3:   DE-INSTITUTIONALIZATION AND CRIMINALIZATION

Time:	90 min.
Format:	Discussion, video, group activity
Materials:	PowerPoint, Identity Cards for the activity "Staying Free," Invisible tape (or similar), flip chart and markers.
Competencies:	• Recognize the roles that de-institutionalization and criminalization (e.g., of addiction, homelessness, poverty) play in increasing the number of people in correctional institutions who have mental disorders and/or histories of trauma and adversity.

Description

This module gives some American social history that sheds light on prison over-crowding and high incidence of mental illness in current incarcerated populations. A group activity will give insight into the connections between de-institutionalization and criminalization leading to involvement with the justice system.

Before Training

Print out and prepare all of the identity cards for the activity "Staying Free," as directed in the activity materials document.

Bring invisible tape (or similar) to use in the activity. If you have access to a corkboard and tacks, those are also very effective; you may bring the board and tacks in place of the tape.

                   Trainer Guide

During Training

Set Up

Say:

America is a dynamic nation and our culture is changing rapidly and constantly. Over the past few decades, correctional facilities have changed a great deal. Let's look at a few recent trends that shed light on why we see so many people with mental illness in correctional populations.
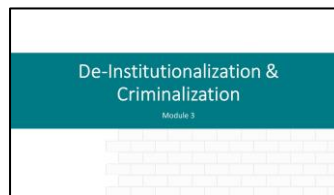
De-Institutionalization of the Mentally Ill

Lecture

Present lecture:

There are currently a large number of incarcerated people with mental illness. These numbers come in part from '**deinstitutionalization**.' Deinstitutionalization began in the 1960s when the treatment of mental illness shifted away from state mental hospitals.

A number of large state hospitals had become infamously identified as using cruel and inhumane or inadequate treatment. Appalled by neglectful or abusive conditions, state legislatures closed these facilities, which led to a housing and treatment gap. The previous residents were expected to be shifted to local facilities such as clinics, halfway houses, and community residential treatment centers.

However, as former residents were released into communities, and state mental hospitals closed, there was a failure to establish the needed community-level treatment facilities.

Inevitably, the untreated, symptomatic behaviors of mental illness often brought individuals to the attention of

police, and people with mental illness were arrested and processed through the justice system. This is an issue that involves policies and resource allocations, often leaving those on the front line (e.g., law enforcement, correctional officers) in a position they have not been trained or resourced to handle.

The policies and practices that drive those in need of care into the criminal justice and correctional systems have been described as the "**criminalization**" of mental illness (Treatment Advocacy Center, 2018). Without treatment, individuals are likely to cycle back in and out of jails and prisons repeatedly (Blevins & Soderstrom, 2015). They become what has been disrespectfully termed as "frequent flyers" (Torrey et al., 2010).

Understanding deinstitutionalization and criminalization makes it easier to understand why there is a growing number of people with mental health problems in the correctional system. A 2010 report, using data from 2004-2005, found that in the United States there were **three times more seriously mentally ill people in jails and prisons than in mental hospitals**. The report states, "America's jails and prisons have become our new mental hospitals" (p. 3, Torrey et al., 2010).

While mental institutions were often under-resourced and under-staffed, which often led to poor or even inhumane care, there have been limited responses in our communities to address the mental health needs of all individuals.

So often, law enforcement and correctional staff now have much more contact with people with mental illness because many persons who are mentally ill may lack safe housing or have limited access to care.

Discussion

Quickly check with participants by asking:

- Have you seen or heard about the effects of deinstitutionalization? Any examples, if so?

- Does your workplace see a high number of people who you think may struggle with mental health issues?

# Criminalization of Mental Illness and Poverty

Lecture

Present lecture:

People are incarcerated for many kinds of violent and non-violent crimes, and not all come from backgrounds with multiple adverse experiences. But given what we know about the backgrounds of persons who are incarcerated, we cannot ignore those who have had these experiences.

Beyond serious mental illness, a number of behaviors associated with trauma and adversity have become criminalized—most notably drug addiction and homelessness, both of which are often survival strategies for people who have backgrounds of extreme adversity.

