Power Point Slides on Criminalization and Jail Diversion

Prepared for the 2003 NAMI Leadership Conference

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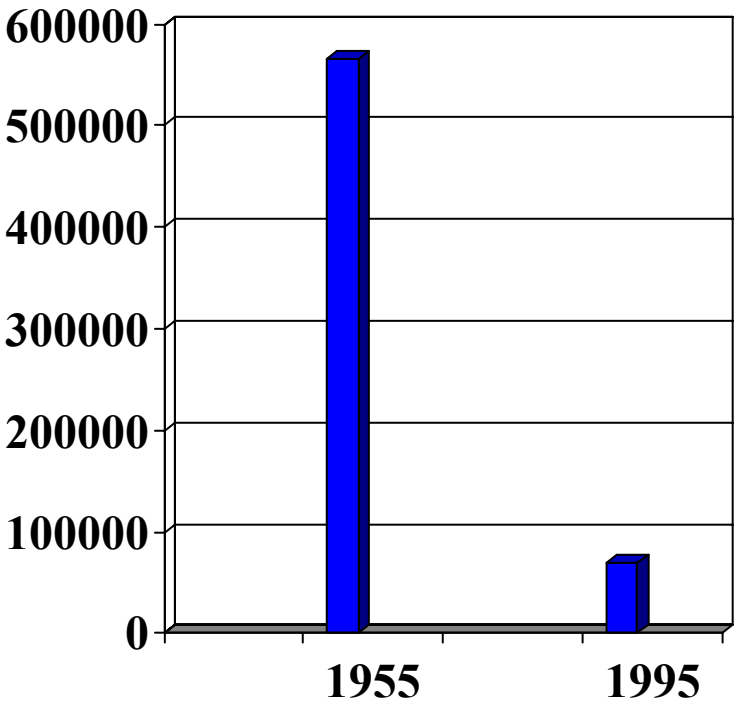
NAMI

Introduction

These power point slides were prepared as a resource for NAMI's grassroots leaders. The slides include relevant statistics, information about CIT programs, MH Courts, community reentry, treatment engagement strategies, and other forensic concerns.

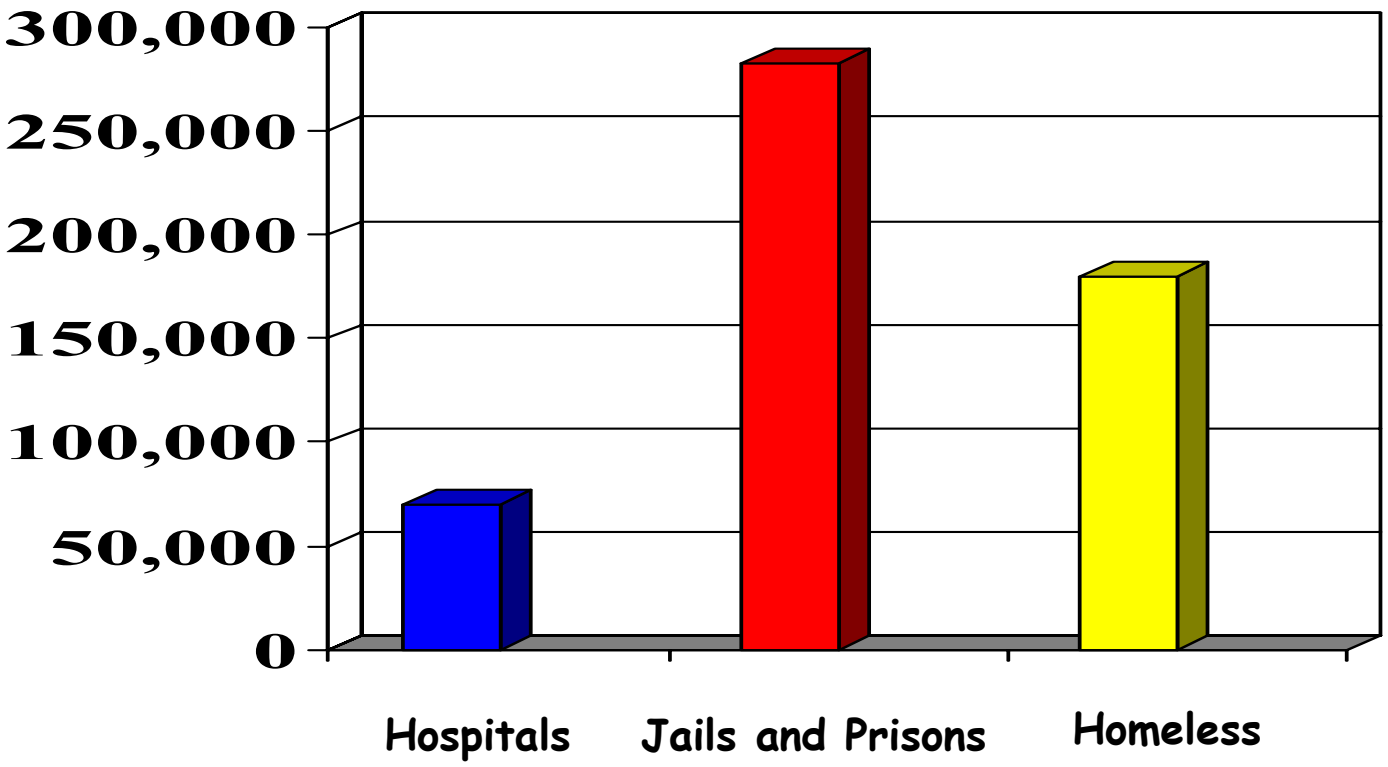
Please feel free to use these slides for your own purposes. Questions, comments or recommendations should be directed to Ron Honberg, 703-516-7972; RonH@nami.org

