO ONE TO TALK YOU DOWN’” (accessed 7 July 2021) (brackets in original) <https://www.washingtonpost.com/news/national/wp/2018/11/21/feature/federal-prisons-were-told-to-improve-inmates-access-to-mental-health-care-theyve-failed-miserably/>

Untreated mental illness can also contribute to prison violence. While the vast majority of people with a mental illness are not violent, [research compiled in recent years](https://www.treatmentadvocacycenter.org/evidence-and-research/learn-more-about/3633-risk-factors-for-violence-in-serious-mental-illness) shows that people with serious psychotic disorders, especially when untreated, can be more likely to commit a violent crime. And mentally ill individuals can be [up to 11 times as likely as the general population](https://jamanetwork.com/journals/jamapsychiatry/fullarticle/208861)to be victimized, researchers have found. “Their symptoms could include delusions, thoughts that other people are conspiring against them,” said Paul Appelbaum, a psychiatrist at Columbia University. “[And] to the extent that they are loud, talking about their delusions, intrusive with other people or hyperactive, they can end up provoking other prisoners into attacking them.”

ADVANTAGE 2. Safer communities

A. 96% of all federal prisoners will rejoin society some day. It’s critical they come out better than they went in

Kevin Ring and Milly Gill 2017 (Ring – President, Families Against Mandatory Minimums (FAMM). Gill – Director of Federal Legislative Affairs, FAMM) USING TIME TO REDUCE CRIME: Federal Prisoner Survey Results Show Ways to Reduce Recidivism, June 2017 <https://www.prisonpolicy.org/scans/famm/Prison-Report_May-31_Final.pdf> (accessed 7 July 2021)

Ninety-six percent of federal prisoners are eventually going to leave prison and rejoin society.1 Those of us concerned about protecting public safety should support policies and programs that are proven to reduce the likelihood that returning citizens will reoffend. Indeed, all Americans have an interest in making sure that people come out of prison better than they went in.

B. Mental illness treatment is essential for successful re-entry after release

Michael D. Carvajal 2020. (Director, Federal Bureau of Prisons) 2 Dec 2020 BEFORE THE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY U.S. HOUSE OF REPRESENTATIVES <https://www.congress.gov/116/meeting/house/111100/witnesses/HHRG-116-JU08-Wstate-CarvajalM-20201202.pdf> (accessed 9 July 2021)

Reentry programing is a critical component of public safety; individuals are much less likely to return to a life of crime and victimization if they leave prison with an education, job training, treatment for mental illness and/or substance use when needed, and a general understanding of what it means to be a productive, law-abiding citizen.

ADVANTAGE 3. Increasing human rights and reducing human suffering

A. We increase human rights because mental illness treatment is key to upholding the 8th Amendment’s protection against cruel and unusual punishment

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently a Ph.D. student at the University of Southern California. Caspar is an attorney with the law firm of Squire Patton Boggs LLP in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 9 July 2021)

What this Eighth Amendment jurisprudence suggests is that when an individual has cancer or diabetes and ends up in jail, the jail must provide the individual with the medication and treatment necessary to control his or her illness, as refusing to provide medication or treatment is unconstitutional. As a matter of logic, this protection should extend to individuals who enter a jail or prison with mental illnesses.

B. We reduce human suffering because mentally ill prisoners suffer greatly without treatment

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently a Ph.D. student at the University of Southern California. Caspar is an attorney with the law firm of Squire Patton Boggs LLP in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 9 July 2021)

Unable to find proper care in penitentiaries, victimized by fellow inmates and guards alike, and incapable of finding any voice in a democratic society, mentally ill inmates have suffered greatly in state and federal jails. Many mentally ill individuals remain untreated after leaving jails or prisons, creating a revolving door within the jails and prisons (where these individuals often return repeatedly, sometimes for want of another place to go).

2A Evidence: Mental Health Care

BACKGROUND

Bureau of Prisons’ definition of “mental illness”

Office of the Inspector General, US Dept of Justice 2017. “Review of the Federal Bureau of Prisons’ Use of Restrictive Housing for Inmates with Mental Illness” July 2017 <https://oig.justice.gov/reports/2017/e1705.pdf> (accessed 8 July 2021)

BOP policy defines a mental disorder (illness) as: A syndrome characterized by clinical significant disturbance in an individual’s cognition, emotional regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress or disability in social, occupational, or other important activities.

