In the Shadow of Sandra Bland: The Importance of Mental Health Screening in U.S. Jails

Matti Hautala*

* Matti Hautala is a Master' s of Public Affairs Candidate at the LBJ School of Public Affairs. Hautala worked as a mental health caseworker, residential counselor, and behavioral skills trainer for six years before beginning graduate school at the University of Texas at Austin. A special thank you to Michele Deitch for her help and guidance during the creation of this Note.

I. INTRODUCTION

The death of Sandra Bland on July 23, 2015, while in the Waller County Jail attracted widespread scrutiny of the jail staff's handling of inmates with mental health issues and to the jail's suicide prevention procedures.[1] Bland committed suicide three days after she was arrested and jailed following a routine traffic stop.[2] The resulting investigations into her death have revealed that prison staff, among other failures, did not complete a high-fidelity mental health screening process with Bland and failed to follow the minimum suicide prevention standards for jails, raising questions about whether her death could have been prevented.[3] While Waller County became a focal point in summer 2015 for the lack of appropriate mental health screenings and services for inmates at intake, other counties in Texas and across the country likely face similar problems that, if left unsolved, will continue to allow more and more preventable deaths in America's jails. Ensuring that the jail intake process is thorough and consistently implemented is paramount in making sure inmates with mental health issues receive proper treatment behind bars and diversion from incarceration when appropriate.[4] Improving how jails screen and treat inmates with mental illness will not only save lives, but it will also save taxpayer money by ultimately lowering re-incarceration rates[5] and by making more effective use of

---

[1] *See* Leah Binkovitz, *Waller DA Releases More Jail Footage, Details in Sandra Bland Case*, HOUS. CHRON., July 28, 2015, http://www.houstonchronicle.com/news/houston-texas/houston/article/Waller-DA-releases-more-jail-footage-details-in-6411259.php, <https://perma.cc/U5CK-UXH5> (describing attention to Bland' s death).

[2] Terri Langford, *Records Show Bland Revealed Previous Suicide Attempt*, TEX. TRIB., July 22, 2015, http://www.texastribune.org/2015/07/22/dps-sandra-bland-video-wasnt-doctored/, <https://perma.cc/P58B-RLKT>.

[3] *Id.*

[4] AM. BAR ASS' N, *ABA Criminal Justice Standards on the Treatment of Prisoners, Standard 23-1.2 Treatment of Prisoners* (June 2011), http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/treatment_of_prisoners_commentary_website.authcheckdam.pdf, <https://perma.cc/36KP-7CC3> [hereinafter *ABA Standards*].

[5] Sarah D. Pahl, *Interim Testimony 2014: Senate Committee on Health & Human Services*, TEX. CRIMINAL JUSTICE COAL., 1, 4 (2014), http://www.texascjc.org/sites/default/files/uploads/2014%20Interim%20Testimony%20Senate%20HHS%20-%20MH%20and%20Sub%20Abuse.pdf, <https://perma.cc/9ZRN-XH69>.

available mental health and law enforcement resources.[6]

The shift over the past fifty years from treating individuals with mental illness in state-run hospitals to outpatient, community-based services has steadily increased the number of individuals with mental illness who are incarcerated in local jails.[7] While state-run mental health institutions closed due to assuredly inhumane conditions like overcrowding and overworking,[8] a concurrent national increase in the prevalence of mental illness coupled with a lack of adequate funding for community-based services made it difficult for patients being released from those hospitals to get outpatient treatment. Without adequate access to treatment, individuals' symptoms deteriorated to the point of arrest and incarceration before they could receive adequate treatment.[9]

Jails are locally operated facilities that hold inmates for usually less than two years, either because the incarcerated person is awaiting trial or was convicted of a low-level crime.[10] Prisons are facilities run by either the state or the federal government and typically hold inmates for longer sentences.[11] Texas is unique in that it also has a separate state jail system for housing certain types of low-level felony offenders for sentences that are less than two years.[12] For the purposes of this Note, jail refers only to locally operated jails and not the Texas state jail system. Regardless of which type of facility an inmate goes to—federal prison, state prison, or state jail—the first stop in their journey through the criminal justice system is usually a local jail.

In a typical jurisdiction, individuals arriving at a jail begin an intake process aimed at identifying their medical, mental, substance abuse, social, and behavioral risks and any other immediate needs.[13] A high-fidelity screening includes an initial, brief mental health screening that flags potentially high-risk, high-need individuals who need a more in-depth mental health assessment with a licensed clinician.[14] The information obtained during the mental health screening and intake

---

[6] COUNCIL OF STATE GOV' TS, *Criminal Justice / Mental Health Consensus Project*, 107, 236 (2002), https://www.ncjrs.gov/pdffiles1/nij/grants/197103.pdf, <https://perma.cc/H39T-CV6D> [hereinafter *Consensus Project*].

[7] Hung-En Sung et al., *Jail Inmates with Co-Occurring Mental Health and Substance Use Problems: Correlates and Service Needs*, 49 J. OFFENDER REHAB. 126, 127-28 (2010).

[8] *Id.*

[9] Fred Osher et al., *Adults with Behavioral Health Needs Under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery*, COUNCIL OF STATE GOV' TS JUSTICE CTR. (2012), https://www.bja.gov/Publications/CSG_Behavioral_Framework.pdf, <https://perma.cc/M7WE-GTTQ>.

[10] BUREAU OF JUSTICE STATISTICS, *FAQ Detail: What is the Difference Between Jails and Prisons?*, http://www.bjs.gov/index.cfm?ty=qa&iid=322, <https://perma.cc/MAB7-8SBE> [hereinafter *FAQ Detail*].

[11] *Id.*

[12] TEX. CRIMINAL JUSTICE COAL., *Safe Alternatives to State Jail will Increase Cost Savings, Public Safety, and Personal Responsibility*, http://www.texascjc.org/sites/default/files/publications/State%20Jail%20Talking%20Points.pdf, <https://perma.cc/RQC3-B7MB> (last updated Dec. 2012).

[13] AM. CORR. ASS' N, *Performance-Based Standards for Adult Local Detention Facilities*, 4-ALDF-2A-21 (Ref. 3-ALDF-4A-01) (4th ed. 2004).

[14] *Id.*

process is also used to classify the type of housing, custody, supervision, and programming for every inmate.[15]

Getting this classification correct from the beginning is important because depending on an inmate's mental health diagnoses, history of treatment, and current symptomology,[16] they may need a special custody level or housing to keep them safe, or it may be appropriate for diversion away from incarceration to cheaper, more community-based services like supervised probation or mental health treatment.[17] The classification process sorts individuals into housing that will be the least restrictive possible while maintaining safety for both offenders and jail staff.[18] For example, violent inmates should be sorted into higher security facilities whereas suicidal inmates may be placed in anti-suicide uniforms or cells with line-of-sight safety checks every fifteen minutes.[19] Having an intake process that gathers thorough information while still being quick is no easy task; as one researcher put it, "Local jail systems are faced with the daunting task of appropriately classifying numerous inmates each day in a matter of minutes through the use of standard protocols and a series of questions."[20]

Although consistent governmental oversight and data reporting is hard to come by, research in recent years has shown that many jails are not completing a quality mental health screening during the intake of every new inmate.[21] Three of the most commonly used and widely researched mental health screening tools—the Jail Screening Assessment Tool (JSAT), the Brief Jail Mental Health Screen (BJMHS), and the Referral Decision Scale (RDS)—have been found to have significant problems in recent years.[22] These screening instruments have a range of different issues, including: doing a poor job of accurately identifying mental illness across genders and races, taking too long to administer, and having too many false positives (i.e., inappropriately referring too many people without mental illness for more expensive in-depth psychological services).[23]

Given that minorities make up the majority of jail populations[24] and

---

[15] Roger H. Peters et al., *Screening and Assessment of Co-occurring Disorders in the Justice System*, CMHS NAT' L GAINS CENT., 1, 33 (2008), https://csgjusticecenter.org/wp-content/uploads/2014/12/ScreeningAndAssessment.pdf, <https://perma.cc/XY73-BJ7G>; *ABA Standards*, *supra* note 4.

[16] Peters et al., *supra* note 15, at 36.

[17] *ABA Standards*, *supra* note 4.

[18] AM. CORR. ASS' N, *supra* note 13.

[19] *Id.*

[20] Steven L. Proctor et al., *Response Bias in Screening County Jail Inmates for Addictions*, 1 J. DRUG ISSUES 117, 119 (2011).

[21] Sarah Krueger, *Responses of Minnesota Jails to Mental Illness: Survey of Minnesota Jails*, NAT' L ALLIANCE ON MENTAL ILLNESS 1 (Apr. 2006) http://www.namihelps.org/assets/PDFs/NAMIMN JailSurveyReport42006.pdf, <https://perma.cc/49TX-MJYA>.

[22] Michael S. Martin et al., *Mental Health Screening Tools in Correctional Institutions: A Systematic Review*, 13 BMC PSYCHIATRY 275, 2 (2013).

[23] *Id.* at 2, 7.

[24] Todd D. Minton & Daniela Golinell, *Jail Inmates at Midyear 2013-Statistical Tables*, BUREAU OF

females have been the fastest-growing group of inmates in jails for over the past decade,[25] it is more important than ever that mental health screening instruments are sensitive to gender and race differences. The Correctional Mental Health Screen-Men (CMHS-M) and the Correctional Mental Health Screen-Women (CMHS-W) are two gender-specific screenings that are more accurate than the BJMHS in detecting mental illness in inmates across races and genders, more cost effective than the JSAT, and more comprehensive than the RDS.[26] This Note will discuss in greater detail why the CMHS screening instruments should be considered for adoption in jails nationwide.

Jails also vary greatly in regards to how they administer whichever screening they choose to use. Some jails have the initial mental health screening as part of the normal booking process and the arresting officer is included in making the classification and custody decisions;[27] in other jails, inmates may wait hours before they receive a mental health screening[28] while in more well-funded jails, inmates might complete longer, more in-depth screenings with a qualified mental health professional.[29] This wide variability in intake processes between jails makes enforcement, oversight, and accountability difficult. Add to that the severe understaffing of independent oversight bodies like the Texas Commission on Jail Standards and the fact that few states even have such centralized oversight departments set up to regulate their jails, and it becomes clearer how and why problems in jails often only come to light following grave tragedies.[30] In response to Sandra Bland's death in a Texas county jail in the summer of 2015, criminal justice researcher and policy expert Michele Deitch argued in an opinion piece in The Texas Tribune that "[t]he public is asking tough questions and demanding answers about jail suicide, the jail intake process, staff supervision, appropriate housing placements, inmate access to mental health treatment[,] and safety precautions for inmates."[31]

Local jails can be more secure and efficient while reducing recidivism over the long term by improving the screening, treatment, and diversion processes for inmates with mental health issues. It is also important for legislators and local decision makers to help fund new mandates and voluntary efforts to improve mental health care in jails. As

---

JUSTICE STATISTICS, at 6, Table 1 (Aug. 12, 2014), http://www.bjs.gov/content/pub/pdf/jim13st.pdf, <https://perma.cc/YHT8-6HMF>.

[25] *Id.* at 1.

[26] *Id.*

[27] *Consensus Project*, *supra* note 6, at 107.

[28] Observations at Downtown Austin Travis County Jail (Apr. 22, 2015 & Apr. 30, 2015).

[29] *ABA Standards*, *supra* note 4.

[30] Edgar Walters & Kiah Collier, *Sandra Bland Case Shows Deficiencies in Jail Oversight*, TEX. TRIB., July 24, 2015, http://www.texastribune.org/2015/07/24/sandra-bland-case-shows-deficiencies-jail-oversigh/, <https://perma.cc/572H-8736>.

[31] Michele Deitch, *Bring Texas Jails Out of the Shadows*, TEX. TRIB., July 29, 2015, http://www.tribtalk.org/2015/07/29/bring-texas-jails-out-of-the-shadows/, <https://perma.cc/77LC-3UT3>.

