Position Statement 56: Mental Health Treatment in Correctional Facilities

Policy

"Over the past 50 years [America has] gone from institutionalizing people with mental illnesses, often in subhuman conditions, [in state mental health hospitals] to incarcerating them at unprecedented and appalling rates—putting recovery out of reach for millions of Americans…. On any given day, between 300,000 and 400,000 people with mental illnesses are incarcerated in jails and prisons across the United States, and more than 500,000 people with mental illnesses are under correctional control in the community." 1 MHA supports effective, accessible mental health treatment for all people in adult or juvenile correctional facilities or under correctional control who need it. However, persons with mental health and substance use conditions also need an effective classification system to protect vulnerable prisoners and effective protection of their human rights. 2 Notwithstanding their loss of their liberty, prisoners with mental health and substance use conditions retain all other rights, and these must be zealously defended.

Background

The most important contemporary civil rights issue for persons with mental health and substance use conditions is the increasing use of criminal sanctions and incarceration to compel consumers to accept treatment, replacing the state mental hospitals with much more drastic curtailment of personal liberty and preclusion of community integration and community-based treatment. 3 Prisoners with mental health conditions are especially vulnerable to the difficult and sometimes deplorable conditions that prevail in jails, prisons and other correctional facilities. Overcrowding often contributes to inadequacy of mental health services and to ineffective classification and separation of prisoner classes. It can both increase vulnerability and exacerbate mental illnesses. For these and other reasons, Mental Health America supports maximum reasonable diversion.4

Nevertheless, America is locking up more and more people with mental health conditions. 5

MHA believes that placing prisoners with mental health conditions in institutions, especially correctional facilities, imposes special obligations on society. Jails, prisons and other correctional facilities have a duty to provide medical services, including mental health services, and to provide protection from harm. These services are basic human rights of every prisoner with a mental illness or an addictive disorder. Correctional facilities must exercise special vigilance in dealing with every prisoner with a mental illness or addictive disorder because his or her ability to assert these human rights may be impaired. Mental Health America believes that these treatment obligations are greater than the treatment rights currently enforced by the courts as a matter of American constitutional law. 6

Additionally, MHA recognizes the nation must acknowledge and address the forces that contribute to the disproportionately high involvement of persons from ethnic and racial minority

communities in the criminal justice system. A system that continues to incarcerate so many people of color with inconsistent lengths of incarceration when compared to others is inherently unjust.

Treatment During Confinement

When prisoners in need of mental health treatment must be confined in correctional facilities, certain principles should be observed:

1. All prisoners should be screened upon admission by trained personnel for mental health and substance abuse problems. When the screening detects possible mental health or substance use conditions, prisoners should be referred for further evaluation, assessment and treatment by mental health professionals. 7 Prisoners who are already receiving treatment before they enter should be assisted in continuing treatment. All prisoners should have behavioral, mental health and substance abuse evaluations completed promptly following admission by qualified mental health staff. 8
2. Delivery of mental health services to prisoners in correctional facilities is the responsibility of all professionals at a facility, including psychiatrists, psychologists, social workers, nurses, correctional counselors, correctional officers, and facility administrators. Correctional facilities must be sufficiently staffed with mental health professionals. Correctional facilities that do not employ mental health staff should have written arrangements with local medical or mental health facilities for providing emergency medical and mental health care. 9
3. Mental health services should be available to prisoners 24 hours per day, seven days per week. Treatment should be provided in an atmosphere of empathy and respect for the dignity of the person. It should be strengths-based and recovery-oriented. A reasonable array of mental health interventions should be available, including the full range of available medications. The type of intervention should be tailored to meet the prisoner's needs, with family consultation unless the prisoner rejects it, and should be delivered by qualified mental health staff who are trained to deal with crises as they arrive. When medications are used, they should be consistent with the treatment plan and monitored by a qualified mental health professional. 10 Psychotropic medications should never be used as a form of "chemical restraint" for prisoner control. 11
4. Special treatment should be available to prisoners who are sexually abused, who have substance abuse problems, health problems, educational problems, histories of family abuse or violence, and who are sex offenders. Programming in facilities should be appropriate to the person's age, gender and culture. Linguistically and culturally appropriate therapy should be provided. Under no circumstances should a prisoner be penalized for seeking, receiving or declining mental health treatment.
5. Correctional facilities should train staff to use behavior management techniques that minimize the use of intrusive, restrictive, and punitive control measures. MHA supports elimination of seclusion and restraints in therapeutic facilities. 12 It is particularly important to maintain facilities other than seclusion for the protection of vulnerable prisoners, including those with serious mental health conditions. 13 In any event, facilities should follow written guidelines for the use of seclusion, room confinement, and restraints. These guidelines should be made clear to persons in custody. Distinctions