INHERENCY

Denial of the problem since 2014

BOP treats only 3% for mental illness. But BOP 2016 study found 19%. Bureau of Justice Statistics study found 45%

Office of the Inspector General, US Dept of Justice 2017. “Review of the Federal Bureau of Prisons’ Use of Restrictive Housing for Inmates with Mental Illness” July 2017 <https://oig.justice.gov/reports/2017/e1705.pdf> (accessed 8 July 2021)

BOP data showed that, as of 2015, only 3 percent of the BOP’s sentenced inmate population was being treated regularly for mental illness. Yet, the BOP’s FY 2016 Performance Budget Congressional Submission cited an internal BOP study, which suggested that approximately 19 percent of federal inmates had a history of mental illness. Moreover, a 2006 Bureau of Justice Statistics report concluded that 45 percent of federal inmates had symptoms or a recent history of mental illness.

BOP has low numbers of mental illness reported because they don’t bother documenting all the cases

Office of the Inspector General, US Dept of Justice 2017. “Review of the Federal Bureau of Prisons’ Use of Restrictive Housing for Inmates with Mental Illness” July 2017 <https://oig.justice.gov/reports/2017/e1705.pdf> (accessed 8 July 2021)

We found that the BOP cannot accurately determine the number of inmates who have mental illness because institution staff do not always document mental disorders. The BOP’s FY 2014 data estimates that approximately 12 percent of inmates have a history of mental illness; however, in 2015, the BOP’s Chief Psychiatrist estimated, based on discussions with institutions’ Psychology Services staffs, that approximately 40 percent of inmates have mental illness, excluding inmates with only personality disorder diagnoses. Similarly, one institution’s Deputy Chief Psychologist estimated that 50 percent of that institution’s inmates may have Antisocial Personality Disorder; nevertheless, we found that this disorder was documented for only about 3.3 percent of the BOP’s total inmate population. Because mental health staffs do not always document inmates’ mental disorders, the BOP is unable to ensure that it is providing appropriate care to them.

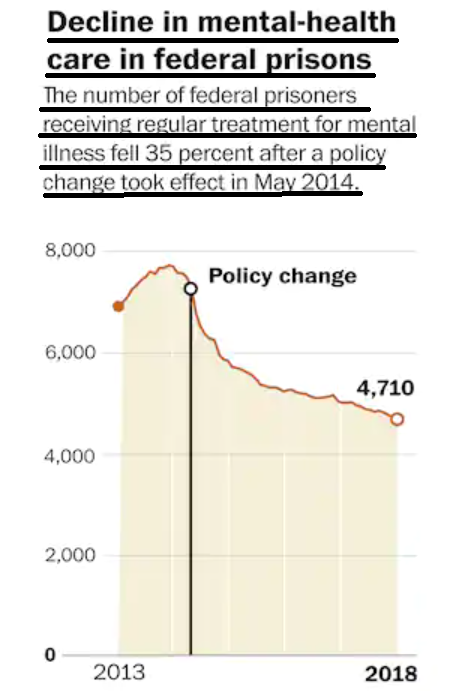
Details about the 2014 policy change that cut mental health care in federal prisons

[CHRISTIE THOMPSON](http://www.themarshallproject.org/staff/christie-thompson) and [TAYLOR ELDRIDGE](https://www.themarshallproject.org/staff/taylor-eldridge) 2018 (journalists) 21 Nov 2018 “Treatment Denied: The Mental Health Crisis in Federal Prisons” <https://www.themarshallproject.org/2018/11/21/treatment-denied-the-mental-health-crisis-in-federal-prisons> (accessed 11 July 2021)

Current policy states that inmates are supposed to receive monthly or even weekly check-ins with a mental-health professional and be monitored by a team that meets regularly to review treatment plans and progress. Before 2014, there were no such teams, and mental-health staff were required to check in with inmates less frequently. Patricia Griffin, a former psychologist at the federal prison in Otisville, New York, remembers her co-workers dreading the change. “You only have so much time in the day, and suddenly your workload increased pretty dramatically,” she said. Griffin said staff members scrutinized inmates to see if they could safely lower care levels to decrease their caseloads. Before the new policy, the inspector general’s report found, psychologists were more likely to increase an inmate’s care level when reviewing their mental-health status. But once the rules changed, they were significantly more likely to downgrade prisoners.

