

THE CRIMINALIZATION OF MENTAL ILLNESS

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Crisis and Opportunity for the Justice System

SECOND EDITION

Risdon N. Slate

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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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Library of Congress Cataloging-in-Publication Data

Slate, Risdon N.

The criminalization of mental illness : crisis and opportunity for the justice system /
Risdon N. Slate, Jacqueline K. Buffington-Vollum, W. Wesley Johnson. -- Second edi-
tion.

pages cm

Includes bibliographical references and index.

ISBN 978-1-61163-039-8 (alk. paper)

1. Insanity (Law)--United States. 2. Mentally ill--Commitment and detention--
United States. 3. Mentally ill offenders--United States. I. Buffington-Vollum, Jacque-
line K. II. Johnson, W. Wesley. III. Title.

KF9242.S59 2013

364.3'8--dc23

2013004307

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

DEDICATION

To Claudia and Virginia Slate for your love and support, to Dean Shoe for helping me find my voice, and to Ron Vogel for assisting me in finding the confidence to use it. Martin Luther King, Jr. (1963) said in his book *Strength to Love*: “The ultimate measure of a man is not where he stands in moments of comfort and convenience but where he stands at times of challenge and controversy. The true neighbor will risk his position, his prestige and even his life for the welfare of others. In dangerous valleys and hazardous pathways, he will lift some bruised and beaten brother to a higher and more noble life” (p. 35). I, Risdon Slate, am that brother, and Ron Hudson is that neighbor. Without Ron’s courageous, selfless, and innovative actions this book would likely never have been written. – RNS

To my mother, Sheryll Gray, who taught me the power of empathy and compassion and that all persons are worthy of respect and consideration. To Scott and Kai Vollum, who inspire me every day to make this world a better, more peaceful place. Thank you for your tireless patience, love, and support. To the men and women with mental illness in the state hospital and the criminal justice system, who allowed me into their lives, enabled me to see the problems with the systems, and motivated me to change it. – JKBV

To my family and friends who have ridden with me on the roller coaster of life; To the many caring professionals in the mental health and criminal justice systems that are dedicated to people that are troubled by their own thoughts, and to members of the National Alliance of Mental Illness for decades of hard work and advocacy. – WWJ

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FOREWORD

*H. Richard Lamb, MD**

The enormously increased presence of persons with serious mental illness in the criminal justice system is one of the great problems of our time. Estimates place the number at 360,000 or more incarcerated in the U.S. at any given time. As a result, mental health professionals and society generally have become much more concerned about the number of persons with serious mental illness in jails and prisons, as well as the treatment provided to these persons, both while incarcerated and after release. These issues are relatively recent. Reports of large numbers of persons with mental illness in U.S. jails and prisons began appearing in the 1970s, a phenomenon that had not been reported since the nineteenth century.

Criminalization of persons with serious mental illness is a subject of enormous complexity in terms of understanding how it came about, the problems that these mentally ill persons face in our jails and prisons and how to confront these problems, how to reverse criminalization and how to treat these persons in the community, either after release or, if possible, before they have been criminalized. Drs. Slate, Buffington-Vollum, and Johnson have chosen to present a comprehensive summary of these issues so that our understanding is deepened and our knowledge of what needs to be done is clarified.

One of the major concerns in present-day psychiatry is that placement in the criminal justice system poses a number of important problems and obstacles for the treatment and rehabilitation of persons with serious mental illness. Even when quality psychiatric care is provided in jails and prisons, the inmate/patient still has been doubly stigmatized as both a mentally ill person and a criminal. Furthermore, jails and prisons have been established to mete out punishment and to protect society; their primary mission and goals are not to provide treatment. The correctional facility's overriding need to maintain order and security, as well as its mandate to implement society's priorities of punishment and social control, greatly restrict the facility's ability to establish a therapeutic milieu and provide all the necessary interventions to treat mental illness successfully.

After giving an exceptionally clear picture of how we have reached the sorry state of the present day criminalization of persons with serious mental illness, the authors of this book present a detailed description of what needs to be done by law enforcement, by custody staff in jails and prisons, by the courts, by probation and parole, by mental health professionals, by families, and by society generally. Important subjects in the efforts to decrease criminalization, such as the police as first responders and police Crisis Intervention Teams, Mental Health Courts, Assertive Community Treatment, Assisted Outpatient

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Treatment, the role of substance abuse and how to deal with it, and reentry strategies for persons with serious mental illness are described with clarity and in detail.

This book is a very important contribution to the literature and to the understanding of a problem which should never have been allowed to happen in a Country like ours. The authors are to be highly commended for the immense amount of work that went into writing it.

PREFACE

Various circumstances brought the authors of this book together. Wesley Johnson and Risdon Slate met in a South Carolina prison in 1985. Wes was a professor bringing students for a tour, and Ris was the prison administrator who served as tour guide. It would be some nine years later in a strip cell in the Richland County South Carolina Jail that the seeds for this book would be planted. Scott Vollum would hear the details of this story in a presentation made by Ris in San Antonio, Texas, and he would tell his wife, Jacqueline Buffington-Vollum, a forensic clinical psychologist with an interest in the criminal justice system's response to offenders with mental illness. Jacki knew Wes from Sam Houston State University and would years later ask Ris to come speak to students at James Madison University. Perhaps there is something to be said for serendipity, but here we are engaged together in this project.

