Testimony submitted to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

“Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety.”

April 29, 2014

By the Bazelon Center for Mental Health Law

The Bazelon Center for Mental Health Law submits this statement for the record regarding the April 29, 2014 hearing on Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety. The Bazelon Center is a national nonprofit advocacy organization that represents individuals with psychiatric disabilities and advances their rights to live full and independent lives in their own homes and communities.

As the subcommittee has noted, individuals with psychiatric disabilities have disproportionate rates of involvement with the criminal justice system. Individuals with mental illness are much more likely to be arrested and studies have found that rates of arrest among public mental health service recipients are “roughly 4.5 times higher than those observed in the general population.”

On average, 17 percent of people incarcerated in jails are estimated to have serious mental illnesses.\(^1\)


In Los Angeles, about 15 percent of the L.A. jail’s 15,000 inmates, or about 2250 people, were classified as mentally ill. The Cook County Jail in Illinois screens all inmates for mental illnesses and reports that a third of the 10,000 inmates have a mental illness. These individuals are not imprisoned because of violent crimes, but because of minor offenses: “‘[p]olice have picked them up for small crimes like acting out in front of restaurants, sleeping in abandoned buildings or possessing drugs.’”

These rates of justice involvement reflect the failure of our mental health systems to offer people the services they need to prevent law enforcement involvement. Providing these services to more individuals who need them would enable us to: (1) avoid many preventable deaths of individuals with psychiatric disabilities during encounters with law enforcement, (2) avoid spending costly sums on incarcerating individuals with psychiatric disabilities in jails and prisons where they are poorly served, and (3) prevent arrests and convictions that follow individuals for the rest of their lives, making it substantially more difficult for them to obtain housing and employment and reintegrate successfully into community life.

We have services that have demonstrated effectiveness in reducing law enforcement involvement—Assertive Community Treatment, mobile crisis services, and supportive housing. These services have demonstrated success in reducing recidivism, improving mental health outcomes, and lowering costs. These services may be covered by states under the Medicaid program. Moreover, states that have adopted the Medicaid expansion may cover these services at largely federal expense for numerous people who were previously uninsured and ineligible for Medicaid.

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6 Letter from Professor Kupers to County Supervisor Yaroslavsky, supra note __; see also H. Richard Lamb et al., Treatment Prospects for People With Severe Mental Illness in an Urban County Jail, 58(2007) Psychiatric Services, 782-86 (2007); Jennifer S. Bard, Re-Arranging Deck Chairs on the Titanic: Why the Incarceration of Individuals with Serious Mental Illness Violates Public Health, Ethical, and Constitutional Principles and Therefore Cannot Be Made Right by Piecemeal Changes to the Insanity Defense, 5 Hous. J. Health L. & Pol’y 1 at 6 (2005); D. Lovell, et al., Recidivism and use of services among people with mental illness after release from prison, 53(10) Psychiatric Services 1290, 1296 (2002).

7 The Medicaid Expansion gives states an enhanced reimbursement rate (100 percent until 2016, after which a minimum 90 percent) for all newly eligible individuals, anyone whose annual income is less than 139 percent of the federal poverty level. States must create Medicaid expansion plans that cover, at a minimum, the mandatory traditional Medicaid services and the essential health benefits. States can also chose to align these expansion plans with the state’s traditional Medicaid plan, simplifying administration. Regardless of what states cover in their Medicaid expansion plans, individuals with serious mental illness are among those considered “medically frail” and thus can choose to receive traditional Medicaid services. The state will still receive the increased reimbursement rate for the newly eligible. See The Judge David L. Bazelon Center for Mental Health Law, When Opportunity Knocks, How the Affordable Care Act Can Help States Develop Supported Housing for People with
**Assertive Community Treatment (ACT)**, an intensive set of services, helps people with the most significant mental health needs in navigating the day to day demands of community living. ACT is provided by a mobile team of professionals who coordinate and deliver comprehensive services that are flexible and individualized to meet each client’s particular needs. ACT services are available on a 24/7 basis and may be increased or decreased as a person’s needs change. ACT team members can help individuals not only in getting clinical needs addressed but in maintaining stable housing, securing and maintaining employment, engaging in community activities, skill building, managing health, and developing other recovery skills.