Number of federal prisoners getting mental health treatment went down 35% after 2014 policy change

WASHINGTON POST 2018 (journalists Christie Thompson and Taylor Elizabeth Eldridge) 21 Nov 2018 “‘NO ONE TO TALK YOU DOWN’” (accessed 7 July 2021) <https://www.washingtonpost.com/news/national/wp/2018/11/21/feature/federal-prisons-were-told-to-improve-inmates-access-to-mental-health-care-theyve-failed-miserably/>



Lack of resources

Mental health needs are denied because BOP lacks the resources

WASHINGTON POST 2018 (journalists Christie Thompson and Taylor Elizabeth Eldridge) 21 Nov 2018 “‘NO ONE TO TALK YOU DOWN’” (accessed 7 July 2021) <https://www.washingtonpost.com/news/national/wp/2018/11/21/feature/federal-prisons-were-told-to-improve-inmates-access-to-mental-health-care-theyve-failed-miserably/>

A review of court documents and inmates’ medical records, along with interviews of former prison psychologists, revealed that although the Bureau of Prisons changed its rules, officials did not add the resources needed to implement them, creating an incentive for employees to downgrade inmates to lower care levels. In an email, the bureau confirmed that mental-health staffing has not increased since the policy took effect.

In some federal prisons, mental health treatment dropped by 80% or more after 2014

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Data shows the reduction in care varies widely depending on location. At the high-security penitentiary near Hazelton, for instance, which is near the medium-security facility where Rudd was housed, the number of inmates receiving regular mental-health care has dropped by 80 percent since May 2014. At the federal prison near Beckley, West Virginia, the number fell 86 percent.

Trump’s budget cuts eliminated a lot of mental health treatment in federal prisons

[CHRISTIE THOMPSON](http://www.themarshallproject.org/staff/christie-thompson) and [TAYLOR ELDRIDGE](https://www.themarshallproject.org/staff/taylor-eldridge) 2018 (journalists) 21 Nov 2018 “Treatment Denied: The Mental Health Crisis in Federal Prisons” <https://www.themarshallproject.org/2018/11/21/treatment-denied-the-mental-health-crisis-in-federal-prisons> (accessed 11 July 2021)

[Staffing shortages elsewhere in the federal prison system](https://www.usatoday.com/story/news/politics/2018/02/13/ill-equipped-and-inexperienced-hundreds-civilian-staffers-assigned-guard-duties-federal-prison-secur/316616002/) have forced the bureau to require some counselors to serve as corrections officers, a situation that worsened under the Trump administration after a lengthy hiring freeze designed to cut spending. In 2016, the bureau had instructed wardens to stop using psychologists for tasks not related to mental health, except in emergencies. But media reports illustrate how counselors and case managers are still being asked to do odd jobs. “The catchphrase in the bureau was ‘Do more with less,’ ” said Russ Wood, a psychologist in federal prisons for 24 years. “The psychologists were getting pulled off to work gun towers and do prisoner escorts. We’re not really devoted to treating.”

Schizophrenics are likely to get arrested, and government is not prepared to address their illness

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently Ph.D. student at Univ. of Southern California. Caspar - attorney with the law firm of Squire Patton Boggs in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 10 July 2021)

Schizophrenics are also “four times more likely to engage in violent conduct” than non-schizophrenic individuals. In the absence of asylums or mental health facilities that can manage their illness, schizophrenics may be more likely to engage in criminal behavior, which would lead to incarceration. Either by way of violence or by seeking illegal substances that may help them self-medicate, schizophrenics may find themselves in state or federal custody despite the fact that both state and federal governments are not adequately prepared to address their illness.

Bipolar disorder leads to imprisonment, and a lot of problems for the incarcerated because help may not be available

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently Ph.D. student at Univ. of Southern California. Caspar - attorney with the law firm of Squire Patton Boggs in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 10 July 2021)

Bipolar disorder—another mental illness that can contribute to a higher rate of incarceration, drug use, and additional mental health problems—results in extreme mood swings, ranging from mania to severe depression. A bipolar individual often cycles from one extreme mood to the other. As with schizophrenia, bipolar disorder affects about 1 percent of the U.S. population and can be a severe detriment for someone confined to a jail or prison cell with inmates who are less than understanding and corrections staff that do not take measures to ensure the individual receives the care and protection he or she needs. Symptoms of the disorder include euphoria, grandiosity, irresponsibility, hopelessness, excessive sleeping or difficulty sleeping, self-criticism, and persistent thoughts of death or suicide. Bipolar individuals have a higher risk of violence than do schizophrenics. Treatments for both disorders include “antipsychotic medication, rehabilitation, cognitive behavior therapy, and self-help groups,” which may not be available while confined to a jail or prison.