- **Criminalization of drug addiction.** Human Rights Watch has released a report on laws criminalizing personal drug use. The report shows that drug possession for personal use is the crime for which people are most frequently arrested in the U.S., with someone arrested once every 25 seconds. From this perspective, policy-based enforcement of laws criminalizing drug use drives drug users underground rather than toward treatment; this can be damaging to individual and family lives, undermining public health and subjecting
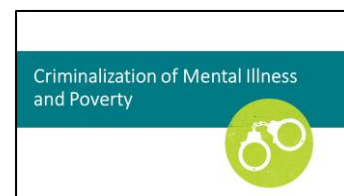
people of color and other vulnerable populations to discriminatory enforcement (Human Rights Watch, 2016).

▪ Drug use is often a coping mechanism for people who have suffered adverse events, including abuse or trauma. Some use drugs as treatment for chronic pain, which can sometimes turn into an addiction. For persons who are addicted, use of drugs and alcohol may be motivated by the need to avoid pain and withdrawal rather than to use as a form of recreational fun.

▪ **Criminalization of homelessness.** Many cities in the United States have laws against life-sustaining activities including sleeping, sheltering, sitting, asking for help, sharing food, and resting. Examples include laws against public camping to shelter from the elements, public sleeping, panhandling, and sharing food with a homeless person (NLCHP, 2014).

▪ Some people live homeless to avoid dangerous home situations. Others may not be able to maintain jobs to pay for housing due to mental illness or other disadvantage.

Discussion

Briefly check in with participants by asking:

- Have you heard about the criminalization of drug addiction or homelessness before today?

- How many inmates have you known who were homeless or addicted to drugs when they arrived in a correctional facility?

# Connections Between Identity and Incarceration

Lecture

Present lecture:

Criminalization of poverty has meant that people from impoverished backgrounds are overrepresented in the correctional system. For instance, those living in poverty and people who are ethnic minorities are more likely to be fined, arrested, and incarcerated for minor offenses than are other Americans (Dolan & Carr, 2015). Contributing factors include:

- Differential targeting and enforcement of those who are poor or from ethnic minority backgrounds. A recent study found that African Americans were four times more likely than Whites in Section 8 housing to be searched by law enforcement as a result of non-criminal complaints against them (Brodie, Pastore, Rosser, & Selbin, 2014).

- Criminalization often begins very early in life for those who are poor or from ethnic minority backgrounds. The 'school-to-prison pipeline' is a term for policies and practices that push poor, ethnic minority, and LGBT youth out of school and into the criminal justice system because of gaps in disciplinary practices for school-based offenses (ACLU, 2016). In a nutshell, these vulnerable youth are more likely to be disciplined for the same behaviors that White, wealthier youth 'get a pass' on, and such discipline is associated with greater likelihood of entering the juvenile justice system (Fabelo et al., 2011).

- **Inability to pay fines or failure to appear in court.** When people are unable to pay fines or don't appear in court for offenses that don't come with
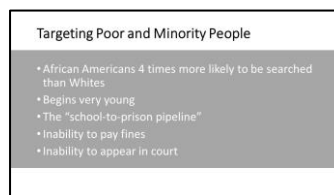
jail time, warrants may be issued for their arrest, resulting in jail or prison time. The person may then accrue additional debt due to charges for public defender services, room and board during lockup, probation and parole supervision, drug and alcohol treatment, and DNA samples (Anderson et al., 2014). For instance, probationers usually end up paying more in additional fees than the actual debt owed for the crime committed (Abin-Lackey, 2014).