ACT has proved extremely effective in reducing justice involvement for individuals with serious mental illness. A 2005 study found an 83 percent decrease in jail days over the course of a year for participants in a local ACT program.\(^8\) In one year, Georgia experienced a net cost savings of $1.114 million in associated reduced hospitalization, fewer arrests and decreased jail time.\(^9\)

**Mobile Crisis Services** provide in-person psychiatric assistance to people in crisis situations. Mobile crisis teams are often used to divert individuals from inpatient hospitalization and into community programs. They meet individuals in the community at the time of crisis and include psychiatric nurses, social workers, and paraprofessionals. Rather than involve law enforcement, mobile teams can assess an individual and use a variety of interventions designed to de-escalate crises.

A national survey of mobile crisis services found that both consumers and law enforcement officials found mobile crisis intervention more effective than and preferable to law enforcement involvement (escorting an individual, for instance, to an emergency room for potential hospitalization).\(^10\) Mobile services prevented hospitalization 55 percent of the time compared to only 28 percent for regular police intervention. This national study also found mobile services to cost, on average, 23 percent less than police involvement and the subsequent higher rate of hospitalization.\(^11\)

**Supportive Housing** is another critical service that not only has substantial social and economic benefits, but furthers states’ efforts to comply with the ADA and Olmstead by affording individuals with mental illness the chance to live in what is the most integrated setting appropriate for virtually all: their own apartments or homes. Supportive housing units are typically scattered in mainstream buildings throughout the community. Scattered site housing promotes greater integration than housing in developments exclusively or primarily designated

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\(^8\) J. Steven Lamberti et al., Forensic Assertive Community Treatment: Preventing Incarceration of Adults with Severe Mental Illness, 55 Psychiatric Services 11, 1285-1293, 1289.


\(^11\) Id.
for individuals with disabilities. In addition, supportive housing provides the individual with a flexible array of services, such as case management, life skills training, homemaker services, substance abuse treatment, and employment supports. Supportive housing recipients can also receive ACT or other team-based services if they need them.

Studies have shown that supportive housing has substantial benefits: A large study in New York City of homeless individuals with SMI receiving supportive housing services demonstrated that these individuals experienced significant reductions in shelter use, hospitalizations, duration of hospital stays, and incarceration. A pilot project involving the Pathways to Housing program in Philadelphia, which provides supportive housing to formerly homeless individuals with serious mental illness and substance abuse disorders, found that the program reduced participants’ prison system episodes by 50 percent.

A number of jail diversion programs have used these services specifically to target individuals in the criminal justice system (including both pre- and post-booking), with great success. The Nathaniel Project uses ACT, supportive housing, and supportive employment to serve in the community adults with serious mental illness who have been convicted of non-violent and violent felonies, as an alternative to incarceration. The Project has demonstrated a “70 percent reduction in the mean number of arrests in the two years following program admission compared to the two years before,” and less than 3% of participants are arrested on violent charges once enrolled in the program.

Pathways to Housing, a well-studied and widely emulated provider of ACT and supportive housing, has shown that its services yield dramatic reductions in contact with law enforcement.

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16 Nathaniel ACT ATI Program: ACT or FACT? www.cases.org/articles/ACTBrief0511111.pdf.


18 Nathaniel ACT ATI Program: ACT or FACT? www.cases.org/articles/ACTBrief0511111.pdf.

19 More information available at pathwaystohousing.org.
and impressive improvements in mental health and personal stability.\textsuperscript{20} Pathways offers immediate access to permanent independent apartments, and gives priority to people with a history of incarceration because it impedes access to other housing programs.\textsuperscript{21} Pathways’ program has been shown to reduce prison episodes by 50 percent, as well as reducing shelter use by 88 percent, hospitalization episodes by 71 percent, and crisis response episodes by 71 percent.\textsuperscript{22}

Not only do these programs improve public safety and public health, but they are consistent with the purpose of the Americans with Disabilities Act and with the landmark decision in \textit{Olmstead v. L.C.}, 527 U.S. 581 (1999), in which the U.S. Supreme Court affirmed that the ADA prohibits the needless institutionalization of people with mental disabilities. The U.S. Department of Justice (DOJ) has been actively promoting community-based services, especially ACT and supportive housing, as a means of preventing the needless institutionalization of people with mental illness in jails.\textsuperscript{23}

Despite the substantial benefits of these services, they are unavailable to thousands who need them. In 2012, state mental health authorities reported that only 2 percent of individuals served received ACT services and only 2.6 percent received supported housing services.\textsuperscript{24} Increasing access to these services would drastically reduce the number of individuals with SMI who are involved in the Justice System.