Patients in Public Psychiatric Hospitals, 1955 and 1995



- 1955 census included geriatric patients and some patients with MR.
- 21,000 (1/3) of the 70,000 patients in hospitals in 1995 were forensic patients.
- Does not include community or private hospitals.
  - Torrey, Out of the Shadows, 1997.

Jails/Prisons as the new "Psychiatric Hospitals."



NAMI's Goals for De-Criminalization.

- Prevent unnecessary interactions with law enforcement or corrections.
- Divert as many people with smi as possible into treatment.
- Ensure that people with smi who are incarcerated receive decent and humane treatment.
- Facilitate successful community reintegration and prevent recidivism.

Jail and Prisons - Statistics

- About 16% (283,000) jail and prison inmates suffer from severe mental illnesses. (U.S. DOJ, 1999).
- Approximately 550,000 people on probation suffer from severe mental illnesses.
- African-Americans, other minority populations disproportionately represented among inmates with severe mental illnesses.
  - But, white inmates more likely to report or be identified as having an SMI than black or hispanic inmates.

Jails and Prisons - Statistics, cont.

- Half or more of jail/prison inmates with SMI reported using alcohol or drugs at time of offense. (National GAINS Center).

- 20% of inmates with smi were homeless during the year before incarceration.

- Very high rates of recidivism, particularly among prison inmates with SMI (75%).

Types of Crimes

- Jails - most individuals with SMI charged with non-violent misdemeanors or felonies.
  - Trespassing, disorderly conduct, public nuisance, loitering, etc.
- Prisons - 53% of inmates with SMI convicted of violent crimes, versus 46% for all other inmates.

Why are there so many people with SMI in jails and prisons?

- Lack of appropriate treatment and services
  - e.g. Schizophrenia PORT - Fewer than 50% of people with schizophrenia get even minimally adequate treatment.
- Limited or no crisis response capabilities in MH system.
- Not enough hospital beds for people requiring inpatient treatment.
- Treatment non-compliance.
- Punitive society (retribution favored over rehabilitation).
- Poor coordination between MH and CJ systems, particularly when people leave correctional systems.

Treatment or Punishment?

- For 20 years or more, policies have favored punishment over rehabilitation.
  - Mandatory minimum sentencing.
  - Three strikes laws.
  - "Zero tolerance".
- Tide may be changing, at least for people with smi charged with minor crimes.
- NAMI advocates forming strategic alliances with law enforcement, corrections and court communities throughout the country.

Strategies to Reduce Criminalization

- Good treatment and services, including:
  - Access to medications.
  - ACT or services of similar intensity and duration.
  - Integrated Treatment for Mental Illness and Addictive Disorders.
  - Supportive Housing.
  - Peer education and peer supports.
  - Inpatient beds, when necessary.
  - Long term care options.

Strategies to Reduce Criminalization, cont.

- Jail Diversion
  - Pre-booking (usually police based).
  - Post-booking (usually court-based).
  - Post-sentencing. (e.g. conditional release)

Pre-Booking Diversion Models

- Specialized Police response ("Memphis model").
- Mobile Crisis Units (Mental health triage with police).
- Community Service Officer Model (civilian police employees with mh training).