Fort Bend County Sheriff Troy Nehls puts it, legislators need to help finance the "unfunded mandates" they have passed down to local jails that have rendered them the "de facto mental health facilities" in many communities.[32] Given the high costs and risks associated with incarcerating such a large number of individuals with mental health diagnoses, this Note addresses several issues: the prevalence and problems of mental illness in the jail system, how the mental health screening and intake process affect mental health treatment behind bars, and what jails can do differently during the intake process to bring down overall costs and recidivism while improving security, successful diversion from jail, and the rehabilitative and humane treatment of individuals behind bars.

A. The Purpose of the Jail System

Local jails house individuals awaiting trial or sentenced to less than a two-year sentence, while prisons are reserved for more serious offenders with longer sentences.[33] The national jail population hit a record daily high of 785,500 inmates in 2008 and has decreased each year since, falling to approximately 731,200 jail inmates incarcerated at the end of 2013.[34] Individuals are incarcerated in local jails for four reasons: pre-trial detention, post-adjudication admission, short-term incarceration (including parole violations), or while waiting to transfer to another correctional facility.[35] Because inmates are sent to jails for such short periods of time, they cycle in and out very quickly, and the number of inmates in jails is constantly in flux.[36] While there were 731,200 inmates in local jails on a single day in 2013, those same jails saw 11.7 million inmates cycle through their doors during the span of one year.[37] This rapid cycling of inmates means that jails incarcerate most of America's inmates in a given year but have very limited time to assess an individual inmate's risks and needs or provide them with help accessing pre-trial diversion programs or rehabilitative programming while they are behind bars. Instead, their focus is on efficiency and security.

---

[32] Emily Foxhall, *Fort Bend Sheriff Pushes Back Against Criticism Over Jail Suicides,* HOUS. CHRON., Nov. 28, 2015, http://www.houstonchronicle.com/neighborhood/fortbend/news/article/Fort-Bend-sheriff-pushes-back-against-criticism-6662591.php, <https://perma.cc/2CNG-77YH>.

[33] *FAQ Detail*, *supra* note 10.

[34] Lauren E. Glaze & Daniel Kaeble, *Correctional Populations in the United States, 2013*, BUREAU OF JUSTICE STATISTICS, at 13 (Dec. 2014), http://www.bjs.gov/content/pub/pdf/cpus13.pdf, <https://perma.cc/4F3T-PKHN>.

[35] *FAQ Detail*, *supra* note 10.

[36] Sung et al., *supra* note 7, at 16, 130.

[37] Minton & Golinell, *supra* note 24, at 4.

B. The Evolution of Mental Health Services in the U.S.

Before the 1960s, the vast majority of mental health services were provided in state-run mental health hospitals on a long-term basis—lifetime commitments in "back wards" for patients with severe mental illnesses were not uncommon and hospital patients dealt with crowded wards and "appalling" living conditions.[38] A 1961 report from the Joint Commission on Mental Health helped to provide a shared framework and set of goals for advocates across the country who were pushing for more humane and therapeutic treatment of individuals with mental illness.[39] The deinstitutionalization of state-run mental hospitals was also pushed forward by the introduction of the first psychotropic medications and a corresponding shift in public attitude toward mental illness as a medical condition that could be treated in the community with medication.[40]

Throughout the next decade, there were consistent small steps forward in releasing individuals from state-run hospitals, but the deinstitutionalization movement really took hold in 1972 with the enactment of the Supplemental Security Income (SSI) disability benefits program that helped pay for community-based mental health services.[41] The system of institutionalization was then dealt a major blow in 1973 with a federal ruling that closed the doors of most state-run mental health institutions by extending rights under the Fair Labor Standards Act to mental health patients and forcing institutions to pay patient workers a living wage.[42] Without other sources of federal or state funding, more and more state-run hospitals shut down throughout the 1960s and 1970s, and prisons and jails across the United States increasingly became the de facto providers of mental health services in their communities.[43]

This shift from state-run hospitals to correctional facilities as the primary provider of mental health services was exacerbated during the 1980s and 1990s by the war on drugs and a corresponding move to increase the length of sentences for drug offenses. This change disproportionately affected individuals with mental health issues, who are more likely to use substances[44] and often self-medicate with drugs or alcohol to treat their symptoms when medication or other forms of

---

[38] Chris Koyanagi, *Learning from History: Deinstitutionalization of People with Mental Illness as Precursor to Long-Term Care Reform*, HENRY J. KAISER FAMILY FOUND., 4 (Aug. 2007), https://kaiserfamilyfoundation.files.wordpress.com/2013/01/7684.pdf, <https://perma.cc/59J5-GUZT>.

[39] *Id.* at 5.

[40] Bernard Harcourt, *Reducing Mass Incarceration: Lessons from the Deinstitutionalization of Mental Hospitals in the 1960s*, 9 OHIO ST. J. CRIM. L. 1, 65 (2011).

[41] *Id.*

[42] Souder v. Brennan, 367 F. Supp. 808, 815 (D.D.C. 1973).

[43] E. Fuller Torrey et al., *The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey*, TREATMENT ADVOCACY CENT. (Apr. 8, 2014), http://tacreports.org/storage/documents/treatment-behind-bars/treatment-behind-bars.pdf, <https://perma.cc/9BXY-VVAM> [hereinafter *State Survey*].

[44] Sung et al., *supra* note 7.

treatment are not available.[45] After the economic recession in 2008, large cuts to publicly funded mental health services made it even harder for individuals to receive community-based treatment for their mental health problems.[46] By 2012, there were more than ten times as many individuals with mental illness in jail or prison than were receiving treatment in state psychiatric hospitals in the United States.[47]

This influx of individuals with mental health issues into the criminal justice system is a particularly difficult problem for jails because they house a higher percentage of individuals with mental health issues (64%) when compared to state prisons (56%) and federal prisons (45%).[48] Those higher percentages also come with higher operating costs for the local and state governments who are responsible for funding jails and state prisons. Individuals with mental illness generally are more expensive to incarcerate because they serve a larger portion of their full sentence, have more disciplinary infractions while imprisoned, and have higher rates of recidivism once released.[49]

The deinstitutionalization movement exacerbated a national shortage of both inpatient and outpatient mental health services: while there was one psychiatric bed available for every 300 people in the United States in 1955, that number dropped to only one available psychiatric bed for every 3,000 people in 2004.[50] While part of the reason for so many fewer psychiatric beds was a well-intentioned push for more community-based mental health services closer to the individual's home, that goal ended up backfiring because funding for those services did not materialize and community-based providers and traditional health care providers were not equipped to meet demand.[51]

Oakland County Sheriff Mike Bouchard describes watching this transition to jails as the primary providers of mental health services over the course of his career: "When I became the sheriff, which is about 16 years ago [1998], we had about 8% [of inmates] on psychotropic medications. Now, it fluctuates somewhere north of 30%."[52] Jails across the country are having to step up and fill the role of primary mental

---

[45] J. R. Belcher, *Are Jails Replacing the Mental Health System for the Homeless Mentally Ill?*, 24 COMMUNITY MENTAL HEALTH JOURNAL 185 (1988).

[46] PEW CHARITABLE TRUST & MCARTHUR FOUND., *Mental Health and the Role of States* (June 2015), http://www.pewtrusts.org/~/media/assets/2015/06/mentalhealthandroleofstatesreport.pdf, <https://perma.cc/Y8R5-WJLW>.

[47] *State Survey*, *supra* note 43.

[48] *Id.*

[49] Doris James & Lauren Glaze, *Special Report: Mental Health Problems of Prison and Jail Inmates*, U.S. DEP'T OF JUSTICE'S OFFICE OF JUSTICE PROGRAMS (Dec. 14, 2006), http://www.bjs.gov/content/pub/pdf/mhppji.pdf, <https://perma.cc/3XBW-3R4R>.

[50] E. Torrey, *More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States*, TREATMENT ADVOCACY CENT. (May 2010),http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf, <https://perma.cc/HM4Q-A53C> [hereinafter *More Mentally Ill*].

[51] Koyanagi, *supra* note 38.

[52] Kayla Brandon, *Mental Health in Oakland County Jail*, YOUTUBE (July 7, 2014), https://www.youtube.com/watch?v=xjgNDyKrysk, <https://perma.cc/RA3Y-5WQP>.

health providers; in Texas, for example, the Harris County Jail outside of Houston provides psychotropic medications to more people than all ten of Texas's public mental health hospitals combined.[53]

The total number of inmates in jail more than tripled between 1983[54] and 2006.[55] Yet during that same period, the number of inmates with a mental illness in jail jumped from approximately 14,307 in 1983[56] to 479,900 in 2005.[57] That means that while jails in America incarcerated about three times as many people during that time overall, they incarcerated 33 times as many people with a mental illness. When left untreated, symptoms of a serious mental illness can lead to criminal behavior and, as a result, more and more mental health cases got shuffled into the criminal justice system.[58] One study estimates that approximately 14% of the growth in incarceration during this period was due to the process of deinstitutionalization and releasing mentally ill individuals into the public without proper replacement services in the community.[59] Limited access to both inpatient treatment in psychiatric hospitals and outpatient community-based services has clearly been a driving force behind the increasing number of individuals with mental health needs in the criminal justice system. Black people in particular have been pushed to higher rates of arrest and incarceration due to limited access to mental health care services.[60]

There continues to be a large number of inmates with mental illnesses in more recent studies. The most recent report on mental illness in jails from the Bureau of Justice Statistics found that in 2006, 64% of jail inmates had a mental health problem.[61] In comparison, only about 18.5% of the U.S. population had a mental illness in 2013.[62] Figure 1 below shows the high percentage of jail inmates who have at least one symptom of mental illness.

---

[53] Emily Deprang,, *Barred care: Want treatment for mental illness in Houston? Go to jail,* TEX. OBSERVER, Jan. 13, 2014, http://www.texasobserver.org/want-treatment-mental-illness-go-to-jail/, <https://perma.cc/7X6W-GHDP>.

[54] Craig Perkins, *Jails and Jail Inmates 1993-94,* U.S. DEP' T OF JUSTICE' S OFFICE OF JUSTICE PROGRAMS, http://bjs.gov/content/pub/pdf/jaji93.pdf, <https://perma.cc/4M8V-UGTQ>.

[55] James Stephan, *Census of Jail Facilities, 2006,* U.S. DEP' T OF JUSTICE' S OFFICE OF JUSTICE PROGRAMS, http://www.bjs.gov/content/pub/pdf/cjf06.pdf, <https://perma.cc/MRS8-NZJL>.

[56] Perkins, *supra* note 54; *More Mentally Ill, supra* note 50.

[57] James & Glaze, *supra* note 49.

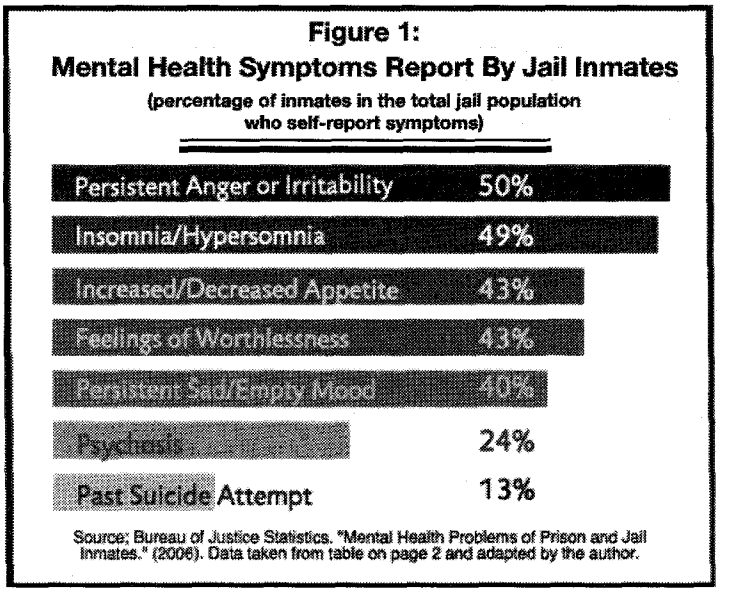
[58] Osher et al., *supra* note 9.

[59] Steven Raphael, *The Deinstitutionalization of the Mentally Ill and Growth in the U.S. Prison Population: 1971 to 1996,* GOLDMAN SCHOOL OF PUBLIC POLICY (2000), http://ist-socrates.berkeley.edu/~raphael/raphael2000.pdf, <https://perma.cc/H7JA-GG6N>.