should be made between the use of seclusion and restraints for custodial-administrative purposes and those made for therapeutic purposes. When restraint must be used to prevent injury to self or others, there should be stringent procedural safeguards, limitations on time, periodic reviews and documentation. Generally, these techniques should be used only in response to extreme threats to life or safety and after other less restrictive control techniques have been tried and failed.

6. Under no circumstances should prisoners be subjects of research without proper ethical review and informed consent. 14
7. Prisoners should have a discharge plan prepared when they enter the correctional facility in order to integrate them back into the family and the community. This plan should be updated in consultation with the prisoner's family (as appropriate) and community treatment facilities before the prisoner leaves. It should include the continuation of treatment, therapy and services begun in the facility. Correctional facilities should take an active role in promoting continuity of treatment for those released. 15
8. Prisoners who suffer from acute mental disorders or who are actively suicidal should be placed in or transferred to appropriate medical or mental health units or facilities and returned to general population only with medical clearance. Facilities should have a suicide prevention plan that includes appropriate admission screening, staff training and certification, assessment by qualified mental health professionals, adequate monitoring, referral to appropriate mental health providers or facilities, and procedures for notification of the prisoner's family (unless refused). 16
9. Facilities need to identify and treat co-occurring disorders, and particularly substance abuse, and to provide support in the facility and in the transition to the community. 17
10. Many states and the federal government have created a class of prison referred as "supermax." Supermax prisons are intended to reduce violence within prison systems by creating an extremely harsh environment which includes extreme isolation and sensory deprivation. Mental Health America shares the concerns of most prison reform groups that supermax prisons may constitute cruel and unusual punishment for all inmates and may induce mental illnesses in those prisons who were previously healthy. 18 However, we are specifically opposed to placing any person diagnosed with a serious mental illness in a supermax prison.

Specific Rights

Mental Health America affirms the specific rights of people with mental illness confined in correctional facilities listed here because they have the most potential to be abridged in correctional settings:

- The right to adequate medical and mental health care, to protection from harm including staff abuse, and to a facility in which the vulnerable can be protected: a safe, sanitary and humane environment
- The right to informed consent to treatment. Staff should discuss with the prisoner the nature, purpose, risks, and benefits of types of mental health treatment.
- The qualified right to refuse treatment, including psychotropic medications, on the same basis as any other person. 19

- The right to the least restrictive environment and the least intrusive response to an apparent need for mental health services.
- The right to be confined in a place that can provide the treatment needed.
- The right to confidentiality in the delivery of mental health services and in mental health and related facility records.
- The right to have regular and timely access to medical and mental health staff who are culturally competent and qualified to provide adequate treatment and supervision.
- The right to be transferred to an appropriate medical or mental health facility or unit when conditions warrant.
- The right to be free from corporal punishment, chemical restraints, and sexual abuse or coercion.
- The right to assert grievances, to have grievances considered in a fair, timely and impartial manner, and to exercise rights without reprisal.
- The right to an individualized written treatment plan, to the treatment specified in the plan, to periodic review and revision of the plan based on the prisoner's needs. The family should participate in the development, review, reassessment and revision of both the treatment plan and the discharge plan, unless the prisoner refuses such participation.