- **Collateral consequences of criminal conviction.** When people are arrested and/or incarcerated, their criminal conviction or arrest may increase barriers to employment, mental health services, housing, childcare, food assistance, economic services, and transportation (Dolan & Carr, 2015). The likelihood of someone getting a callback for a job interview for an entry-level job drops about 50% if that person has an arrest or criminal conviction (NELP, 2014).
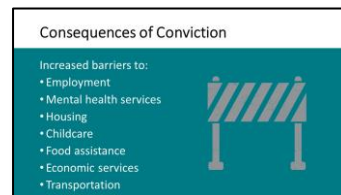
- **If an individual breaches their probation, federal law disqualifies them from a range of social security benefits** including Temporary Aid to Needy Families and the Supplemental Nutrition Assistance Program, which used to be called 'welfare' and 'food stamps.' The elderly and disabled can lose access to Supplemental Security Income (Bannon, Nagrecha, & Diller, 2010). Such collateral consequences create barriers to returning to mainstream society and may leave former offenders and their families with many unmet needs.

On top of these concerns, it's important to keep in mind the complex histories of trauma, adversity, and mental illness that characterize the lives of people who are incarcerated—as these may contribute to their risks for behavioral and mental health problems, their needs for counseling and healthcare, and their responses to incarceration and daily stressors.
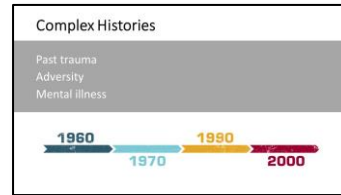
Activity: Staying Free

Note to facilitator: This is a gamification of real-life circumstances meant to engage the learners in the challenges of staying free when a person is justice-vulnerable. It is not intended to make light of very serious circumstances. Make certain that participants understand that this may be a game to them, but it is a daily struggle for many.

1. Explain that this activity is to give learners a chance to simulate the challenges of staying out of the justice system. These challenges are based on real-life experiences of people affected by de-institutionalization and criminalization of drug use and homelessness.

2. Put participants into up to six groups, one group per table. Use fewer than 6 groups if you have fewer than 2 participants per group. NOTE: If you have fewer than six groups, you may give each group more than one identity card. If groups have more than one identity card, allow a few extra minutes to allow them to decide how both characters would fare under each challenge. Adjust times in the instructions below, as needed.

3. Give the following instructions:

    a. Each group will receive one (or more, as needed) Identity Card. The group should read it carefully.

    b. The goal of the activity is to stay free of the justice system as long as possible. Your character ends up in the justice system if they meet ANY ONE of these criteria:

        i.   They become homeless.

        ii. They are caught with illegal drugs.

        iii. They lose access to medication for a mental health diagnosis.

    c. If your character becomes justice-involved, give me your Identity card and I will put it at the front of the room.

    d. When I read out a Challenge, your group should take about two minutes to discuss how your character will solve the problem, if a solution is possible. Remember that you have to stay within the "world" of the character by only acting on the information on your Identity cards.

        For the purpose of this activity, these people are living in the town we're in today, so all local laws apply to their situations.

        Also, these challenges are happening sequentially to your characters, so they're cumulative. For example, if a challenge says that the bus route near you closes, it remains a challenge; the bus route does not reopen.

Again, this activity occurs in the town we live in. At this point in time, the mayor has decided that crime is too high and has asked the police to "crack down" on illegal activities to "clean up the streets."

e. After each Challenge, we will debrief as a group to hear how your character fared. I will collect Identity cards after each Challenge if anyone has lost their freedom.

f. See how many rounds your character is able to "stay free."

4. Begin the activity by showing the first Challenge on the PowerPoint and reading it aloud. Then say, "Stay free, everyone." Give them two minutes to discuss its implications for their character.

Challenge One

The local free clinic closes. There are no other local alternatives for free or low-cost care and prescription services. If you use the free clinic, you lose access to your medication.

5. After two minutes, have each group report out in turn by summarizing basic details from their character card and then explaining how the challenge affected that character.

6. If anyone's character meets ANY of the three criteria for justice-involvement, ask for that group's card to tape to the front of the class and say, "I'm sorry. You're no longer free." To the rest of the groups, before each challenge, say, "Stay free, everyone." NOTE: If participants argue about whether a character should remain free or not, you have two choices: (1) Be the authority and decide, or (2) Ask the full group to vote. In the event of a tie, you will be the tie-breaker.