Memphis CIT model

- Adopted in about 30 jurisdictions nationwide, many more in planning phases.
- Police receive intensive training about SMI's and how to de-escalate psychiatric crises.
- Dispatchers trained as well.
- Police have options other than arrest, release or general ER's.
- Specialized psychiatric ER with rapid response capabilities.
- Proven success in addressing immediate crisis, long-term outcomes depend upon underlying mh system.

Memphis CIT, cont.

- Memphis CIT Outcomes:
  - Officer feel prepared to respond to people with smi.
  - 95% of “mental disturbance calls” result in specialized officer responses.
  - Rapid responses.
  - Responsive mental health system.
  - Fewer officer injuries.
  - Lower utilization of SWAT teams.
  - High officer, consumer satisfaction.

Mental Health Courts

- Problem solving criminal Courts, designed to:
  - address underlying problems
  - change future behaviors.
- Goals:
  - Facilitate treatment alternatives, prevent or limit incarceration
  - Protect public safety (reduce recidivism).
- Approximately 25 currently exist.

Mental Health Courts, common characteristics

- Voluntary participation
- History or demonstrable signs of mental illness (or, in some cases, mental retardation) required.
- Participation generally limited to non-violent offenders (misdemeanors or minor felonies).
- Team approach (justice and mental health).
- Dedicated staff.
- Ongoing supervision, with Judge at core.

Mental Health Courts, Procedures

- Differ across jurisdictions.
- Candidates referred (usually within 24 hours of arrest, by:
  - Police
  - Correctional staff
  - Families or friends
  - Defense attorney
  - Others.

MH Court Procedures, cont.

- Traditional Court procedures and formalities relaxed.
- Non-traditional, active role for Judge.
- Deferred prosecution

  or

- Guilty plea required (with option to vacate or reduce).

Benefits of MH Courts

- Information, options for judges.
- Staff resources for judges
- Humane alternative to incarceration
- Way to hold MH programs accountable.
- Better treatment outcomes, reduced recidivism, enhanced public safety.
- Provides options for other specialty courts (e.g. drug courts, domestic violence courts).

MH Courts: Concerns and Challenges

- Proportionality of mandated treatment to charges.
- Role of courts and counsel.
  - Are rights waived?
  - Is participation truly voluntary?
- Finding resources for adequate services, protecting access to benefits (SSI and Medicaid).
- Protecting confidentiality
- Building a better mousetrap?

Mental Health Courts: Outcomes

- Limited data.
  - Petrilla and colleagues (Broward)
  - King County (Washington).
  - Santa Clara (California).

Broward (Ft. Lauderdale) MH Court

- Good outcomes in terms of:
  - procedural justice (engagement in process, opportunity to discuss problems, respectful interaction with judge, etc.).
  - Linkages with treatment
  - Use of services after case heard.
  - Lower levels of perceived coercion than traditional mh system!

King County (Seattle) MH Court

- 41% of D's referred to Court opted to participate.
- 85% opted to participate.
- D's who opt into Court receive more treatment than before their involvement with Court.
- Program participants spent fewer days in detention than those who did not participate.
- Sharp drop in rate of new arrests for participants.

Santa Clara (California) MH Court

- 56 graduates.
- Participation in Court program resulted in:
  - 6,013 fewer jail days;
  - $395,655 in savings (from fewer jail days); and
  - No new arrests for program participants.

Steps in creating a MH Court

- Convene all relevant stakeholders.
  - E.g. Consumers, families, judges, prosecutors, defense attorneys, corrections, law enforcement, mental health.
- Examine existing procedures:
  - How does MH system respond to people in crisis?
  - Are police trained to de-escalate people in crisis?

Steps, cont.

- Do jails screen those arrested for mental illness/substance use or abuse?
- How do Courts currently handle non-violent offenders with mental illnesses.
- Are there procedures in place to timely link people with treatment upon discharge?
- Does jurisdiction have experience with other types of specialty Courts, e.g. drug courts, domestic violence courts, etc.?

Funding

- CMHS jail diversion grants ($4 million).
  - Www.samhsa.gov\centers\cmhs\cmhs.html
- Federal Mental Health Court grants ($4 million).
  - Administered by U.S. Department of Justice, Bureau of Justice Assistance.
  - Www.ojp.usdoj.gov/BJA
- SAMHSA community action grants.
- Edward R. Byrne or Law Enforcement Block Grants (DOJ).
- State mental health or Medicaid funds.