8th Amendment

8th Amendment should require mental health care, but we don’t know how Supreme Court will rule (new Trump appointees)

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently a Ph.D. student at the University of Southern California. Caspar is an attorney with the law firm of Squire Patton Boggs LLP in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 9 July 2021)

Of course, Brown v. Plata is only the culmination of expanding case law regarding prisons violating the Eighth Amendment rights of prisoners. What makes this case notable is the explicit focus on mental health problems in portions of the majority opinion. When it comes to failing to address physical health problems, the United States Supreme Court has long been of one voice: prisons and jails must provide adequate protections for inmate health or risk violating the United States Constitution. Yet Brown v. Plata seemed to extend these prior holdings to mental health risk as well. The Court explicitly addressed the mistreatment of mentally ill individuals, noting the large number of suicides, the cruel use of suicide prevention cages to confine individuals with suicidal ideations, and the large number of other instances involving the mistreatment of mentally ill individuals. The Court noted that perhaps the gravest outcome of mental illness in confinement, suicide, exceeded the national average by 80 percent in California prisons. The composition of the United States Supreme Court has changed with two nominees (and counting) made by President Trump, so it is difficult to say whether this trend will continue. Yet, as we will point out, the well-established precedent of the Court, upholding the rights of mistreated prisoners in correctional facilities, should logically extend to inmates suffering from severe mental health problems if it has not already.

HARMS / SIGNIFICANCE

Cutting mental health care = Eliminating it. Half-done mental health = not doing it at all

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently Ph.D. student at Univ. of Southern California. Caspar - attorney with the law firm of Squire Patton Boggs in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 10 July 2021)

Individuals who need treatment often cannot afford it or do not even recognize that they have a problem requiring psychological attention. Even in situations where the patient is able to receive some care, the care may be insufficient, and when it comes to psychological treatment, a job half done is a job not done.

More federal prisoners are turning to self-harm and suicide since mental health care was cut

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Federal prison data obtained and analyzed by The Marshall Project show that more inmates are turning to self-harm, although numbers vary by facility. The combined number of suicides, suicide attempts and self-inflicted injuries have increased 18 percent from 2015—when the bureau began tracking such figures—through 2017.

Untreated mental illness violates the 8th Amendment and is as cruel as physical injury

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From time to time, prison reform advocates and even federal agencies may argue that a jail or prison is so poorly run that the whole locale violates the Eighth Amendment. Complaints may be raised because the food is nearly inedible or the living conditions so oppressive and dangerous that placing anyone within the facility would constitute cruel and unusual punishment. These claims may prompt action on the part of the offending county or state, and the correctional facilities may then restore a modicum of civility, bringing everything back to normal. Yet for many inmates, improving the menu or eliminating the rodent infestation does not solve the problem. For individuals suffering from severe mental illnesses, being placed in a facility where their psychological needs remain unaddressed might be as cruel, if not more cruel, than allowing them to become physically injured and refusing to provide treatment.

California Study found suicide rate 80% higher than national prison average due to lack of mental health treatment

**[This is Brown v. Plata, where the Supreme Court ordered California to release some prisoners to reduce overcrowding and get into compliance with the 8th Amendment]**

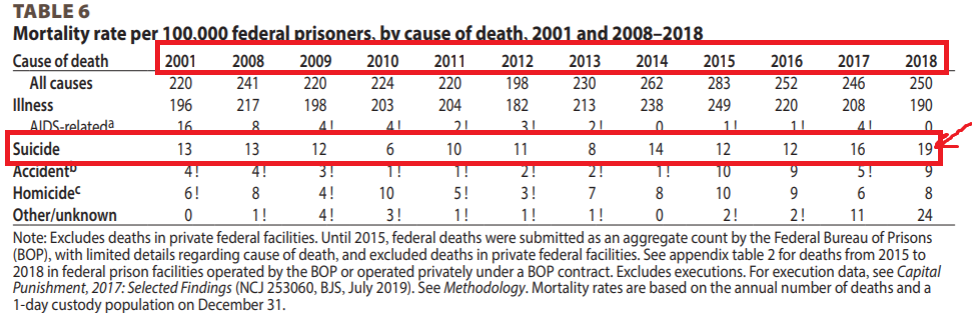
Supreme Court Justice Anthony Kennedy 2011. Opinion of the Court in Brown v. Plata 23 May 2011 (this is the Supreme Court case where the Court ordered California to reduce its prison population because lack of medical care was violating the 8th Amendment for “cruel & unusual punishment”) <https://www.law.cornell.edu/supct/html/09-1233.ZS.html> (accessed 11 July 2021)

Other inmates awaiting care may be held for months in administrative segregation, where they endure harsh and isolated conditions and receive only limited mental health services. Wait times for mental health care range as high as 12 months. Id., at 704. In 2006, the suicide rate in California’s prisons was nearly 80% higher than the national average for prison populations; and a court-appointed Special Master found that 72.1% of suicides involved “some measure of inadequate assessment, treatment, or intervention, and were therefore most probably foreseeable and/or preventable.”