You Become Justice Involved When You:

• Become homeless.
• Are caught with illegal drugs.
• Lose access to medication for a mental health diagnosis.

One criterion is enough!

7. Repeat steps 4 through 6 until all Challenges have been read or no characters remain free. NOTE: If any character becomes homeless, is caught using illegal drugs, or loses access to their medication, take that character card and tape it to the front of
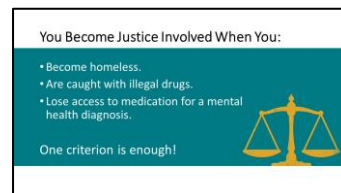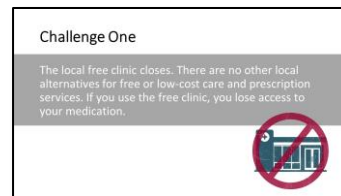
the room. That group will then listen in on another group's discussions until the activity is over. Go from group to group as they work to help keep them focused and to answer any questions.

8. Begin the debrief when all of the characters have become justice-involved or when all of the challenges have been read, whichever comes first. Challenges are listed below as well as on the PowerPoint slides:
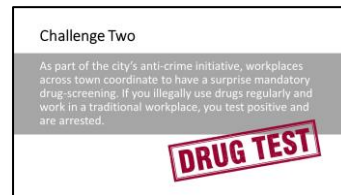
Challenge 1

The local free clinic closes. There are no other local alternatives for free or low-cost care and prescription services. If you use the free clinic, you lose access to your medication.
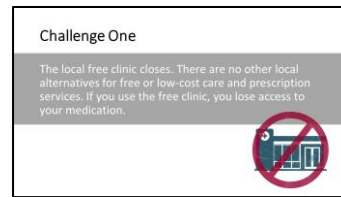
Challenge 2

As part of the city's anti-crime initiative, workplaces across town coordinate to have a surprise mandatory drug screening. If you illegally use drugs regularly and work in a traditional workplace, you test positive and are arrested.

Challenge 3

As part of the Clean Streets crackdown, the police institute a stop-and-frisk procedure. If you are from a racial or ethnic minority background (any race or ethnicity other than White) you are stopped. You will be arrested if you have any arrest risk factors (illegal drugs, drunk in public, etc.).

Challenge 4

You have a fight with people you live with. If you don't own or pay rent on your living space, they throw you out. You must rely on your local support network or become homeless.

Activity Debrief

Lead the discussion by asking the following questions:

- Let's look at the ID cards in the front of the room. How many characters are now justice-involved?

- Let's talk to each group whose character is up here. Tell us the following:

    o First, remind us about your character. Then tell us which challenge took out your character and why. How many challenges did your character overcome, and how?

    o Did you expect your character to last longer? Or are you surprised they made it as far as they did?

- Now let's hear from groups whose characters are still free. (NOTE: If no characters remain free, skip this discussion point and move to the concluding questions.)

    o What kept your character free?

    o What kind of challenge might be enough to get your character justice-involved in the future?

- Concluding questions for everyone:

    o Given the characters you had, what did you learn about risk in their lives?

    o Of the characters who went to prison, how do you think they'll handle incarceration?

    o Could any of these characters' issues be more appropriately addressed through means other than serving time in prison? What could be appropriate alternatives?

SOURCES

Module 3

Abin-Lackey, C. (2014). Profiting from probation: America's 'offender-funded' probation industry. Human Rights Watch. Retrieved from https://www.hrw.org/report/2014/02/05/profiting-probation/americas-offender-funded-probation-industry

American Civil Liberties Union (2016). School to prison pipeline. Retrieved from https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline?redirect=racial-justice/what-school-prison-pipeline

Anderson, E., Beemsterboer, N., Benincasa, R., and Van Werkom, B. (2014). As court fees rise, the poor are paying the price. National Public Radio. Retrieved from http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor

Bannon, A., Nagrecha, M., and Diller, R. (2010). Criminal justice debt: A barrier to reentry. New York, NY: Brennan Center for Justice.

Brodie, J., Pastore, C., Rosser, E., and Selbin, J. (2014). Poverty Law: Policy and Practice. New York, NY: Aspen.