[60] DIGNITY AND POWER NOW, *Impact of Disproportionate Incarceration of and Violence Against Black People with Mental Health Conditions In the World' s Largest Jail System* 2 (2014), http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17740_E.pdf, <https://perma.cc/AZ8G-2AHR>.

[61] James & Glaze, *supra* note 49.

[62] NAT' L ALLIANCE ON MENTAL ILLNESS, *Mental Health by the Numbers,* https://www.nami.org/Learn-More/Mental-Health-By-the-Numbers, <https://perma.cc/4H6H-84K2>.



One reason for such high numbers of symptoms in jail inmates is a lack of sufficient spending on preventive, community-based mental health services, a problem that was only exacerbated by the economic recession in 2007–08.[63] Immediately during and after the recession, between 2007 and 2011, state budgets for mental health services were cut by approximately $2.2 billion.[64] Chicago had six of its 12 mental health clinics close in three years, and other metropolitan and rural areas continue to struggle with similarly difficult budget cuts and closings.[65] The National Association of State Mental Health Program Directors (NASMHPD) reports that state mental health authorities have continued to cut funding for community psychiatric and crisis services by at least $3.49 billion between 2009 and 2012, even while demand for those services continued to increase.[66]

This perpetual lack of funding for preventive, community-based psychiatric services continues to exacerbate the already high number of inmates with mental health needs behind bars. In Atlanta, Georgia, for example, the inmate population at the local county jail increased by 73.4% following the closure of the nearby Georgia Mental Health Institute.[67] Over the past several decades, these continued closures have had a cumulative effect on the number of people with mental illnesses

---

[63] BAZELON CENT. FOR MENTAL HEALTH LAW, *Asking Why: Reasserting the Role of Community Mental Health* 8 (Sept. 2011), http://www.bazelon.org/LinkClick.aspx?fileticket=VFwb7PPm7K0=&tabid=104, <https://perma.cc/D64S-QAEY> [hereinafter *Asking Why*].

[64] *Id.*

[65] Laura Sullivan, *Mentally Ill Are Often Locked Up In Jails That Can't Help,* NAT'L PUB. RADIO, (Jan. 20, 2014) http://www.npr.org/2014/01/20/263461940/mentally-ill-inmates-often-locked-up-in-jails-that-cant-help, <https://perma.cc/87PZ-NWYV>.

[66] Osher et al., *supra* note 9.

[67] *State Survey*, *supra* note 43, at 13.

who are behind bars. When taking into account both jail and prison populations together, there were approximately ten times as many individuals with psychiatric issues incarcerated in 2012 than there were in state mental health hospitals nationwide.[68]

C. The Criminalization of Drug Use

As mentioned earlier, jail populations have grown significantly in recent decades as a consequence of the so-called war on drugs and tough on crime policies of the 1980s and 1990s. Stated simply, drug law violations were the largest source of growth in local jail inmates during this time.[69] It is important to note that there is a high level of comorbidity, or dual diagnoses, of mental health disorders and substance use or abuse disorder. Major depression (54%) and bipolar disorder (46%) are the two most common co-occurring disorders with substance abuse.[70] Studies show that between 55%-69% of individuals with a substance use disorder also have a mental health disorder, and approximately 60% of individuals with a mental health diagnosis also have a substance use disorder.[71] That accounted for approximately seven to 10 million individuals in America as of 2002, about 3% of the total population.[72] However, this group of individuals with dual mental health and substance use disorders are disproportionately represented in jail populations. By 2006, 49% of jail inmates nationwide had a dual diagnosis of both substance use or abuse and another mental health disorder.[73] Having a mental health problem has been found to increase the risk of substance abuse or use by more than 23%.[74] Inmates with co-occurring mental health and substance disorders also have increased rates of depression, suicide, psychosis, homelessness, and violence when compared to individuals with only one such diagnosis.[75] Overall, inmates with a dual diagnosis are more likely to be arrested, incarcerated, and spend a longer time in jail than inmates diagnosed with only a mental health or substance use disorder.[76]

The American Psychiatric Association (APA) now classifies substance abuse and use as a mental health disorder in the Diagnostic and

---

[68] *Id.*

[69] Perkins, *supra* note 54.

[70] Adi Jaffe et al., *Drug-abusing Offenders with Co-Morbid Mental Disorders: Problem Severity, Treatment Participation, and Recidivism*" 43 J. SUBSTANCE ABUSE TREATMENT 244, 246 (2012).

[71] *Id.* at 244.

[72] *Id.*

[73] James & Glaze, *supra* note 49, at 5.

[74] *Id.* at 1.

[75] Jacques Baillargeon et al., *Risk of Reincarceration Among Prisoners with Co-occurring Severe Mental Illness and Substance Use Disorders*, 37 ADMIN. & POL' Y IN MENTAL HEALTH 367, 368 (2009).

[76] Jaffe et al., *supra* note 70, at 244.

Statistical Manual of Mental Disorders (DSM-IV and DSM-V), but this was not always the case.[77] Efforts to toughen criminal sentences for substance abuse during the 1970s resulted in a dramatic increase in sentence lengths for drug-related charges and a subsequent increase in the total number of inmates in jail for drug-related offenses.[78] Although there were only 17,200 people in jail nationally for drug offenses in 1980, that number increased tenfold to approximately 180,600 by 2013.[79] Women experienced the greatest increase in incarceration for drug-related offenses, rising at a rate of 12% per year since 1980.[80] Substance use among women also appears to be linked to the actual act of committing a crime; in a 2003 study of twenty-five different jails, 86.4% of women who were screened had tested positive for alcohol at the time of their arrest, compared to only 9.5% of men.[81]

This increase in drug-related arrests has impacted local jails the most because they are responsible for all pre-trial detentions and because most of the crimes committed by individuals with substance abuse disorders are misdemeanor "quality-of-life" offenses (crimes like disorderly conduct, public intoxication, and possession of certain controlled substances, many of which are essentially public expressions of a personal battle with mental illness) that often carry shorter sentences served in jails.[82] For example, in Texas, more than 89% of statewide drug-related arrests in 2012 were for possession of a controlled substance, a non-violent and arguably victimless crime.[83]

As jail psychiatrist Dr. Charles Zaylor put it, "Jails and prisons are filling in the gap for services that people can't get other places."[84] Ideally, the public health system should be equipped to step in earlier and provide preventative services to try to avoid an arrest for possession in the first place. But without a safety net of services in place, many individuals with mental health needs will inevitably get swept up by law enforcement and put into jail.[85] Once that unfortunate process happens and someone is booked into jail, jails should be doing everything they can to identify, understand, and treat that underlying substance use

---

[77] AM. PSYCHIATRIC ASS' N, *Substance-Related and Addictive Disorders Fact Sheet* 1 (2013), http://www.dsm5.org/documents/substance%20use%20disorder%20fact%20sheet.pdf, <https://perma.cc/DF7A-CWDH>.

[78] SENTENCING PROJECT, *Fact Sheet: Trends in U.S Corrections* 3 (2015), http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf, <https://perma.cc/S37Y-VBL5>.

[79] *Id.*

[80] Roger H. Peters et al., *Treatment of Substance-abusing Jail Inmates: Examination of Gender Differences* 14 J. SUBSTANCE ABUSE TREATMENT 339, 339 (1997) [hereinafter *Examination of Gender Differences*].

[81] BONITA M. VEYSEY, A PUBLIC HEALTH PERSPECTIVE OF WOMEN' S MENTAL HEALTH 247 (Bruce L. Levin & Marion A. Becker eds. 2010).

[82] Sung et al., *supra* note 7, at 128.

[83] Pahl, *supra* note 5, at 4. The remainder of the drug-related offenses were for manufacturing or distributing the controlled substance. *Id.*

[84] Johnson County (Kansas) Sheriff, *How Mental Health Impacts Jail Population*, YOUTUBE (Oct. 10, 2014), https://www.youtube.com/watch?v=0J3y2cEc8ew, <https://perma.cc/M2VD-4FEZ>.

[85] Sung et al., *supra* note 7, at 128.

disorder. As this Note will discuss in Section III: The Jail Intake Process, there is an unfortunate lack of recent nationwide data on screening procedures in jails, and smaller statewide surveys indicate that not all jails are completing quality mental health screenings during the intake process for every inmate.

II. MENTAL ILLNESS AND SECURITY IN JAILS

Inmates with mental illness, especially those with psychotic or depressive symptoms, are more likely to commit acts of violence and rule infractions while incarcerated.[86] These individuals can be especially prone to aggressive behavior during and after their initial intake because inmates are prohibited from bringing medications into jail.[87] This can often lead to inmates with mental illnesses or other health condition missing one or more doses of medication,[88] as was the case with Sandra Bland's epilepsy medication.[89] Ms. Bland had been taking at least one epilepsy medication before she got to the Waller County Jail but did not receive any doses of that medication—Keppra—during her three-day stay at the jail.[90] While withdrawals from Keppra may not be quite as dangerous as withdrawing from psychotropic medications like benzodiazepines, anti-depressants, or mood stabilizers,[91] Keppra is an anti-seizure medication that can have side effects of "suicidal tendencies, behavioral abnormalities and psychotic symptoms,"[92] in addition to increased risk of seizures if Keppra is discontinued suddenly.[93]

---

[86] James & Glaze, *supra* note 49.

[87] *Consensus Project*, *supra* note 6, at 107.

[88] *Id.*

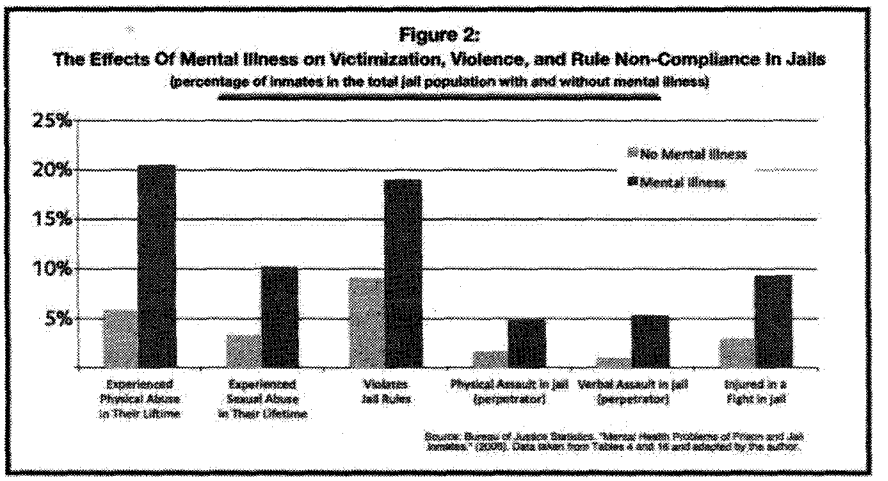
[89] Binkovitz, *supra* note 1

[90] *Id.*

[91] *See* H. Pétursson, *The Benzodiazepine Withdrawal Syndrome*, 89 ADDICTION 1455, 1455 (1994) (describing withdrawals from benzodiazepines).

[92] Binkovitz, *supra* note 1.

[93] UCB INC., *Keppra Prescribing Information* (Mar. 2015), http://www.ucb.com/_up/ucb_com_products/documents/Keppra_IR_Current_COL_%2003_2015.pdf, <https://perma.cc/A76H-PVM3>.



Violent, suicidal, and erratic behavior related to a mental illness directly impacts the classification decision for an inmate's custody level. This behavior can lead to a number of options; for example, a referral to psychiatric staff, more isolated confinement, or mechanical restraint in padded chair shackles. Jail inmates with mental health disorders are also more likely to have repeated infractions for misbehavior and for not following rules, leading to these inmates spending more time in jail.[94] For instance, the national average length of stay for jail inmates with a mental illness is 80 days while the average for inmates without a mental illness is only 20 days. But there are some areas of the country doing far worse than national averages; for example, inmates with a mental illness are incarcerated an average of 173 days longer than a general offender in New York's Rikers Island Jail.[95] Inmates with mental health needs also are at an increased risk for repeated victimization and abuse while they are in jail.[96] The Treatment Advocacy Center offers a succinct summary of the research on the safety and security risks that individuals with mental illness face behind bars: "Such individuals are often raped or otherwise victimized, disproportionately held in solitary confinement, and frequently attempt suicide. Because treatment of mental illness is often not available behind bars, symptoms often get worse."[97]

Suicide has been the leading cause of death in jails for well over a decade now,[98] and the presence of a mental illness drastically increases an inmate's risk of suicide[99]—while only 15% of inmates without a mental illness attempt suicide behind bars, inmates with mental health

---

[94] *Id.*

[95] *State Survey*, *supra* note 43, at 14.