Other Forensic Issues

- Can “treatment” ever be effectively provided in a correctional setting?
- If yes, do good treatment programs in these settings create an incentive to criminalize people?
- Is it possible to reduce seclusion and restraints and other aversive practices in correctional settings?
- What changes in policy and practice are needed to enable people to successfully transition back into society?
- Is there a better way to adjudicate “insanity?”
- Should people with serious mental illnesses be subject to the death penalty?

Treatment Issues in Jails and Prisons

- Limited constitutional right to treatment
  - "Treatment" frequently means older medications.
- Inadequate staffing, few trained clinicians.
- Inappropriate or excessive use of restraints, administrative segregation, solitary confinement as a response to symptoms.
- "Super-max" facilities.

Discharge Planning/Reentry

- Services must start while person is still incarcerated.
- Expedited restoration of benefits (e.g. SSI, Medicaid).
- Specialized programs to serve people upon discharge, e.g. forensic PACT programs.
- Transitional half-way house programs.
- Integrated MH/SA treatment
- Specialized parole and probation officers.
- Employment, VR.

Insanity Defense

- Post-Hinckley insanity defense "reform."
  - States retreat to McNaghton
  - 3 states eliminate insanity defense altogether.
  - Burden of proof shifted to defendant.
  - Juries not instructed about likely consequences of insanity verdicts.
- 12 states adopt "guilty but mentally ill" (GBMI) option
- NAMI opposes GBMI because doesn't mitigate sentence or ensure treatment.

Insanity defense, cont.

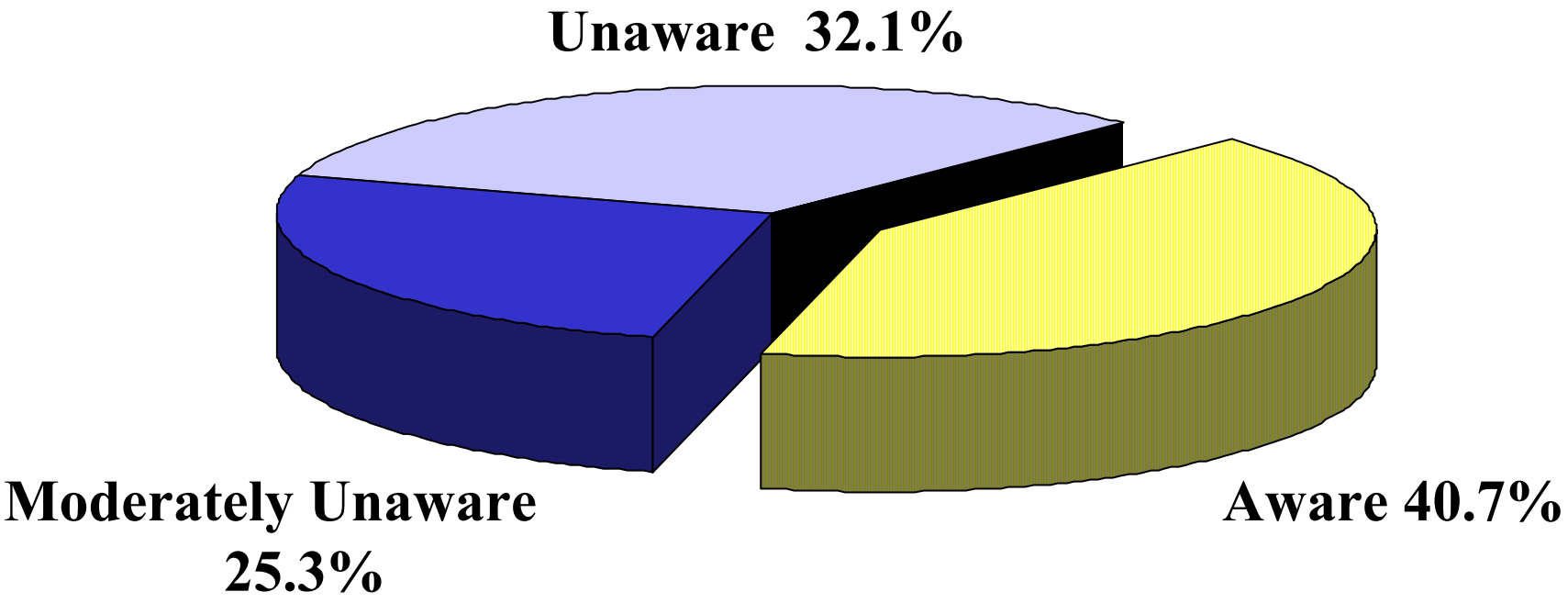
- Oregon, Arizona and Connecticut have adopted a new approach.
  - "Guilty except for insanity."
  - Defendants sentenced to treatment
  - Independent agency assumes jurisdiction over inpatient and outpatient treatment for as long as maximum duration of sentence if person were found guilty.
- Promising outcomes (Oregon) with respect to:
  - Reduced recidivism, violence and hospitalizations.