Carson, A. (2014). Prisoners in 2013 Bulletin. Bureau of Justice Statistics, USDOJ. Retrieved from http://www.bjs.gov/content/pub/pdf/p13.pdf

Centers for Disease Control (2016). Adverse Childhood Experiences (ACEs). Retrieved from http://www.cdc.gov/violenceprevention/acestudy/

Dolan, K., and Carr, J. (2015). The poor get prison: The alarming spread of the criminalization of poverty. Washington, DC: Institute for Policy Studies.

Fabelo, T., Thompson, M. D., Plotkin, M., Carmichael, D., Marchbanks, M. P., III, and Booth, E. A. (2011). Breaking schools' rules: A statewide study of how school discipline relates to students' success and juvenile justice involvement. College Station, TX: Council of State Governments Justice Center, Public Policy Research Institute of Texas, AandM University.

Human Rights Watch (2016). US: Disastrous toll of criminalizing drug use: Enforcement destroys families, undermines health. Retrieved from https://www.hrw.org/news/2016/10/12/us-disastrous-toll-criminalizing-drug-use

Lynch, S., DeHart, D., Belknap, J., Green, B., Dass-Brailsford, P., Johnson, K.*, and Whalley, E.* (2014). A multi-site study of the prevalence of serious mental illness, PTSD, and substance use disorders in women in jail. Psychiatric Services, 65(5), 670-674.

National Employment Law Project (2014). Seizing the 'Ban the Box' momentum to advance a new generation of fair chance hiring reforms. Center for Community Change. Retrieved from http://www.nelp.org/content/uploads/2015/03/Seizing-Ban-the-Box-Momentum-Advance-New-Generation-Fair-Chance-Hiring-Reforms.pdf

National Law Center on Homelessness and Poverty. (2014). No safe place: The criminalization of homelessness in U.S. Cities. Retrieved from https://www.nlchp.org/documents/No_Safe_Place

National Institute of Mental Health (2016). Inmate mental health. Retrieved 8/17/2016 from http://www.nimh.nih.gov/health/statistics/prevalence/inmate-mental-health.shtml

Ocen, P. (2012). The new racially restrictive covenant: Race, welfare, and the policing of Black women in subsidized housing. UCLA Law Review, 59, 1541-1582.

Retrieved from http://www.uclalawreview.org/pdf/59-6-4.pdf

Proctor, S. (2012a). Co-occurring substance dependence and posttraumatic stress disorder among incarcerated men. *Mental Health and Substance Use, 5*(3), 185-196.

Proctor, S. (2012b). Substance use disorder prevelance among female state prison inmates. *American Journal of Drug and Alcohol Abuse, 38*(4), 278-285.

Proctor, S., and Hoffmann, N. (2012). Identifying patterns of co-occurring substance use disorders and mental illness in a jail population. *Addiction Research and Theory, 20*(6), 492-503.

Steadman, H. J., Osher, F. C., Robbins, P. C., Case, B., and Samuels, S. (2009). Prevalence of serious mental illness among jail inmates. *Psychiatric Services, 60,* 761–765.

Torrey, E., Kennard, A., Eslinger, D., Lamb, R., and Pavle, J. (2010). More mentally ill people are in jails and prisons than hospitals: A survey of the states. Arlington, VA: Treatment Advocacy Center.

Treatment Advocacy Center (2018). Criminalization of Mental Illness. Retrieved 3/9/2018 from http://www.treatmentadvocacycenter.org/key-issues/criminalization-of-mental-illness

Trestman, R. L., Ford, J., Zhang, W., and Wiesbrock, V. (2007). Current and lifetime psychiatric illness among inmates not identified as acutely mentally ill at intake in Connecticut's jails. *Journal of the American Academy of Psychiatry and the Law, 35,* 490–500.

Wolff, N., Shi, J., and Siegel, J. (2009). Patterns of victimization among male and female inmates: Evidence of an enduring legacy. *Violence and Victims, 24*(4), 469-484.