[96] *Id.* at 15.

[97] *Id.* at 102.

[98] BUREAU OF JUSTICE STATISTICS, *Mortality in Local Jails and State Prisons, 2000-2013 - Statistical Tables* 1 (2015), http://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf, <https://perma.cc/AZG7-4U3N> [hereinafter *Mortality Statistics*].

[99] Peters et al., *supra* note 15, at 24.

needs are more than five times as likely (77%) to attempt suicide in jail.[100] The presence of a mental illness generally increases an individual's baseline risk of suicide, but this risk factor is amplified behind bars because of the sudden stress individuals feel when they are initially booked into jail and completely isolated from their community and usual support networks.[101] The Marshall Project describes this "shock of incarceration" as something unique to the jail system since individuals entering local and county jails are "stripped of their job, housing, and basic sense of normalcy" for the first time.[102] Suicides in jails have increased in recent years and, as the most recent report from the Bureau of Justice Statistics shows, suicides continued to be the leading cause of inmate deaths in jails across the country in 2013.[103]

In considering the initial intake as a potential intervention point, it is important to note that an estimated 18% of jail suicides happen in the first 24 hours after initial admission.[104] But even with such a high percentage of jail suicides occurring during and directly following admission, jail staff should remain vigilant in preventing the other 82% of suicides—like that of Sandra Bland's—that occur after an inmate's first 24 hours in jail.[105] Suicidal thoughts and past attempts have also been linked to historically low disclosure rates compared to other mental health symptoms.[106] Since suicide is considered an act of opportunity that could happen suddenly and without notice or warning from the individual in crisis, staff should continually monitor all inmates to see if they need any additional mental health evaluations or interventions after the initial intake screening and classification.[107]

Suicide is a topic that is uncomfortable for many people to talk about. When the challenge of talking about suicide is coupled with the low disclosure rates for suicidal thoughts, it becomes perhaps easier to understand why accurately identifying suicide risks is so challenging and heavily reliant on intuition and rapport building.[108] Inmates with a substance use disorder are also at an increased risk of attempting suicide—particularly females—and could be as much as three times as

---

[100] *More Mentally Ill*, *supra* note 50, at 10.

[101] Anasseril E. Daniel, *Care of the Mentally Ill in Prisons: Challenges and Solutions*, 35 J. AM. ACAD. PSYCHIATRY & L. 406, 409 (2007).

[102] Maurice Chammah & Tom Meagher, *Why Jails Have More Suicides Than Prisons*, MARSHALL PROJECT, Aug. 2, 2015, https://www.themarshallproject.org/2015/08/04/why-jails-have-more-suicides-than-prisons#.wFLFyNmJm, <https://perma.cc/FX7X-673X>.

[103] *Mortality Statistics*, *supra* note 98, at 1.

[104] Daniel Dillon, *A Portrait of Suicides in Texas Jails: Who is at Risk and How Do We Stop it?* 21 LBJ J. PUB. AFF. 51, 55 (2013).

[105] Edgar Walters Edgar & Kiah Collier, *Sandra Bland Case Shows Deficiencies in Jail Oversight*, TEX. TRIB., July 24, 2015, http://www.texastribune.org/2015/07/24/sandra-bland-case-shows-deficiencies-jail-oversigh/, <https://perma.cc/QSZ7-8HTK>.

[106] Bruce B. Way et al., *Suicidal Ideation among Inmate-Patients in State Prison: Prevalence, Reluctance to Report, and Treatment Preferences*, 31 BEHAV. SCI. & L. 230, 230 (2013).

[107] James & Glaze, *supra* note 49.

[108] *Examination of Gender Differences*, *supra* note 80, at 22.

likely to attempt suicide as male inmates with similar addiction issues.[109] Inmates with mental illnesses are much more likely to have a history of sexual or physical abuse and are also at an increased risk of physical assault and sustaining an injury during a fight while in jail, making their time behind bars especially traumatic.[110] Figure 2 shows the multitude of risks that inmates with mental health diagnoses face while incarcerated in jail.

A. Mental Health and Rearrest: The Revolving Door

Recidivism is the likelihood that an individual will either reoffend or be reincarcerated within a specified amount of time. Once an individual with an undiagnosed mental health or substance disorder enters the criminal justice system for the first time, a revolving door process begins: the likelihood that they will be arrested or incarcerated is much greater than that of a first-time offender without a diagnosis.[111] Inmates who have a history of mental health treatment seem to be at particular risk of being arrested and jailed—one study in New York found that involvement in public mental health services was linked to a drastically increased risk of incarceration during a five-year period for both males (400%) and females (600%).[112] After their initial entry into the criminal justice system, offenders with mental health needs are likely to cycle back into jail throughout their lifetime; a study of inmates in the Los Angeles County Jail found that 95% of offenders with mental health issues have had at least one previous arrest.[113] While the exact reason for this increased recidivism cannot be determined conclusively from the data, inmates with mental illness have particular difficulty gaining employment, getting access to psychiatric appointments and medications,[114] and meeting the terms of their probation once they are released from jail and prison.[115] Pre-trial diversion programs like mental health courts aim to bring down the high number of individuals with mental illness and substance abuse disorders who are rearrested for minor offenses, like property theft, possession of illegal substances, public intoxication, or parole and probation violations.[116]

It should also be noted that this constant cycling in and out of jails by individuals with mental health needs increases the stress and job

---

[109] *Id.*

[110] James & Glaze, *supra* note 49.

[111] *Id.* at 18.

[112] *Consensus Project*, *supra* note 6, at 4.

[113] Richard H. Lamb et al., *Treatment Prospects for Persons With Severe Mental Illness in an Urban County Jail*, 6 J. PSYCHIATRIC SERVICES 72, 86 (2007).

[114] Christy K. Scott et al., *Predictors of Recidivism Over 3 Years Among Substance-Using Women Released From* Jail, 41 CRIM. J. & BEHAV. 1257, 1261 (2014); Peters et al., *supra* note 15, at 2, 33.

[115] Osher et al., *supra* note 9.

[116] *Consensus Project*, *supra* note 6, at xiii, 122.

dissatisfaction felt by jail staff. During a set of recent observations of the Travis County Jail in Texas by the author, several jail guards and other staff expressed their frustration and a feeling of defeat coming to work every day with a desire to help their community but, instead, they spend a large part of their shifts providing subpar mental health services to individuals with mental illness, only to have them return the next day for the same offense.[117] Dealing too frequently with these high-need populations often leads to job dissatisfaction and "burn-out" (general job fatigue and disaffection) among not only jail staff, but officers in other parts of the criminal justice system.[118] One staff member at the Cook County Jail in Chicago expressed this frustration and feeling of helplessness that many jail employees feel when they work with such a large number of individuals with mental health needs on a daily basis: "To walk in and feel like every other person I'm interviewing [is] mentally ill on any given day, I can't wrap my brain around it. It's staggering what we're really dealing with."[119]

B. The Costs of Managing Mental Illness Behind Bars

It costs $7,017 per year to incarcerate an individual with mental illness in Harris County, Texas, compared to just $2,599 per year for an inmate without mental health needs.[120] In Broward County, Florida, it costs an additional $50 per day to house an inmate who is mentally ill than one who is not, and in one summer month in 2012, Ohio's Clark County Jail spent more on prescription medications than it did on food for inmates.[121] Other jails report spending almost half of their medication budget[122] on already-expensive psychotropic medications that continue to increase in price by anywhere from 18% (for anti-depressants) to 71% (for antipsychotics) annually.[123]

Offenders with mental health issues cost more to incarcerate because their average length of stay is longer[124] and because they need increased supervision, medication, regular assessments, and more frequent interventions.[125] Inmates with mental illness also cost jails more over time because of their increased likelihood to be rearrested and

---

[117] Observations at Downtown Austin Travis County Jail (Apr. 22, 2015 & Apr. 30, 2015).

[118] Osher et al., *supra* note 9, at 38.

[119] Sullivan, *supra* note 65.

[120] Mark A. Levin, *Mental Illness and the Texas Criminal Justice System*, TEX. PUB. POLICY FOUND., 2 (2009), http://www.texaspolicy.com/library/doclib/2009-05-PP15-mentalillness-ml.pdf, <https://perma.cc/Z996-H9JJ>.

[121] *State Survey*, *supra* note 43, at 10.

[122] Osher et al., *supra* note 9, at 8.

[123] Sheila Fifer et al., *Rising Mental Health Drug Costs: How Should Managed Care Respond?*, MEDSCAPE (2005).

[124] James & Glaze, *supra* note 49.

[125] Osher et al., *supra* note 9, at 8.

reincarcerated during the span of their lifetime.[126] Their increased risk of institutional violence and misbehavior also raises overall operating costs due to injuries to guards and inmates, lawsuits, missed workdays, and increased employee turnover.[127] When an inmate commits suicide or is provided significantly negligent medical or mental health care that results in death or injury, jails can be sued for millions of dollars—a bill that taxpayers end up paying.[128] The increased direct supervision, safety equipment, and secure housing that are needed to care for suicidal inmates and inmates with substance abuse issues is particularly costly. It is easier to picture how expensive it is to incarcerate offenders with mental health issues when we look at the cost savings associated with alternatives to incarceration; for example, the Pew Charitable and MacArthur Foundation found that California taxpayers saw $7 in savings in overall incarceration costs for every $1 spent on their state's mental health court system, which aims to divert certain offenders from prison and jail into more rehabilitative (and less expensive) case management models of restitution.[129]

While most everyone agrees that inmates with mental illness are very expensive to incarcerate and treat in the judicial system, there is little research on the system-wide financial and societal costs associated with jailing so many individuals with mental health issues.[130] As these cost estimates improve and different states try new methods to bring down the costs of their criminal justice systems, it will be more important than ever to continue using and evaluating treatment and diversion programs like the mental health courts used in California that utilize a "therapeutic jurisprudence" model of judicial intervention.[131]

C. The Constitutional Requirements for Providing Mental Health Care in Jails

Although there are significant costs associated with providing care to inmates, local communities must also be aware of potentially costly lawsuits if they do not offer adequate care. Typically, inmates can bring lawsuits concerning inadequate medical care through tort cases grounded

---

[126] *State Survey*, *supra* note 43, at 18.

[127] *Consensus Project*, *supra* note 6, at 150.

[128] *State Survey*, *supra* note 43, at 13.

[129] STANFORD LAW SCH. THREE STRIKES PROJECT, *When Did Prisons Become Acceptable Mental Healthcare Facilities?* 10 (2014), http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/632655/doc/slspublic/Report_v12.pdf, <https://perma.cc/S49L-5UE6>.

[130] KiDeuk Kim, Miriam Becker-Cohen, & Maria Serakos, *The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System*, URBAN INST. 13 (Mar. 2015), http://www.urban.org/research/publication/processing-and-treatment-mentally-ill-persons-criminal-justice-system, <https://perma.cc/49RZ-Y7HL>.

[131] *Id.* at 27.

in state law or through federal civil rights actions through 42 U.S.C. § 1983.[132] Under tort cases, inmates can sue prison and jail medical providers for malpractice by proving negligence, but most actual suits are brought under Section 1983 actions to protect constitutional rights.[133] The U.S. Supreme Court has developed the "deliberate indifference" test to determine whether medical providers in correctional institutions have violated inmates' Eighth Amendment rights to be free from cruel and unusual punishment.[134]

The Court announced the existing test for evaluating whether adequate medical care was provided in 1976 in its first inmate medical case, *Estelle v. Gamble.*[135] In *Estelle*, the Court determined that the Eighth Amendment's reference to the "unnecessary and wanton infliction of pain" meant that prison medical providers had to be "deliberate[ly] indifferen[t] to serious medical needs of prisoners" in order to constitute a violation. [136] In doing so, the Court held that "inadvertent failure[s]" to provide proper treatment could not meet that standard, but only indifference that violates "evolving standards of decency."[137] This eschewed the possibility that negligence could ever qualify. In *Farmer v. Brennan,*[138] the Supreme Court further refined its deliberate indifference standard by requiring that officials have actual knowledge of a medical problem.[139] To find that prison officials disregarded an "excessive risk to inmate health or safety," the Court said the officials must be aware of a substantial risk of serious harm to the inmate and "fail[] to take reasonable measures to abate it."[140] These Eighth Amendment rights are at the foundation of every individual's right to be, at a minimum, properly screened and provided with necessary emergency medical interventions.