Suicide rates in federal prison are rising. 19 suicides per 100,000 prisoners as of 2018

We can’t hold up this chart from the federal Bureau of Justice Statistics in 2021, but I can describe what it says and make it available to anyone who wants to see it. Its title refers to mortality rate per 100,000 federal prisoners by cause of death in 2001 and 2008-2018. It shows the suicide rate was 13 per 100,000 in 2001 and the same in 2008. In 2010 it dropped to 6. In 2014 it was 14, then 12 in 2015, 12 again in 2016, 16 in 2017 and the latest data available is 19 suicides per 100,000 prisoners in 2018.

Dr. E. Ann Carson 2021. (PhD; statistician with federal Bureau of Justice Statistics, US Justice Dept.) April 2021 Mortality in State and Federal Prisons, 2001-2018 – Statistical Tables | April 2021 <https://bjs.ojp.gov/content/pub/pdf/msfp0118st.pdf>



A/T “Mentally ill are acquitted by reason of insanity, so not in prison” – Doesn’t work that way.

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently Ph.D. student at Univ. of Southern California. Caspar - attorney with the law firm of Squire Patton Boggs in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 10 July 2021)

While the manifestation of these and other psychological disorders can lead to criminal activity, a jury or judge may not always acquit an individual with a psychiatric illness. The insanity defense in criminal law does not lead to an acquittal of the defendant unless the individual is determined to be unable to (1) appreciate the criminality of his or her conduct or conform his or her conduct to the requirements of the law, or (2) determine the difference between right and wrong at the time of the act. The insanity defense may also lead to an acquittal if the individual displayed an irresistible impulse to commit the criminal act, depending on the jurisdiction. In fact, while some jurisdictions require the prosecution to prove sanity beyond a reasonable doubt once the defense raises the insanity defense, other jurisdictions actually shift the burden to the defendant. When the burden of proof shifts, the burden may not be beyond a reasonable doubt, but it may be as high as clear and convincing evidence, which is no small task in a criminal system where the defendant ordinarily bears no burden at all.

A/T “Inflated diagnoses” - It seems like psych diagnoses have been inflated, but overall they actually haven’t

Prof. Nick Haslam and Fabian Fabiano 2020. (Fabian – Professor of Psychology, Univ. of Melbourne, Australia. Fabiano – Research Assistant, Brain & Mind, Murdoch Children’s Research Institute, Univ. of Melbourne, Australia) 16 July 2020 “**Is psychiatry shrinking what’s considered normal?”** <https://theconversation.com/is-psychiatry-shrinking-whats-considered-normal-142477> (accessed 15 July 2021)

It seems obvious the DSM has steadily inflated psychiatric diagnoses. But we decided to test this assumption in our [recently published research](https://www.sciencedirect.com/science/article/abs/pii/S0272735820300775) — with surprising results. We scoured the research for studies in which consecutive editions of the manual were used to diagnose the same group of people on a single occasion. These were 1980’s DSM-III, 1987’s DSM-III-R, 1994’s DSM-IV, and 2013’s DSM-5. For instance, a study might use DSM-III and DSM-III-R criteria to diagnose schizophrenia in a sample of inpatients. We found more than 100 studies comparing rates of diagnosis of at least one mental disorder across a pair of editions. In all, 123 disorders could be compared based on 476 study findings. For each comparison, we evaluated diagnostic inflation by dividing the rate of diagnosis in the later edition by the rate in the earlier one — the “relative rate”. For example, if 15% of a group of people received a certain diagnosis by DSM-5’s criteria and only 10% received it by DSM-IV’s, the relative rate would be 1.5. This would indicate diagnostic inflation. If the percentages were reversed, the relative rate would be 0.67, indicating deflation. A relative rate of 1.0 would show stability. We found no consistent evidence of diagnostic inflation. Relative rates for each new edition were 1.11 (DSM-III-R), 0.95 (DSM-IV) and 1.01 (DSM-5). None of these differed reliably from 1.0 or from one another. The average relative rate overall was exactly 1.0, indicating an absence of diagnostic inflation from DSM-III to DSM-5. Although there was no pattern of inflation across the board, we found a few specific disorders have inflated. Attention-deficit/hyperactivity disorder (ADHD) and autism both inflated significantly from DSM-III to DSM-III-R, as did several eating disorders and Generalised Anxiety Disorder from DSM-IV to DSM-5. However, a similar number of disorders significantly deflated so fewer people could be diagnosed with them, including autism from DSM-IV to DSM-5.