The Subcommittee has noted that special law enforcement programs such as Crisis Intervention Teams (CIT) have proven effective in training state and local law enforcement personnel to more


\textsuperscript{21} Tsemberis, \textit{Pathways to Housing: Supported Housing for Street-Dwelling Homeless Individuals}, supra note 20 at 488.


\textsuperscript{23} See, e.g., \textit{U.S. v. Georgia}, Civil Action No. 10-249 (N.D. Ga.) (DOJ entered into settlement agreement requiring Georgia, \textit{inter alia}, to make available ACT, supportive housing and supportive employment to individuals with serious mental illness who are released from jails or prisons); \textit{Amanda D., et al. v. Hassan, et al.}; \textit{United States v. New Hampshire}, Civil Action No. 1:12-53 (D.N.H.) (DOJ entered into settlement agreement requiring New Hampshire, \textit{inter alia}, to make available ACT, supportive housing and supportive employment to individuals who have had criminal justice involvement as a result of their mental illness); \textit{U.S. v. Delaware}, Civil Action No. 11-591 (D. Del.) (DOJ entered into settlement agreement requiring Delaware, \textit{inter alia}, to make available ACT, supportive housing and supportive employment to people with serious mental illness who have been arrested, incarcerated, or had other encounters with the criminal justice system due to conduct related to their serious mental illness).

effectively respond to individuals in mental health crisis. This specialized program teaches patrol officers about mental illness, reducing stigma, and about de-escalation techniques. It also provides training on the local system of care and what resources are available for individuals with mental illnesses. The goal of CIT is to connect individuals in mental health crisis with treatment services rather than introducing them to the criminal justice system. It also reduces the chances that an individual in mental health crisis will be killed or injured.

CIT is a good beginning to address the immediate crisis of inappropriate law enforcement responses to individuals with psychiatric disabilities, but to effectively address the root of the problem, we should be focused primarily on interventions that occur earlier and not after the mental health system has failed people again and again, leading to crisis situations. This is the approach taken by DOJ in a recent settlement with the city of Portland, Oregon, regarding the Portland Police Department’s treatment of individuals with mental illnesses. The settlement invests additional resources into CIT training for the police and mobile crisis prevention teams—where a mental health worker accompanies a law enforcement officer responding to a crisis—but also requires the city to plan for the long term and develop ACT teams and other important services.

This prevention focus would also reduce avoidable contact with the criminal justice system that can shatter individuals’ lives. Once an individual has an arrest record or a criminal record, it becomes much harder for the individual to obtain basic necessities, such as housing and employment. Many individuals reentering the community following imprisonment are ineligible for housing subsidy programs despite their very limited financial resources, or are denied housing based on criminal background checks conducted by landlords. It is no surprise that “criminal justice officials say that finding housing for parolees is by far their biggest

29 United States v. City of Portland, Settlement Agreement, Case No. 3:12-cv-02265-SI (December 17, 2012).
challenge. The stigma of having an arrest or conviction also impacts employment opportunities, making it much harder for justice-involved individuals to find jobs or even an interview.

These barriers could be avoided if individuals received services that have proven effective in reducing the need for police involvement. Expanding the use of ACT, mobile crisis services, and supportive housing would create a system that is less crisis-oriented and instead focused on affording individuals with mental illnesses access to the services they need.

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34 Michelle Natividad Rodriguez and Maurice Emsellem, The National Employment Law Project, 65 Million “Need Not Apply”--The Case for Reforming Criminal Background Checks for Employment (March 2011) available at http://nelp.3cdn.net/e9231d3ae1058c9e_55im6wopc.pdf. See also U.S. Equal Employment Opportunity Commission, Pre-Employment Inquiries and Arrest & Conviction Guidance (last visited April 28, 2014) available at http://www.eeoc.gov/laws/practices/inquiries_arrest_conviction.cfm (recognizing the disparate impact that employers’ use of criminal background checks may have based on race; the EEOC has not issued guidance concerning the impact of such screens on people with disabilities, but given the disproportionate rates of individuals with mental illness and certain other disabilities in jails and prisons, these screens clearly have a disparate impact based on disability).