Subsequent cases have extended *Estelle*'s deliberate indifference standard to psychiatric and psychological care.[141] In *Bowring v. Godwin*, the Court held that an inmate with a mental illness is entitled to treatment if: (1) the prisoner's symptoms show evidence of a serious disease or injury; (2) the disease or injury is curable or can be alleviated with treatment; and (3) delay or denial of care has the potential for substantial harm to the prisoner.[142] Mental health needs are considered serious if

---

[132] William C. Collins, *Jails and the Constitution*, NAT' L INST. OF CORR. 43 (2007), http://static.nicic.gov/Library/022570.pdf, <https://perma.cc/C4JC-3PZ7>.
[133] *Id.* at 43-44.
[134] *Id.*; U.S. CONST. amend. VIII.
[135] Collins, *supra* note 132, at 44; Estelle v. Gamble, 429 U.S. 97 (1976).
[136] *Estelle*, 429 U.S. at 103 (1976).
[137] *Id.* at 105-06.
[138] 511 U.S. 825 (1994).
[139] *Id.* at 837.
[140] *Id.* at 847.
[141] Michele Deitch, *Correctional Health Care and Special Populations-Legal Considerations and Context, in* MANAGING SPECIAL POPULATIONS IN JAILS AND PRISONS 21-9 (Stan Stojkovic ed., 2005).
[142] *Id.* (citing Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977)).

they cause "significant disruption" in an inmate's life and prevent the inmate from functioning "without disturbing or endangering others or himself."[143]

Because the deliberate indifference standard has been applied in the mental health context, correctional institutes must have intake screening systems in place to identify mental illness among the inmate populations, and they must provide adequate treatment to inmates with mental health needs.[144] To avoid liability under Section 1983 claims, mental health providers in prisons and jails will also have to address issues with suicide by identifying inmates who are at risk, protecting and monitoring them once identified, and responding to suicide attempts.[145] As the doctrine established by *Estelle* shows, every individual who comes through the doors of a jail is legally and constitutionally entitled to a quality mental health screening, suicide interventions, and access to emergency medical and mental health care. This is particularly notable considering that as recently as 2014, the No. 1 source of complaints for jail inmates in Texas was issues related to medical services.[146]

III. THE JAIL INTAKE PROCESS

A. The Purpose of the Jail Intake Process

When an individual is being booked into a local jail, the first step is the completion of an intake (or "booking") process that identifies, among other things, an inmate's immediate medical needs and security risks.[147] The American Correctional Association's (ACA) Standards for Adult Local Detention Facilities state that a high-fidelity jail admissions process should include: a criminal-history check, a photograph of the inmate, fingerprints, an inventory of personal property, collection of personal information for mailing and visitation lists, assignment of the inmate's registered number, an assessment of general appearance and behavior, verification of identity, and screenings for any risks and needs associated with medical, dental, mental health, drug or alcohol use, or suicidal tendencies.[148] This whole intake and classification process should be completed "as soon as possible" and is supposed to be completed within 48 hours of the inmate's arrival at the jail, but that can vary depending on the time of day, number of inmates, or available staff

---

[143] *Id.*
[144] *Id.*
[145] Collins, *supra* note 132, at 46.
[146] TEX. COMM' N ON JAIL STANDARDS, *2014 Annual Report* 12 (2015) http://www.tcjs.state.tx.us/docs/2014AnnualJailReport.pdf, <https://perma.cc/9LXK-J3ZE>.
[147] AM. CORR. ASS' N, *supra* note 13.
[148] AM. CORR. ASS' N, *supra* note 13.

resources.[149]

During the initial intake process, jail intake staff are also supposed to check available state records for inmates' past involvement with public mental health systems. For example, in Texas, state standards set forth in the Texas Administrative Code require jail staff to research every inmate's past involvement with public mental health systems using the Department of State Health Service's (DSHS) Continuity of Care Query (CCQ) system.[150] The CCQ system uses state records to determine whether an inmate has ever received mental health services at state psychiatric hospitals or through community health centers run by state-funded local mental health authorities.[151] Record-keeping systems like the CCQ system are also important in combating low disclosure rates during the intake process; one study found that 34% of inmates were not flagged by jail staff as having a mental illness during the intake process but had a documented history of mental health treatment.[152] Unfortunately, this type of verification of past treatment does not always happen. In the case of Sandra Bland, her mental health records and treatment history in the CCQ system were not checked during the three days she spent in the Waller County Jail before her suicide.[153]

The American Bar Association's Criminal Justice Standards for the Treatment of Prisoners emphasizes that the primary purpose of gathering such a wide breadth of information during intake is to inform the classification process that separates prisoners into housing, custody levels, and programming that is safe and secure, given each prisoner's risks and needs.[154] The initial brief mental health screening is especially important in determining whether an individual is suicidal, a harm to others, or in need of psychotropic medications.[155] Because there are not always enough mental health staff available in jails to meet every inmate's needs, individuals that present a risk to themselves or others during intake are often put into isolation units[156] or seats with restraint straps for their legs and arms until staff is available.[157] This is especially common during nighttime shifts, weekends, and other busy times.[158]

Jail standards in Texas require visual checks of every inmate each hour and visual checks every 30 minutes for inmates who are potentially

---

[149] *ABA Standards, supra* note 4.

[150] 37 TEX. ADMIN. CODE § 273.5(c)(1) (2013).

[151] *Id.*

[152] TEX. COMM'N ON JAIL STANDARDS, *Mental Health Study* (2004), http://www.tcjs.state.tx.us/docs/MH%20Study.pdf, <https://perma.cc/UHE4-EDDU> [hereinafter *Mental Health Study*].

[153] *See* Terri Langford, *Mental Health Jail Check Failed in Bland Case*, TEX. TRIB., July 30, 2015, http://www.texastribune.org/2015/07/30/texas-two-part-mental-health-jail-check-failed-san/, <https://perma.cc/9STM-FA3Y> (reporting that were technical difficulties that did not allow the jail to check the CCQ).

[154] *ABA Standards, supra* note 4.

[155] *Consensus Project, supra* note 6, at 128.

[156] *State Survey, supra* note 43.

[157] Observations at Downtown Austin Travis County Jail (Apr. 22, 2015 & Apr. 30, 2015).

[158] *Id.*

suicidal, mentally ill, assaultive, or demonstrating bizarre behavior.[159] Using the case of Sandra Bland as an example of how suicide prevention policies can break down in practice, Waller County Jail was cited by the Texas Commission on Jail Standards on July 26, 2015, for failing to provide its corrections officers with the required mental health and suicide prevention training required under the Texas Administrative Code.[160] Waller County Jail was also cited for failing to administer the basic hourly visual safety checks that are required for every inmate (not to mention the 30-minute checks that "potentially suicidal" inmates are required) under the Texas Administrative Code.[161] Ms. Bland was left alone and out of sight for almost two hours after she had expressed a history of mental health treatment, suicidal ideation, suicidal attempts, and the recent death of her child.[162]

With limited psychiatric inpatient resources available in the community, jails are also responsible for housing inmates with serious mental illnesses while they wait for state-funded psychiatric beds to become available at mental health hospitals.[163] For example, in Bexar County, Texas, jails have been able to bring down their population of inmates with mental health needs by expanding the number and type of community psychiatric facilities where inmates can be transferred to during the intake process.[164] Communities can see significant savings by diverting individuals with serious mental illness to psychological services outside the correctional setting and freeing up those scant psychological services behind bars for more dangerous, serious offenders who need them.[165] In Michigan, for instance, researchers estimate that diverting individuals with serious mental illnesses from incarceration into programs like supportive case management and Assertive Community Treatment could save the state $5–$8 million annually.[166] In Texas, specialized probation caseloads and intensive case management provided through the Texas Correctional Office on Offenders with Medical and Mental Impairments have been shown to significantly reduce recidivism rates for offenders with certain mental health needs who are enrolled in the program, which saves the state incarceration costs both now and in the future.[167]

---

[159] 37 TEX. ADMIN. CODE § 275.1 (2013).

[160] TEX. COMM' N ON JAIL STANDARDS, *Special Inspection Report: Waller County* (July 16, 2015), http://www.tcjs.state.tx.us/docs/Waller_NC.pdf, <https://perma.cc/J75U-XQWP>.

[161] *Id.*

[162] Greg Botelho & Dana Ford, *Sandra Bland' s Death Ruled Suicide by Hanging*, CNN, July 23, 2015, http://www.cnn.com/2015/07/23/us/sandra-bland-arrest-death-main/, <https://perma.cc/Q5PY-9K2H>.

[163] *State Survey*, *supra* note 43, at 28, 56, 65.

[164] Alexander J. Cowel et al., *The Impact on Taxpayer Costs of a Jail Diversion Program for People with Serious Mental Illness*, 41 EVALUATION & PROGRAM PLAN. 31, 35 (2013).

[165] *Id.*

[166] *Asking Why*, *supra* note 63, at 8.

[167] TEX. DEP' T OF CRIMINAL JUSTICE, *Biennial Report of the Texas Correctional Office on Offenders with Medical or Mental Impairments Fiscal Year 2013-2014* (Feb. 2015), https://www.tdcj.state.tx.us/documents/rid/TCOOMMI_

B. The Brief Mental Health Screening

The jail intake process is every offender's first interaction with the corrections system and provides officials with a unique opportunity to help shape future treatments, custody decisions, and interactions with the justice system.[168] The intake process is essential to maintaining security in jails. However, facilities that conform to ABA and ACA standards still have a lot of variation in the structure, depth, and timeliness of their intake procedures because each jail is managed and operated by its own local government officials or sheriff.[169] Jails are particularly inconsistent in which brief mental health screening instrument they use during intake and how they administer that screening.[170] While a 1989 study found that only 70% of jails nationwide were providing mental health screenings at intake,[171] a random sample survey of 600 jails in 1997 found that 88% of jails provided "some level of initial screening" during booking and only 76% of jails reported screening "all booked detainees."[172] Unfortunately, there has not been another systematic study of the prevalence and types of mental health screenings used in jails nationwide since the 1997 study. At the state level, one study in 2000 found that approximately 93% of Florida's 67 county jails were offering some sort of mental health screening during intake, but those results are not necessarily representative of national mental health screening practices in jails in 2015.[173]

Troubling still is a more recent 2006 study of Minnesota jails that found only 61% of jails "always" conducted a mental health screening at intake and only 15% of jails offered mental health screenings with questions that went beyond basic booking questions about medications, past suicide attempts, and treatment history.[174] This Minnesota study shows that even within the borders of one state, there is not always one singular, validated mental health screening instrument used by all jails. Additionally, when screenings do take place, the level of training of the staff conducting the screening and the varying location of the screening create even more inconsistencies between jails.[175] As one of the few

---

Biennial_Report_2015.pdf, <https://perma.cc/QSG7-A3EC>.

[168] *ABA Standards*, *supra* note 4, at 28.

[169] Osher et al., *supra* note 9, at 35.

[170] NAT' L INST. OF JUSTICE, *Mental Health Screens for Corrections*, U.S. DEP' T OF JUSTICE (2007), https://www.ncjrs.gov/pdffiles1/nij/216152.pdf, <https://perma.cc/7AC3-6RBY> [hereinafter *Mental Health Screens*].

[171] Nathalie C. Gagnon, *Mental Health Screenings in Jails* 18 (2009) (Ph.D dissertation, Simon Fraser University).

[172] Henry J. Steadman & Bonita M. Veysey, *Providing Services for Jail Inmates With Mental Disorders*, NAT' L INST. OF JUSTICE (1997), https://www.ncjrs.gov/pdffiles/162207.pdf, <https://perma.cc/5Z3Q-YNHH>.