A/T “Inflated diagnoses” – Not a problem, and some expansion is normal

Prof. Nick Haslam and Fabian Fabiano 2020. (Fabian – Professor of Psychology, Univ. of Melbourne, Australia. Fabiano – Research Assistant, Brain & Mind, Murdoch Children’s Research Institute, Univ. of Melbourne, Australia) 16 July 2020 “**Is psychiatry shrinking what’s considered normal?”** <https://theconversation.com/is-psychiatry-shrinking-whats-considered-normal-142477> (accessed 15 July 2021)

As we have written in relation to “[concept creep](https://www.researchgate.net/profile/Nick_Haslam/publication/295247201_Concept_Creep_Psychology's_Expanding_Concepts_of_Harm_and_Pathology/links/59d80703a6fdcc2aad065364/Concept-Creep-Psychologys-Expanding-Concepts-of-Harm-and-Pathology.pdf)”, ideas can broaden in two directions: downward to encompass milder phenomena than they did previously, and outward to encompass new kinds of phenomena. Our study finds little evidence for the “vertical” sort of creep, but the “horizontal” sort has surely occurred. New DSM editions have always identified new ways of being mentally ill, and some of the rhetorical heat generated by DSM-5’s critics was directed at new diagnoses. The fact that psychiatric classifications continue to evolve should not surprise us, and nor should the fact they sometimes expand. Such changes are not unique to the mental health field either. As Allen Frances has drily [observed](https://www.psychiatrictimes.com/view/conversations-critical-psychiatry-allen-frances-md), “modern medicine is making such rapid advances, soon none of us will be well.” Our findings suggest that although new ways of being mentally unwell may continue to be discovered, the old ways have tended to stay the same.

SOLVENCY / ADVOCACY

Increased enforcement of existing tax laws would increase federal revenues by $1 trillion over the next decade

Galen Hendricks & Seth Hanlon 2021 (*Hendricks is a research associate at the Center for American Progress. Hanlon is a senior fellow at the Center* ) 19 Apr 2021 “Better Tax Enforcement Can Advance Fairness and Raise More Than $1 Trillion of Revenue” <https://www.americanprogress.org/issues/economy/reports/2021/04/19/498311/better-tax-enforcement-can-advance-fairness-raise-1-trillion-revenue/> (accessed 17 June 2021)

The good news is that Congress and the Biden administration have an opportunity this year to begin rebuilding the IRS’ enforcement capabilities, direct new resources toward thoroughly auditing high-income taxpayers and corporations, and modernize the agency’s computer systems in a way that will improve both compliance and taxpayer service. By taking these steps, the United States can increase revenues by more than $1 trillion over a decade, according to multiple estimates.  In other words, investments in tax enforcement would pay for themselves and could pay for other critical investments at the same time.

How much does mental health treatment cost? About $71,000 extra per mentally ill inmate (from Washington State prison numbers)

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently Ph.D. student at Univ. of Southern California. Caspar - attorney with the law firm of Squire Patton Boggs in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 10 July 2021)

Additionally, the state cost for a mentally ill inmate is significantly higher than for a non-mentally-ill inmate: in Washington State prisons in 2009, the average cost per year was $101,000 for a mentally ill inmate versus $30,000 per year for a non-mentally ill inmate.

How many prisoners? (See FACT 1. Treatment would go from 3% to 23% of prisoners) 20% of 153,248 would start getting treatment= 30,650

Zoukis Consulting Group 2020. (consulting agency assisting federal criminal defendants) “Federal Prisons & Inmates | Federal Bureau of Prisons” 17 Dec 2020 <https://www.prisonerresource.com/federal-prisons/> (accessed 11 July 2021)

As of December 17, 2020, the Bureau of Prisons housed 153,248 federal inmates in its institutions. Inmate population totals are [updated daily](https://www.bop.gov/about/statistics/population_statistics.jsp).