For a myriad of reasons the criminal justice system has become the de facto mental health system. This book explores how and why this is the case. Persons with mental illnesses are disproportionately coming into contact with the criminal justice system, a system that has been largely ill-equipped to respond to such individuals. Many in both the mental health and criminal justice systems do not see it as their job or responsibility to intervene. Increasingly, criminal justice practitioners, faced with inadequate resources to respond on their own, are taking the lead in seeking innovative, collaborative alternatives for linking justice-involved persons with mental illnesses to treatment. These initiatives may engage law enforcement, the courts, corrections, and/or probation/parole authorities in collaborative partnerships with persons with mental illnesses, their family members, and mental health treatment providers. Various examples are presented in this book.

Topics covered in the book run the gamut from specialized law enforcement responses, to mental health courts, to jails and prisons, to discharge planning, diversion, reentry, and outpatient commitment. This book contrasts innovative strategies with more traditional approaches, such as civil commitment and recognizing competency to stand trial and insanity at the time of the offense, which are fraught with issues and tend to be short-sighted. The precarious balance between preserving civil liberties and maintaining public safety are discussed, and the concept of therapeutic jurisprudence is promoted. Another focus of the book is the need for adequate mental health treatment services and the compilation of outcome data to establish evidence-based practices. Real-life illustrative vignettes from professionals engaged in dispensing justice to persons with mental illnesses are included throughout the book.

With the addition of Jacki Buffington-Vollum to the 2nd edition of the book, there is increased coverage of issues from the standpoint of a critical forensic mental health professional. Based on her work in state hospitals, in jails and training of jail officers, and in private forensic evaluation practice, she was able to provide more detailed information on civil commitment, mental health professionals' forensic evaluations for the courts, and mental health services in jails than was provided in the 1st edition. This includes tra-

ditional approaches, the issues inherent to tradition, and innovative strategies. Moreover, she contributes insights from a mental health perspective throughout the book.

Too often crises have impacted the interface between the mental health and criminal justice systems, as evidenced at Virginia Tech and more recently with the tragedy that transpired at Sandy Hook Elementary School in Newtown, Connecticut. However, waiting for sensationalized cases to influence policy can lead to impulsively enacted and misguided interventions.

We believe that this book can serve a multitude of purposes. First, it can be used by training academies, criminal justice practitioners, and mental health providers in identifying and assessing what feasible alternatives are in existence and how to develop comprehensive services. This book also provides guidance for advocates, persons with mental illnesses, and their family members to use in their advocacy. In particular, we would like to believe that this book will be used by policymakers to make wiser, more proactive policy that will benefit not only the community but individuals struggling with mental illness. Finally, we hope it informs and inspires college students to one day act as positive change agents in this critical interface between the mental health and criminal justice systems.

Risdon N. Slate
Jacqueline K. Buffington-Vollum
W. Wesley Johnson

ACKNOWLEDGMENTS

We offer a special thank you to Dick Lamb for writing the foreword to this edition of the book. Hank Steadman wrote the foreword to the first edition. Between these two gentlemen, we cannot think of any more admirable contributors to the study of the criminalization of mental illness. These men have devoted their professional lives to researching and seeking reasoned solutions to the intractable problems surrounding the interface of the mental health and criminal justice systems. We applaud them.

We would like to thank our friends and colleagues who have provided understanding and/or levity during this project. On the home front, Claudia Slate and Scott Vollum provided comfort and expert editing skills. Also, we are indebted to the Carolina Academic Press team, especially Beth Hall, Chris Harrow, and Jae Aoh, for expert handling and guidance during this process.

We appreciate Ron Honberg's contribution to the chapters on competency and insanity. In addition, various professionals submitted significant input regarding their personal experiences with the interface of the mental health and criminal justice systems. We are pleased to include these offerings from Scott Anders, Steven Bacallao, Steve Barr, Sam Cochran, Lee Cohen, Angela Cowden, Jerry Dincin, D. Dretke, Steve Feinstein, Howard Finkelstein, Susan Flood, J. Frank, Brian Garrett, Mark Heath, Marcia Hirsch, Stephen Hudak, Chris Jordan, Mark Kammerer, Mike Lee, Ginger Lerner-Wren, Barbara Lewis, Jose Lopez, Dave Lushbaugh, Janeice Martin, Paul Michaud, Joseph Mucenski, Louise Pyers, Stephanie Rhoades, Jack Richards, Jim Rice, Tony Rolón, Carol Schott, Denise Spratt, Jon Stanley, Arlene Stoltz, A. Tate, Larry Thompson, Larry Wall, George Welch, Anne Marie Wendel, Joyce Wilde, Kendall Wiley, Michael Zabarsky, and Derek Zimmerman.

Stephen Bacallao and Peggy Symons are to be commended for their tenacity and sharing their bureaucratic battle with us. Thanks also to Grady Judd for his commitment to CIT and willingness to explore alternatives to the incarceration of persons with mental illnesses.

Kristie Blevins and Irina Soderstrom demonstrated professional collegiality by sharing their cutting-edge research with us for inclusion in the book, and we appreciate them and their work. Individuals who have offered encouragement and support before, during, and/or after this project include Mike Denham, Lisa Carter, Sharon Masters, Ed Plowman, Ken Kerle, Steve Leifman, Bob Carolla, Mike Thompson, and David D'Amora.

We also appreciate the efforts of all of our students who have assisted in editing this book: Morgan Bow, Miriam Brooks, Tierney Garver, Emily Keller, Alissa Rardin, Bradon Valgardson, Jordan Wiertzema, Laura Witte.

Finally, we thank all those professors who used the first edition of this book and all those who offered insightful suggestions for this edition. We hope you like it.

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