Call to Action

MHA and its affiliates should work to inform members of law enforcement and correctional groups, judges and attorneys, mental health professionals and advocates, prisoners and their families, the community and the media about the excessive number of persons with mental illnesses and addictive disorders in prisons and jails and the inherent difficulties involved in providing decent and humane care to such persons in these settings and should develop and advocate for effective strategies addressing these problems.

Effective Period

The Mental Health America Board of Directors approved this policy on June 13, 2010. It is reviewed as required by the Public Policy Committee.

Expiration: December 31, 2015

1. "Ending an American Tragedy: Addressing the Needs of Justice-Involved People with Mental Illnesses and Co-Occurring Disorders," by the National Leadership Forum on Behavioral Health/Criminal Justice Services (September, 2009).
2. National Commission on Correctional Health Care, Standards for Mental Health Services in Correctional Facilities, Standards MH-E-02, MH-E-03, MH-E-04, (2009).
3. "Ill-Equipped: U.S. Prisons and Offenders with Mental Illness," Abramsky & Fellner, Human Rights Watch (2003). http://www.hrw.org/reports/2003/usa1003/
4. MHA Position Statement Number 50, "In Support of Maximum Diversion of Persons with Serious Mental Illnesses from the Criminal Justice System" (2008).
5. "From the Asylum to the Prison: Rethinking the Incarceration Revolution," Harcourt, B., 84 Texas Law Review 1751 (2006)
6. In *Estelle v. Gamble*, 429 U.S. 97 (1976), the Supreme Court held that a prison was not liable under the United States Constitution for failing to provide adequate health care to an inmate unless the inmate could prove that the prison was "deliberately indifferent" to the inmate's medical needs. This standard has been applied to the provision of mental health services in prisons and jails. *Conn v. City of*

Reno, 591 F.3d 1081 (2010). MHA believes that this standard does not sufficiently protect the rights of inmates and that confinement in a correctional facility should not entail the loss of the basic right to non-negligent health care, including mental health care that meets ordinary standards of professional care.

7. National Commission on Correctional Health Care, Standards for Mental Health Services in Correctional Facilities, Standard MH-E-02 and MH-E-03 (2008).
8. *Id.*, Standard MH-E-04.
9. *Id.*, Standards MH-D-05, MH-E-09, MH-G-01 through 06.
10. *Id., Standard MH-D-02.*
11. *Washington v. Harper, 490 US 210 (1990).*
12. *MHA Position Statement Number 24, "Use of Restraint Techniques and Seclusion" (2006).*
13. *"Commentary: Evolving Toward Equivalence in Correctional Mental Health Care—A View from the Maximum Security Trenches," Vlach & Daniels, 35 J. Am. Acad. Psychiatry & Law. 436 (2007)*
14. *National Commission on Correctional Health Care, Standards for Mental Health Services in Correctional Facilities, Standard MH-I-05 (2008).*
15. *Id., Standard MH-E-10.*
16. *Id., Standard MH-G-04.*
17. *Id., Standard MH-G-05.*
18. *"Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," by Craig Haney, University of California, Santa Cruz. Published in Crime & Delinquency, Vol. 49, No. 1, pp.124-156 (2003); "Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics", Metzner & Fellner, 38 J. Amer. Acad. Psychiatry & Law 1 (2010).*
19. *In Washington v. Harper, 494 U.S. 210 (1990), the Supreme Court held unanimously that a prisoner had a Constitutional right not to be medicated against his will unless, as a result of serious mental illness, the prisoner was dangerous to himself or others and the treatment was in the prisoner's best interest. MHA shares the view expressed in Justice Stevens's concurring opinion that prisoners should be afforded review of involuntary medication decisions by a judicial decision-maker or, at a minimum, by someone not employed by the prison.*