How much does the plan cost? Do the math. 30,650 prisoners x $71,000 = $2.18 billion

Mental health care in prison should be constitutionally required based on the 8th Amendment

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently a Ph.D. student at the University of Southern California. Caspar - attorney with law firm of Squire Patton Boggs LLP in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 9 July 2021)

First, it is important to note why the United States Constitution might require reform. It is precisely because our society has a greater understanding of mental health problems than it did a century ago. When the Founding Fathers drafted the Eighth Amendment, the field of psychology was nonexistent. But now, the field is quite developed, with many advancements helping to explain not only the reasons some individuals become incarcerated, but also that inmates can suffer severely even when showing no apparent physical symptoms. Psychological studies suggest that this suffering may be as real and as severe as a physical injury. Hence, just as jails and prisons must provide medical care to sick or injured inmates, the United States Supreme Court may soon require jails and prisons to provide significant psychological care to alleviate the mental suffering of the afflicted inmates therein.

Supreme Court should rule the 8th Amendment requires mental health care, and send prisoners home if it’s not provided

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently a Ph.D. student at the University of Southern California. Caspar - attorney with law firm of Squire Patton Boggs LLP in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 11 July 2021)

Rather, if the government seeks to convict, sentence, and imprison individual ls with mental health issues, it may well be required to provide them with the protections the United States Constitution promises to all Americans. It may have been impossible or nearly impossible for the California prison system to cut down the number of individuals within its prisons, but that did not stop the United States Supreme Court from mandating the release of prisoners due to the state’s failure to provide them with adequate care in Brown v. Plata. If the Court faces a similar case in the future that involves only inmates with mental health problems, it is difficult to see how the Court could act any differently given sufficient expert testimony on the record detailing the inappropriate treatment of mentally ill inmates. While the Court declined to rule on a similar issue in Taylor v. Barkes in 2015, the exacerbation of the problem with time, and the general need for clarity in legal rulings, should compel the Court to reconsider. All of the United States Supreme Court’s precedent points in one direction: toward declaring the failure to provide adequate mental health treatment unconstitutional under the Cruel and Unusual Punishment Clause of the Eighth Amendment.

A/T “Court can’t just order prisons to do it” –Supreme Court ordered California to fix it when they couldn’t provide adequate health care under the 8th Amendment

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently a Ph.D. student at the University of Southern California. Caspar - attorney with law firm of Squire Patton Boggs LLP in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 11 July 2021)

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Federal government has responsibility for mental health care of prisoners

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently a Ph.D. student at the University of Southern California. Caspar - attorney with law firm of Squire Patton Boggs LLP in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 9 July 2021)

At first blush, providing mental health care to mentally ill inmates would seem to be a harsh burden for the Court to impose on federal, state, and local governments. After all, the United States has a very large jail and prison population compared to other nations, due in part to a large number of laws that place many people within reach of the criminal justice system. However, this imposition is less unjustified than it seems, because the actions of federal, state, and local governments may have greatly increased the number of mentally infirm inmates to begin with. As this Article will show, the 1960s saw an era of abdication of responsibility for psychologically infirm patients by state and local governments in hopes that the federal government would take up the mantle. The federal government became involved in taking responsibility for mental health treatment but never finished the job. As a result, the mentally ill lacked asylums to return to and became incarcerated at disproportionately high rates.

Supreme Court could order prisons to release inmates early if they can’t comply with 8th Amendment on mental illness

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently a Ph.D. student at the University of Southern California. Caspar is an attorney with the law firm of Squire Patton Boggs LLP in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 9 July 2021)

Overall, a combination of state and federal government actions has contributed to the mishandling of the United States mental health crisis. Now that these actions are culminating in a rise in Eighth Amendment violations within jails and prisons, courts are more and more likely to scrutinize this problem in light of greater awareness of the struggles the mentally ill face. Government appeals for saving funds are unlikely to sway the constitutional question of whether it is proper under current and former standards of decency to allow a person with a severe mental illness to remain untreated for the period of his or her incarceration or a large portion thereof. Since the Eighth Amendment likely requires the provision of far greater care, and since the United States Supreme Court has already ordered the release of nearly 46,000 people on grounds that encompass the mistreatment of the mentally ill, jailers and wardens across the country should begin taking steps to bring their facilities in compliance with the United States Constitution on their own terms. If the jailers and wardens wait, they might get to see a panel of judges require them to provide such mental health services.