[173] Randy Borum & Michelle Rand, *Mental Health Diagnostic and Treatment Services in Florida' s Jails*, 7 J. CORRECTIONAL HEALTH CARE 189, 202 (2000).

[174] Krueger, *supra* note 21, at 1.

[175] *Id.*

states that has an independent governing body overseeing jail operations, the Texas Commission on Jail Standards currently provides county jails across the state with the Screening Form for Suicide and Medical/Mental/Developmental Impairments to use during the initial intake process.[176] This form was updated in October 2015 to include more specific instructions to jailers regarding how to ask inmates about suicidal risk.[177] The new form has a series of questions for jail staff to ask inmates, while the previous screening form relied on inmates to self-report any medical or mental health needs.[178] While the Texas Commission on Jail Standards worked with outside experts to develop the instrument and even got feedback on the form from jailers in four different counties, the screening instrument used in Texas's jails still has not been validated for accuracy across jail populations of different races and genders.

Brief mental health screenings in jails typically last five minutes or less and consist of two to eight yes or no questions.[179] However, some jails still report asking only one or two simple mental health related questions as part of the regular interview during booking.[180] Individuals who are flagged during the screening process as being at risk of having suicidal thoughts or other serious mental health needs should then be referred for a more in-depth clinical assessment with the first available social worker or trained medical staff.[181] Unfortunately, a referral for further psychiatric evaluation does not always happen quickly or uniformly for every jail detainee[182]—individuals also may need to wait several hours for a screening if, for example, they are booked in the middle of the night and no staff is available until morning.[183] In a survey of Texas inmates in 2004, 22% of them reported not being screened for mental illness within 72 hours of their arrival at jail.[184] Because of the limited time and resources in local jails, the brief mental health screening is a balancing act that requires casting a wide net to catch as many risks as possible while not referring an excessive number of individuals to a full psychiatric assessment if they do not need those more expensive and resource-intensive services.[185] In the case of Sandra Bland, she was never

---

[176] Katharine Ligon, *Suicide in Texas Jails: Time for Reform*, CTR. FOR PUB. POLICY PRIORITIES (July 29, 2015), http://bettertexasblog.org/2015/07/suicide-in-texas-jails-time-for-reform/, <https://perma.cc/P76X-D3VA>.

[177] TEX. COMM'N ON JAIL STANDARDS, *Memo on Revised Intake Screening Form* (Oct. 22, 2015), http://www.tcjs.state.tx.us/docs/TAMemo-RevisedIntakeScreeningForm.pdf, <https://perma.cc/R356-SMG7> [hereinafter *Revised Intake Screening Form*].

[178] Johnathan Silver, *New Statewide Jail Form Aimed at Suicide Risks*, TEX. TRIB., Nov. 13, 2015, https://www.texastribune.org/2015/11/13/county-jails-adopt-revised-intake-form-next-month/, <https://perma.cc/8G6F-583A>.

[179] *Mental Health Screens*, *supra* note 170; *Consensus Project*, *supra* note 6, at 42.

[180] Krueger, *supra* note 21, at 2.

[181] AM. CORR. ASS'N, *supra* note 13; *Consensus Project*, *supra* note 6, at 134.

[182] 37 TEX. ADMIN. CODE § 273.5 (West 2015).

[183] Observations at Downtown Austin Travis County Jail (Apr. 22, 2015 & Apr. 30, 2015).

[184] *Mental Health Study*, *supra* note 152.

[185] Martin et al., *supra* note 22, at 2.

referred to a mental health professional for a psychiatric evaluation after disclosing to jail staff a previous suicide attempt, thirty cut marks on her arms,[186] and the recent death of a child.[187]

The initial mental health screening is not a full diagnostic tool but rather is meant to send a warning signal to jail staff that a particular inmate needs further mental health assessment or immediate safety precautions.[188] In the case of affirmative or evasive answers to questions related to suicidality or homocidality, jail staff can take a wide range of immediate actions (e.g. isolation in a solitary cell with visual checks every half hour) to keep an inmate safe until they can become stable, meet with psychiatric staff, or are transferred offsite to a psychiatric facility.[189] Inmates at risk of suicide should also be kept away from potentially lethal objects, making it surprising that the Texas Commission on Jail Standards did not cite the Waller County Jail on July 16, 2015, for Sandra Bland having had access to the trash bag in her jail cell that she used to hang herself.[190]

Combined with the sociological and biographical information obtained during the rest of the intake process, the brief mental health screening is instrumental in referring detainees to diversionary inpatient psychiatric services, setting up appropriate pre-trial diversion services,[191] negotiating lower bail amounts or deferred adjudication,[192] and arranging necessary psychiatric and medical accommodations for individuals who are still going to be incarcerated.[193] Unfortunately, judges and other important decision makers experience significant delays in receiving information about an inmate's mental health status. One survey in Texas found that most of the 244 judges surveyed reported not finding out about inmates' mental health status until arraignment or during trial, a delay that leads to inmates being held for longer periods of time than is necessary.[194]

C. Commonly Used Brief Mental Health Screenings in Jail Settings

Standards for the treatment of prisoners set forth by groups like the ACA, ABA, and Texas Commission on Jail Standards require jails to

---

[186] Botelho & Ford, *supra* note 162.

[187] Langford, *supra* note 153.

[188] *ABA Standards*, *supra* note 4, at 23-2.1.

[189] AM. CORR. ASS' N, *supra* note 13.

[190] Jareen Imam & Henry Hanks, *5 Questions asked in the Sandra Bland case*, CNN, July 27, 2015, http://www.cnn.com/2015/07/23/us/sandra-bland-questions-remain-social-irpt/, <https://perma.cc/P3GM-T69M>.

[191] *ABA Standards*, *supra* note 4, at 23-6.2.

[192] *Consensus Project*, *supra* note 6, at 102.

[193] *ABA Standards*, *supra* note 4, at 23, 24.

[194] Levin, *supra* note 120, at 2.

administer a high-fidelity mental health screening during the intake process, but jail administrators and other local authorities are generally left to decide which specific screening instrument to use. While many states use screenings they develop in legislative work committees and advisory councils, there are only five mental health screening instruments used in jails that have published replication studies using independent samples in the United States, making them the most researched and statistically validated screening instruments available: the Jail Screening Assessment Tool (JSAT), the Brief Jail Mental Health Screen (BJMHS), the Referral Decision Scale (RDS), and the Correctional Mental Health Screening-Men and -Women (CMHS-M and CMHS-W).[195] The JSAT, BJMHS, and RDS are significant improvements over previous screening tools, but all three still present significant limitations in adopting them for nationwide use with all jail populations.[196] The BJMHS in particular has gained support in recent years from groups such as the Substance Abuse and Mental Health Services Administration and the National Gains Center for Behavioral Health and Justice Reform.[197] However, for reasons this Note will discuss below, preliminary studies indicate the BJHMS may not be as accurate as the CMHS-M and CMHS-W scales in detecting mental illness in females and other minority jail populations.

1. The Referral Decision Scale (RDS)

The RDS is the oldest of the three screening instruments discussed here and was lauded as a great advance in corrections screenings in the early 1990s.[198] The RDS was created specifically for use in correctional settings, and researchers were particularly optimistic about the RDS's diagnostic accuracy because its questions were derived from a more comprehensive, full-scale screening called the Diagnostic Interview Schedule, Version 3 (DIS-III).[199] The RDS focused specifically on identifying risk factors for three major mental health diagnoses: major depression, bipolar disorder, and schizophrenia.[200] An example of one question from the RDS bipolar scale is: "Have you ever felt for a period of a week or longer that you had a special talent or powers and could do things others could not or that in some way you were an especially important person?" This compartmentalization of screening questions into separate categories that correspond to distinct diagnoses is one

---

[195] Martin et al., *supra* note 22, at 4.
[196] *Id.* at 7-8.
[197] Ligon, *supra* note 176.
[198] *See, e.g.*, Linda A. Teplin & James Swartz, *Screening for Severe Mental Disorder in Jails: The Development of the Referral Decision Scale*, 13 L. & HUM. BEHAV. 1, 14 (1989).
[199] *Id.* at 5.
[200] *Id.* at 3.

reason the RDS does not predict the presence of mental illness as accurately as other screenings.[201]

The RDS has also been faulted for its myopic focus on a history of mental illness treatment instead of focusing more holistically on mental health and including questions related to acute crises or recent functioning.[202] The RDS has fallen out of use in recent years for a number of reasons: its inability to distinguish between depressive and psychotic symptoms,[203] its generally poor ability to predict mental illness,[204] its lack of specificity which puts it at an increased risk for misinterpretation by correctional staff or inmates,[205] a general inability to identify specific diagnoses or concerns,[206] the exclusion of any questions related to suicidality,[207] and too many referrals for mental health services when the individual did not actually have a mental health diagnosis.[208] This last issue is crucial because it makes the RDS prohibitively expensive to implement on a large scale due to its excessive number of unneeded referrals to longer, more in-depth psychological evaluations, also known as false positives.[209]

2. Jail Screening Assessment Tool (JSAT)

The JSAT is distinct from the RDS or BJMHS because instead of using yes or no questions and a structured rubric to score individuals' responses, the JSAT is a semi-structured assessment that has no objective scoring scale.[210] Instead, the JSAT relies on the interviewer's professional judgment and prior mental health training to talk generally about symptoms with each individual, subjectively respond to their responses to sets of questions in eight subject areas, and flag individuals who are likely at risk and need further psychiatric follow-up.[211] Some of the subject areas of questions include "legal situation, violence issues, social background, substance use, [and] mental health treatment."[212]

---

[201] Bonita M. Veysey et al., *Using the Referral Decision Scale to Screen Mentally Ill Jail Detainees: Validity and Implementation Issues*, 22 L. & HUM. BEHAV. 205, 210 (1998).
[202] *Id.* at 212.
[203] *Id.* at 210.
[204] Richard Rogers et al., *The Referral Decision Scale with Mentally Disordered Inmates: A Preliminary Study of Convergent and Discriminant Validity*, 19 L. & HUM. BEHAV. 481, 490 (1995).
[205] *Id.* at 488.
[206] *Id.* at 488.
[207] *Id.* at 490.
[208] Stephen D. Hart et al., *The Referral Decision Scale: A Validation Study*, 17 L. & HUM. BEHAV. 618, 620 (1993).
[209] Veysey et al., *supra* note 201, at 213.
[210] Thomas Grisso, *Jail Screening Assessment Tool (JSAT): Guidelines for Mental Health Screenings in Jails*, 57 J. AM. PSYCHIATRIC ASS' N 1049, 1049 (2006) (reviewing Tony Nichols et al. BRITISH COLUMBIA, MENTAL HEALTH, LAW AND POLICY INSTITUTE (2005).
[211] *Id.* at 1050.
[212] *Id.*

Because the JSAT has no objective rating system for scoring responses, there is considerable discretion on the part of the interviewer in terms of how to respond and follow-up to responses.[213]

The creators of the JSAT state that a social worker, nurse, or someone with "graduate training in psychopathology and assessment" should administer the JSAT—a wholly unrealistic requirement for budget-strapped jails that often need to rely on arresting officers or jail guards to handle intake paperwork.[214] Unlike older screening instruments like the Minnesota Multiphasic Personality Inventory (MMPI) and the Millon Personality Inventory, which took one to two hours to complete,[215] the JSAT is designed to be administered over a fifteen- to thirty-minute period—a considerable length of time that still makes it impractical for use in most jail intake settings when compared to the BJMHS, RDS, and CMHS tools.[216] The JSAT has been shown to correctly identify mental illness in about 71% of women and 84% of men, but in terms of nationwide implementation across all jails, that level of accuracy is not enough to outweigh the JSAT's high cost, excessive length, and unrealistic requirements for extensive mental health training for the staff who administer it.[217] It also costs money to buy the JSAT from Proactive Resolutions and use it with inmates, which increases the price tag of the JSAT even more.[218]

3. Brief Jail Mental Health Screening (BJMHS)

The BJMHS was developed as an improved and updated version of the RDS, meant to be shorter and more accurate at detecting mental illness while having fewer false positives (i.e. screenings that indicate the presence of mental health issues in individuals who do not actually have mental health issues).[219] The BJMHS's overall accuracy in detecting mental illness is about the same as the JSAT (65%-75%) but unlike the JSAT, correctional staff can administer it in under three minutes and with much less training required.[220] Unfortunately, some studies have found that the BJMHS has a false-negative rate for females (approximately

---

[213] *Id.*

[214] *Id.*

[215] Linda A. Teplin et al., *Screening for Severe Mental Disorder in Jails: The Development of the Referral Decision Scale*, 13 L. & HUM. BEHAV. 1, 2, 14 (1989).