Balancing rights with the need for treatment

- Studies suggest that fewer than half of all people with mental illnesses receive minimally adequate treatment.
- Why
  - In many areas, treatment is not available.
  - Many consumers have had bad experiences with the treatment system.
  - Some people make informed decisions not to receive treatment.
  - Some people lack insight about their illness and need for treatment.

Unawareness of Mental Disorder

(Xavier Amador, Ph.D)



N = 221 Schizophrenia patients

Strategies to Engage People in Treatment

- Assertive community treatment (ACT).
- Peer education and counseling
- Treatment negotiations strategies.
- Advance directives.
- Court ordered treatment (last resort).
  - Inpatient.
  - Outpatient.

What is outpatient commitment?

- Court order compelling person to participate in treatment in the community.
- 41 states have outpatient commitment ("assisted outpatient treatment") laws on the books.
- The option of outpatient commitment is rarely used in a number of states.
- Some states (e.g. Wisconsin, New York, Ohio and North Carolina) use frequently.

Potential Benefits of Outpatient Commitment

- Care, where otherwise there might be none.
- Continuity of care (if properly structured).
- Remain in community (retain housing, benefits, etc.).
- Therapeutically more beneficial than inpatient commitment.
- Less stigma than hospitalization.

Potential problems with outpatient commitment

- Need an adequate infrastructure of community services and supports.
- Diversion of $$$'s from those who need community services but are not subject to outpatient commitment orders.
- What happens if person doesn't adhere to order?
- What happens if mh system doesn't adhere to order?
- Some evidence that engagement in treatment lasts only for duration of order.
- Divides advocates along ideological lines.

Does outpatient commitment work?

- Studies are mixed, but majority suggest that outpatient commitment can be effective in:
  - reducing hospitalizations;
  - reducing lengths of stays when re-hospitalizations do occur;
  - enhancing participation in community services.
- Length of order may improve outcomes.
- Are positive outcomes attributable to court orders or enhanced services?

Advocacy Challenges

- How to get systems not used to working together to work together?
  - Consumers, family members and other advocates can serve as “boundary spanners.”
- How to promote jail diversion in a “get tough on crime” environment?
  - Should jail diversion be framed as a public safety issue?

Advocacy Challenges, cont.

- How can the needs of people who require intensive, comprehensive, or long-term services be addressed?
  - Role of hospitals, group homes?
  - Does personal care/attendant care model work for people with mental illnesses?
- How can the needs of people who lack insight or consistently refuse treatment be addressed?
  - PACT?
  - Peer supports?
  - IOC?
  - Advance Directives?

Advocacy Challenges, cont.

- How can ideological differences be put aside in the interest of pursuing common goals?
- How can housing resources be directed for people leaving jails/prisons or at risk of incarceration?
  - Fair housing act doesn't protect people convicted of crimes.
  - Many existing housing programs don't want to serve people involved with CJ systems.

Advocacy Challenges, cont.

- How can mental health and substance abuse services be integrated for people with co-occurring disorders?
  - For most part, MH and SA systems do not work together in a coordinated fashion.
- How can we break through the culture in jails and prisons that results in people being punished for the symptoms of their illnesses?
  - Solitary confinement, restraints, etc.

Council of State Governments (CSG) Criminal Justice/Mental Health Consensus Project

- Four national tracks.
  - Mental Health track.
  - Law Enforcement track
  - Courts track
  - Corrections track
- Funded by a partnership of federal agencies and private foundations.
- Comprehensive report to highlight innovative practices, recommend steps to decrease criminalization, improve treatment outcomes.
- Significant partnership of law enforcement and corrections community, bipartisan support, enhances chances of meaningful action.
- Opportunities for new partnerships at state and local levels.