In *Brown v. Plata*, Supreme Court gave California 3 options for complying with 8th Amendment on inadequate health care: 1) Reduce the prison population. 2) Increase prison capacity. 3) Transfer prisoners to other facilities

Supreme Court Justice Anthony Kennedy 2011. Opinion of the Court in Brown v. Plata 23 May 2011 (this is the Supreme Court case where the Court ordered California to reduce its prison population because lack of medical care was violating the 8th Amendment for “cruel & unusual punishment”) <https://www.law.cornell.edu/supct/html/09-1233.ZS.html> (accessed 11 July 2021)

Courts faced with the sensitive task of remedying unconstitutional prison conditions must consider a range of available options, including appointment of special masters or receivers and the possibility of consent decrees. When necessary to ensure compliance with a constitutional mandate, courts may enter orders placing limits on a prison’s population. By its terms, the PLRA restricts the circumstances in which a court may enter an order “that has the purpose or effect of reducing or limiting the prison population.” [18 U. S. C. §3626(g)(4)](https://www.law.cornell.edu/supct-cgi/get-usc-cite/18/3626/g/4). The order in this case does not necessarily require the State to release any prisoners. The State may comply by raising the design capacity of its prisons or by transferring prisoners to county facilities or facilities in other States. Because the order limits the prison population as a percentage of design capacity, it nonetheless has the “effect of reducing or limiting the prison population.”

ADVANTAGES

Psychiatric treatment reduces crime

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently a Ph.D. student at the University of Southern California. Caspar is an attorney with the law firm of Squire Patton Boggs LLP in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 11 July 2021)

Crimes committed by mentally ill individuals have also increased significantly over the past few decades, in part an effect of deinstitutionalization. Severely mentally ill individuals who are not receiving treatment are now responsible for approximately 10 percent of United States homicides. “This figure contrasts with studies of homicide in the United States between 1900 and 1950, before deinstitutionalization got underway; these early studies reported that ‘insane’ or ‘psychotic’ persons were responsible for between 1.7 percent and 3.6 percent of homicides.” There are now approximately 19,510 homicides per year in the United States, and therefore, approximately 1,951 homicides would not have happened if mentally ill individuals received psychiatric treatment

Mental health care in prison makes a difference in re-integration after release

[CHRISTIE THOMPSON](http://www.themarshallproject.org/staff/christie-thompson) and [TAYLOR ELDRIDGE](https://www.themarshallproject.org/staff/taylor-eldridge) 2018 (journalists) 21 Nov 2018 “Treatment Denied: The Mental Health Crisis in Federal Prisons” <https://www.themarshallproject.org/2018/11/21/treatment-denied-the-mental-health-crisis-in-federal-prisons> (accessed 11 July 2021)

How inmates are diagnosed can affect them long after they leave prison. A determination that prisoners have no mental illness can make it harder to secure disability benefits or treatment once they are released. And compared with those assigned lower care levels, inmates on higher levels receive more pre-release planning for how to get their medication and find a supportive place to live. “That can be the difference between housing or no housing,” [director of the D.C. Jail and Prison Advocacy Project, Tammy] Seltzer said.

DISAD RESPONSES

A/T “Might release some prisoners” – Same thing happened when Supreme Court ordered California to reduce overcrowding due to lack of medical care. But there was no public safety impact

Brown v. Plata 2011. (syllabus, headnotes of the published Supreme Court case; notes are written by the Reporter of Decisions, not by the Court judges themselves) 23 May 2011 (this is the Supreme Court case where the Court ordered California to reduce its prison population because lack of medical care was violating the 8th Amendment for “cruel & unusual punishment”) <https://www.law.cornell.edu/supct/html/09-1233.ZS.html>

The three-judge court gave “substantial weight” to any potential adverse impact on public safety from its order. The PLRA’s “substantial weight” requirement does not require the court to certify that its order has no possible adverse impact on the public. Here, statistical evidence showed that prison populations had been lowered without adversely affecting public safety in some California counties, several States, and Canada. The court found that various available methods of reducing overcrowding—good time credits and diverting low-risk offenders to community programs—would have little or no impact on public safety, and its order took account of such concerns by giving the State substantial flexibility to select among the means of reducing overcrowding. The State complains that the court approved the State’s population reduction plan without considering whether its specific measures would substantially threaten public safety. But the court left state officials the choice of how best to comply and was not required to second-guess their exercise of discretion. Developments during the pendency of this appeal, when the State has begun to reduce the prison population, support the conclusion that a reduction can be accomplished without an undue negative effect on public safety.