[216] *Mental Health Screens*, *supra* note 170; Martin et al., *supra* note 22, at 7.

[217] Tonia L. Nicholls et al., *Women Inmates' Mental Health Needs: Evidence of the Validity of the Jail Screening Assessment Tool (JSAT)*, 3 INT' L J. FORENSIC MENTAL HEALTH 167, 179-80 (2004).

[218] PROACTIVE RESOLUTIONS, *Jail Screening Assessment Tool (JSAT) Manual* (2015), http://proactive-resolutions.com/shop/jail-screening-assessment-tool-jsat/, < https://perma.cc/KHE4-CJWY>.

[219] Henry J. Steadman et al., *Validation of the Brief Jail Mental Health Screen*, 56 J. AM. PSYCHIATRIC ASS' N 816, 816 (2005).

[220] Martin et al., *supra* note 22, at 5.

35%) that is alarmingly high when considering it for nationwide use with all inmate populations.[221] This false negative rate means that a large number of females would be screened as having no mental health needs when in fact they did have mental health issues, an undoubtedly dangerous situation.

A second version of the BJMHS was developed, the BJMHS-R, which included additional questions measuring symptoms related to post-traumatic stress disorder (PTSD) and depression, two issues which are more common in female inmates.[222] While the newer BJMHS-R did not improve on the accuracy or validity of the BJMHS, researchers in the new BJMHS-R study also re-administered the BJMHS and found a less alarming range of false negative rates in women (14% to 37%) than was found in the initial research studies validating the BJMHS.[223] Although the BJMHS's rate of false negatives was improved in this second validation study, this wide range of false negative rates still represents a significant percentage of women being misidentified as not having a mental illness, which is concerning when considering the BJMHS for nationwide adoption. The BJMHS is also ineffective at identifying mental illness in African-Americans, Latinos, and low-income populations.[224] This is due to the BJMHS relying too heavily on the inmate having a history of involvement in mental health treatment in order to trigger further mental health assessment. A history of treatment is often absent in minority and low-income populations because of financial and geographical barriers to obtaining healthcare. [225]

4. The Correctional Mental Health Screenings: Women (CMHS-W) & Men (CMHS-M)

There has been increased interest recently in brief mental health screenings that are more sensitive to race, gender, and class. The Correctional Mental Health Screening-Women (CMHS-W) and the Correctional Mental Health Screening-Men (CMHS-M) are the most consistently validated scales across all jail populations and the most adaptable for jails of all different sizes, staffing numbers, and resource levels.

The CMHS-M and CMHS-W are gender-specific mental health screenings that improve upon many of the faults of the JSAT, BJMHS,

---

[221] Steadman et al., *supra* note 219, at 821.

[222] Henry J. Steadman et al., *Revalidating the Brief Jail Mental Health Screen to Increase Accuracy for Women*, 58 J. PSYCHIATRIC SERVS. 1398, 1398-99 (2007) [hereinafter *Revalidating the Brief Jail Mental Health Screen*].

[223] *Id.*

[224] Alexander I. Simpson et al., *Does Ethnicity Affect Need for Mental Health Service Among New Zealand Prisoners?*, 37 AUSTL. & N.Z. J. PSYCHIATRY 728, 728 (2003).

[225] Seth J. Prins et al., *Exploring Racial Disparities in the Brief Jail Mental Health Screen*, 39 CRIM. JUST. & BEHAV. 635, 636 (2012).

and RDS. Unlike the JSAT, the CMHS-W and CMHS-M can be administered in under five minutes[226] and have simple scoring systems that do not require the interviewer to have extensive training or experience in mental health treatment.[227] The CMHS scales are more effective than the RDS scales because they contain questions that relate to suicidality and have much lower rates of false positives than the RDS.[228] Finally, the CMHS-M and CMHS-W tools are an improvement over the BJMHS because the CMHS tools identify mental illness equally well across races and genders with fewer false positives than the BJMHS or BJMHS-R.[229]

The CMHS scales are also the most accurate in identifying symptoms related to depression and anxiety in males, which could be especially helpful for correctional workers who have consistent difficulty detecting symptoms of depression and anxiety in both genders.[230] This difficulty detecting depression and anxiety is especially important given that six of the top seven mental health symptoms reported in jail are symptoms related to a diagnosis of major depression.[231] The CMHS-W's increased focus on symptoms of anxiety and depression may at least partially explain why the CMHS-W is more accurate overall in identifying mental illness in females. The ability for the CMHS-W to accurately identify mental illness in women is particularly important given that the female jail population has increased more than any other group in recent years, jumping 10.9% between 2010 and 2013 (while the male population in jails declined 4.2% during that same time).[232] Symptoms of depression are also prone to response bias and closely linked to thinking about and attempting suicide, so identifying these symptoms early is a crucial component of an effective jail suicide prevention strategy.

In testing the accuracy of the CMHS scales, researchers have looked at raising and lowering the cut-off point for how many positive responses trigger a referral for more in-depth psychiatric services. In the largest meta-analysis of CMHS-M data available, researchers suggest that lowering the cut-off point from six positive responses to five raises the overall accuracy of the CMHS-M from 77% to 79%.[233] That same meta-analysis found that for the CMHS-W, lowering the cut-off point from five positive responses to four provides a better balance of false positives and false negatives while still maintaining the CMHS-W's overall accuracy in correctly detecting mental illness in inmates 73% of

---

[226] Martin et al., *supra* note 22, at 7.
[227] *Mental Health Screens*, *supra* note 170, at 10.
[228] *Id.*
[229] *Id.*
[230] Denis Lafortune, *Prevalence and Screening of Mental Disorders in Short-Term Correctional Facilities*, 33 INT' L J.L. & PSYCHIATRY 94 (2010).
[231] *Id.*
[232] Minton & Golinell, *supra* note 24, at 1.
[233] Martin et al., *supra* note 22, at 5.

the time.[234] While that still leaves 27% of inmates with mental illness undetected by the screening, that number should decrease if jail staff use the screening in combination with an electronic records systems—like Texas's CCQ system—that checks each individual's history of mental health treatment at publicly-funded clinics and health centers.[235]

IV. WHY LEADERS SHOULD FOCUS ON IMPROVING MENTAL HEALTH SCREENINGS DURING JAIL INTAKES

The jail intake process is every offender's first interaction with the corrections system, and as the first step in a sometimes life-long cycle of incarceration and release, jail intakes can have a ripple effect on every treatment and custody decision made thereafter. The brief mental health screening and admissions process is at the foundation of every security and treatment decision that is made for an inmate after the admissions process; as the American Bar Association puts it, many of their standards for the treatment of prisoners "can be safely and effectively implemented only if they are preceded by sound classification of the affected prisoners."[236] In Texas, for example, more than 90% of judges report that having access to a mental health assessment before an inmate goes to court would help them make more effective judgments and treatment decisions.[237] The first step in making that happen is ensuring the initial mental health screening is as accurate as possible, and that intake processes and suicide prevention plans are consistently implemented in all jails. While recent changes to the mental health screening used in Texas jails are certainly a step in the right direction,[238] the Texas Commission on Jail Standards will likely need increased staff and resources to make sure the new screening and suicide prevention procedures are implemented properly statewide and updated where necessary.[239]

The case of Sandra Bland is a tragic example of how minimum jail standards for the treatment of inmates with mental illnesses can break down and suicide prevention procedures can be forgotten or ignored without adequate oversight and training. While no one can say for sure that Ms. Bland's death in the Waller County Jail could have been prevented, jail staff could have better responded to her mental health needs had they given her the 30-minute visual checks required by law[240]

---

[234] *Id.*

[235] *Mental Health Study*, *supra* note 152. Note: The precursor to the CCQ electronic records system was the Case Assignment and Registration (CARE) system discussed in this report.

[236] *ABA Standards*, *supra* note 4, at 24.

[237] Levin, *supra* note 120, at 2-3.

[238] *Revised Intake Screening Form*, *supra* note 177.

[239] Deitch, *supra* note 31.

[240] 37 TEX. ADMIN. CODE § 275.1 (2013).

or had their employees been given the proper mental health and suicide prevention training that the Texas Administrative Code requires for all corrections officers.[241]

This section of the Note provides a set of five recommendations for jail administrators and officials who are interested in making changes to improve mental health services in jails while reducing both the costs of incarceration and rates of recidivism.

A. Local Jail Officials Should Begin Using More Accurate Mental Health Screening Tools.

The limitations and inaccuracies of three of the most commonly used brief mental health screenings—the BJMHS, JSAT, and RDS—suggest that jails should begin using screening instruments that have been validated and are more accurate in identifying mental illness in inmates of all genders, races, and economic classes.[242] Potentially more worrisome is the apparent lack of validation studies of screening tools used in different states, like the Screening Form for Suicide and Medical/Mental/Developmental Impairments that the Texas Commission on Jail Standards currently uses in Texas jails.[243] Organizations including the American Psychiatric Association recommend using a standard, uniform screening instrument at every jail within each state to help improve reporting and training in addition to making data and records sharing between correctional facilities more efficient.[244] However, it is important that any screening a state decides to use is also validated to accurately identify mental illness in all types of jail populations.

Independent jail oversight bodies and local officials should begin using brief screening instruments like the CMHS-M and CMHS-W[245] that are accurate in detecting mental illness in all races and genders while still remaining cost effective by not referring too many inmates without a mental illness for further evaluation.[246] By tightening up and improving the quality of the mental health screening during intake, correctional systems should see a cascade of benefits and payoffs at each step of the criminal justice process following the initial pre-trial booking into a local

---

[241] TEX. COMM' N ON JAIL STANDARDS, *supra* note 146.

[242] *See generally* Steadman et al., *supra* note 219.

[243] *See generally* TEX. COMM' N ON JAIL STANDARDS, *Instructions for Suicide and Medical/Mental/Developmental Impairments Form*, http://www.tcjs.state.tx.us/docs/Instructions-Suicide_Medical_and_Mental_Impairments_Form.pdf, <https://perma.cc/57Q3-B8P4>.

[244] *Consensus Project*, *supra* note 6, at 131.

[245] The CMHS screenings are available online and free to copy and use in both research and institutional settings: ASS' N OF STATE CORR. ADM' RS, *Correctional Mental Health Screening for Women*, http://www.asca.net/system/assets/attachments/2640/MHScreen-Women082806.pdf?1300974694, <https://perma.cc/PB87-7MG4>; ASS' N OF STATE CORR. ADM' RS, *Correctional Mental Health Screening for Men*, http://www.asca.net/system/assets/attachments/2639/MHScreen-Men082806.pdf?1300974667, <https://perma.cc/J42J-8FGL>.

[246] Martin et al., *supra* note 22, at 6-8.

jail. And with an increasing number of women entering U.S. jails in recent years, it is more important than ever that corrections officers are identifying the mental health needs of *every* inmate during their initial intake.

B. Officials Should Ensure that Screeners are Appropriately Dressed and Trained.

Jail administrators and policymakers should evaluate the dress, demeanor, training, and gender of the staff that administers brief mental health screenings in an effort to improve disclosure rates and overall accuracy in detecting mental health needs. Research suggests that there are overall higher rates of symptom disclosure, especially of depressive and suicidal or homicidal thoughts, when mental health screenings are administered by female staff members[247] or staff members who are dressed in uniforms that are less intimidating than traditional jailer uniforms.[248] Inmates also tend to disclose more symptoms when corrections officers have received training in how to calmly and naturally communicate with someone about their symptoms of mental health problems and thoughts of suicide.[249] When mental health and suicide prevention training is insufficient or not completed by all staff, it opens up the door for increased risk of injury and tragedy. It bears repeating that following Sandra Bland's death, the Waller County Jail was cited by the Texas Commission on Jail Standards for not being in compliance with providing the minimum two hours of mental health training that is legally required for all corrections officers.[250] Before looking to improve mental health training for jail staff, officials must first ensure that existing minimum standards are being implemented and enforced.

Looking past current standards toward best practices that jails should be aiming to implement, one evidence-based training on communicating with individuals experiencing a mental health crisis that is already being used by different state health agencies across the country is the Applied Suicide Intervention Skills Training (ASIST) program.[251] The ASIST training is just one example of the type of therapeutic communication trainings that every staff member in jails should be receiving. Mental health counselors in Texas jails have further suggested that inmates would more readily disclose feelings of suicide and other

---

[247] *Revalidating the Brief Jail Mental Health Screen, supra* note 222, at 1398.

[248] Hart et al., *supra* note 208, at 622; *Consensus Project, supra* note 6, at 69.

[249] Peters et al., *supra* note 15, at 24.

[250] Botelho & Ford, *supra* note 162.

[251] *ASIST*, LIVINGWORKS, (2015), https://www.livingworks.net/programs/asist/, <https://perma.cc/9S8A-9MK8>; TEX. HEALTH & HUMAN SERV. COMM' N, *Presentation to the Senate Health and Human Services Committee on Mental Health Coordination* (Aug. 15, 2014), https://www.hhsc.state.tx.us/news/presentations/2014/Senate-Presentation-Mental-Health.pdf, <https://perma.cc/9NSD-BGVY>.

symptoms if the counselors in jails could offer them the same client-patient privacy protections that mental health counselors and their patients have in other institutionalized settings.[252] Legislators should seriously consider looking at this issue since changing the level of patient-client privacy that a correctional counselor can offer inmates may increase disclosure rates of mental health symptoms, suicidal and otherwise.[253]

Jail administrators should also ensure that their staff are properly trained in the electronic medical records systems and referral processes that are used when an inmate needs their prior mental health records checked or forwarded for a referral for further psychological assessment. Sandra Bland's death is just one example of what can potentially go wrong when important information about suicide risk is left off of intake forms[254] or when public mental health records systems (like the CCQ system used in Texas) are not properly used or backed up.[255]

C. Jails Should Minimize the Use of Restraints to Respond to Mental Health Crises.

When corrections officers or other jail staff determine that an inmate has serious mental health issues, they should be immediately evaluated by a mental health specialist, and the use of mechanical restraints and solitary confinement should be minimized whenever possible. As discussed earlier, when nursing or psychiatric staff are not available, jail guards are often forced to resort to isolation and seat restraints as a means for controlling violent or suicidal inmates, making the already unpleasant experience of being incarcerated (potentially while withdrawing from medication)[256] even more traumatic.[257] Jail corrections staff should be regularly trained in crisis intervention and de-escalation techniques that have been proven to help calm inmates down before staff are forced to resort to solitary confinement or physical restraints.[258]

Inmates' potential refusal of medication presents another set of security risks for jails. In those cases when an inmate refuses medication and the effects of withdrawal present health or safety risks, there should

---

[252] Observations at Downtown Austin Travis County Jail (Apr. 22, 2015 & Apr. 30, 2015).
[253] *Id.*
[254] *See* David Warren, *Sandra Bland Mentioned Previous Suicide Attempt to Jailer: Report*, NBCDFW, July 22, 2015, http://www.nbcdfw.com/news/local/Sandra-Bland-Mentioned-Previous-Suicide-Attempt-to-Jailer-Report-318199011.html, <https://perma.cc/LA2Y-ZY6N> (noting discrepancies in jail forms).
[255] *See* Langford, *supra* note 153 (noting incomplete results due to technical problems when Waller County jail officials ran Sandra Bland' s CCQ query).
[256] *Consensus Project*, *supra* note 6, at 104, 107.
[257] *Id.* at 102.
[258] *Id.* at 62.

be an expedited process for court orders to mandate medication compliance. Inmates may also have difficulty obtaining medications that are not on a particular jail's formulary of medication that are deemed acceptable and available to dispense.[259] Making sure there are no missed doses of psychotropic medications during the initial intake is crucial to overall jail security and positive outcomes for individual inmates—a step toward avoiding costlier interventions down the road. Over time, more accurate detection of mental health problems that are underlying psychotic, antisocial or violent behavior during the intake process should naturally expand the use of acute psychiatric units inside jails and increase the number of inmate diversions to community inpatient treatment where appropriate. This should also decrease jail staff's reliance on solitary confinement as a "catch-all" to keep at-risk inmates safe.

D. Jails Should Institute 15-Minute Visual Checks for Suicidal and Homicidal Inmates.

Suicide prevention plans and standards in jails need to be followed and, where necessary, updated. Using Texas as just one example, current jail standards only require visual observation of inmates "no less than once every 60 minutes," and that increases to every 30 minutes for potentially suicidal, assaultive, mentally ill inmates, or individuals who have "demonstrated bizarre behavior."[260] Hourly safety checks for suicidal inmates are insufficient to keep them safe, but it appears that even the minimal hourly checks are not happening in all jails, as was the case of Sandra Bland.[261] Safety checks for inmates at risk of suicide should be increased to every 15 minutes, the same standard used for patients on suicide precaution in inpatient psychiatric facilities[262] and set forth by the Texas Commission on Jail Standards for inmates being monitored in seat restraints.[263] Visual checks every 15 minutes for potentially suicidal inmates are also supported by the American Bar Association's Criminal Justice Standards on the Treatment of Prisoners.[264]

---

[259] *Id.* at 107.

[260] 37 TEX. ADMIN. CODE § 275.1 (2014).

[261] Botelho & Ford, *supra* note 162.

[262] *See* Jon E. Grant, *Failing the 15-Minute Suicide Watch: Guidelines to Monitor Inpatients*, 6 CURRENT PSYCHIATRY 6 (2007), http://www.currentpsychiatry.com/home/article/failing-the-15-minute-suicide-watch-guidelines-to-monitor-inpatients/fd39a8da44342594aa91146d7447c616.html, <https://perma.cc/FP6S-DX6J> (showing that 15-minute checks must be used to protect patients from harming themselves or others; in psychiatric settings, even 15-minute checks are insufficient because about one-third of the 1,500 inpatient suicides in the United States still occur in those settings).

[263] 37 TEX. ADMIN. CODE § 273.6 (2013).

[264] *ABA Standards, supra* note 4.

Given that decentralized control is inherent to the local and county jail system, it's important for there to be independent oversight bodies to audit and monitor jails on a regular basis. While many states still lack a central independent oversight body to regulate and oversee compliance with jail standards, regulatory bodies that do exist—like the Texas Commission on Jail Standards—need to be properly funded and staffed.[265] If we want to avoid tragedies like that of Sandra Bland's, these oversight bodies need to be able to proactively monitor the conditions and intake procedures in jails rather than be forced to direct limited resources to responding to tragedies that have already occurred.

E. Diversion and Treatment Programs Must be Expanded to Take on More Enrollees.

With improved mental health screenings at intake, diversion and treatment programs will likely see increased referrals for the specific types of offenders they were designed to help. As discussed earlier in this Note, judges also need to receive information regarding inmates' mental health status quickly in order to make clinically and fiscally effective decisions regarding their placement, custody level, and possible diversion. While these treatment and diversion programs will likely need expanded resources and funding to meet an increased demand brought on by improved screening processes, many different diversion and treatment programs have been shown to reduce overall financial and societal costs associated with jailing individuals with mental illness.

For example, both Harris and Bexar counties in Texas have established diversion programs that transfer certain offenders with mental health needs out of the traditional court system into drug and mental health courts that approach the legal process in a more rehabilitative and therapeutic manner.[266] Both counties have lowered taxpayers' costs to operate local jails by reducing the average lengths of stay and reincarceration rates. Those reductions in recidivism continued on after enrollment and exit from these programs, making for safer communities and a less costly correctional system.[267] Individuals enrolled in a similar mental health court diversion program in Indianapolis experienced 45% fewer arrests annually.[268] These drastic reductions in rearrests can result in big savings for taxpayers; in Maryland and New York, diversion programs saved taxpayers an

[265] *See* Deitch, *supra* note 31 (explaining that the Texas Jail Commission has only four inspectors, giving it insufficient resources to do "frequent surprise inspections" and follow up with any issues).

[266] SARAH R. GUIDRY ET AL., TEX. CRIMINAL JUSTICE COAL., A BLUEPRINT FOR CRIMINAL JUSTICE POLICY SOLUTIONS IN HARRIS COUNTY (2015).

[267] *Id.*

[268] Henry J. Steadman et al., *Effect of Mental Health Courts on Arrests and Jail Days: A Multisite Study*, 68 ARCHIVES OF GEN. PSYCHIATRY 167, 168 (2011).

estimated $2,800 per inmate for the two years after a mental health court intervened, with most of the cost savings coming from reductions in rearrests, court appearances, and multiple incarcerations.[269] Similarly, California has seen a 700% return on investment for every $1 dollar they invested in their mental health court diversion program, with these savings mostly coming from reductions in recidivism.[270] In other parts of California, the Connections program has been successful in reducing rearrests and days spent in jail by providing jail probationers with acute case management services when they are released into the community.[271]

Whether it is parole, probation, mental health courts, supportive case management services, or any of the other innovative alternatives to incarceration that are being researched and developed around the country, community supervision has proven to be a much cheaper and more effective alternative to incarceration in jail for many offenders with mental health needs.

V. CONCLUSION

The recommendations in this Note aim to present some solutions to the lack of quality mental health screenings and procedures in America's local and county jails. As state and local governments closed state-run mental health institutions over the last several decades, jails and prisons have become the de facto providers of mental health treatment in America. In Texas, for example, the Harris County Jail in Houston provides psychotropic medications to more people than all ten of the state's public mental health hospitals combined.[272] There is also recent evidence to suggest that jails like Harris County are so overburdened dealing with psychiatric care that they are not able to provide proper medical care for conditions like diabetes and tuberculosis.[273]

While improved mental health procedures during intake will improve conditions and outcomes for individuals that are (and *should* be) incarcerated, it also opens up the opportunity for local jails to make more use of evidence-based diversion programs that provide treatment-based alternatives to incarceration. Recent studies and pilot programs have shown that such diversion programs can reduce costs and recidivism at the same time. In the words of Johnson County, Kansas Sheriff Frank Denning, "We have a social obligation here as law enforcement to

---

[269] Cowel et al., *supra* note 164.

[270] STANFORD LAW SCH. THREE STRIKES PROJECT, *supra* note 129, at 10.

[271] *Id.*

[272] Deprang, *supra* note 53.

[273] James Pinkerton, Anita Hassan, & Lauren Caruba, *Harris County Jail Considered 'Unsafe and Unhealthy' for Inmates, Public*, HOUS. CHRON., Nov. 21, 2015, http://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-Jail-is-unsafe-and-unhealthy-for-6649163.php, <https://perma.cc/F6D6-V8N7>.

partner with the medical health field to attempt some innovative ways to avoid that incarceration."[274]

While some inmates can be counted on to communicate their need for suicide intervention or mental health treatment, a lack of quality jail intake screening instruments and processes that are properly and consistently implemented ensures that many inmates with mental health needs will fall through the cracks of the criminal justice system. Jails should be using a multi-tiered system assessment system that includes a validated brief mental health screening instrument, secondary referral to timely psychiatric services when needed, and an electronic records check of past involvement with publicly-funded mental health treatment. In the case of Sandra Bland, poor mental health intake procedures and a complete lack of follow-through with suicide prevention plans and electronic record checks of Ms. Bland's past treatment undoubtedly contributed to her preventable death on July 13, 2015. Having a multi-tiered system of interventions for offenders with mental health needs not only saves lives, it also saves significant taxpayer dollars and ultimately makes our communities safer and more stable. While quality mental health screenings and intake procedures are far from a cure-all for the wide range of problems facing America's jails, they will go a long way in laying the much-needed groundwork to prevent deaths like Sandra Bland's and ultimately provide individuals with the judicial and clinical interventions they need to be rehabilitated.

[274] Johnson County (Kansas) Sheriff, *supra* note 84.