



FLORIDA HEALTH
JUSTICE PROJECT

Mental Illness and Criminal Justice in Florida: The Case for Medicaid Expansion

Alison Yager
Director of Policy Advocacy

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BACKGROUND: MENTAL ILLNESS AND MENTAL HEALTH CARE ACCESS IN FLORIDA

Too many Floridians with mental illnesses struggle to find the care they need. Nearly one-fifth of Floridians (17.5%) aged 18 and older have a mental illness,¹ and over 7% of Florida's adults have a substance use disorder.^{2,3} Well over half a million adults in Florida experience serious mental illness.⁴

Floridians with mental illness face significant obstacles in accessing necessary and appropriate health care. In fact, almost 60% of adults with mental illness in Florida do not receive treatment.⁵ In a national measure of access to mental health care that includes access to insurance, access to treatment, quality and cost of insurance, and workforce availability, Florida ranked 40 out of the 50 states and Washington D.C.⁶ Furthermore, Florida ranks 49th in total spending on services for the mentally ill.⁷

This disconnect between the need for mental health care and the availability and accessibility of mental health care in Florida is multidimensional. First, a full 16% of adults with mental illness in Florida are uninsured.⁸ This puts the vast majority of mental health services out of reach. Second, there is an insufficient number of mental health care providers across the state.⁹ While the ratio of residents to mental health providers nationally is 547:1, and in California it is 350:1, in Florida it is 750:1.¹⁰ Third, as with virtually all health measures, access to mental health care is marked by racial and ethnic disparities. Across the country, racial and ethnic minorities have less access to mental health services than do White Americans. They are less likely to receive needed care, and when they do receive care, it is more likely to be of poor quality.¹¹

Between 2008 and 2012 in Florida (the most recent published data), 62% of non-Hispanic White males received mental health care for a serious mental illness compared to 52% of Hispanics and 48% of non-Hispanic Black residents. Of non-Hispanic White females, nearly three-quarters received mental health care for a serious mental illness between 2008 and 2012, compared to just over half of Hispanic females and approximately 60% of non-Hispanic Black females. In other words, Black and Hispanic Floridians are less likely than their White counterparts to receive needed mental health care.¹²

MENTAL HEALTH IN JAILS & PRISONS

As a result of inadequate access to appropriate mental health care, Floridians with severe mental illness (SMI) are at increased risk of entanglement in the criminal justice system. On any given day, for example, nearly one fifth of the inmates in the Miami-Dade County Jail, approximately 1,200 individuals, are people with mental illness and in

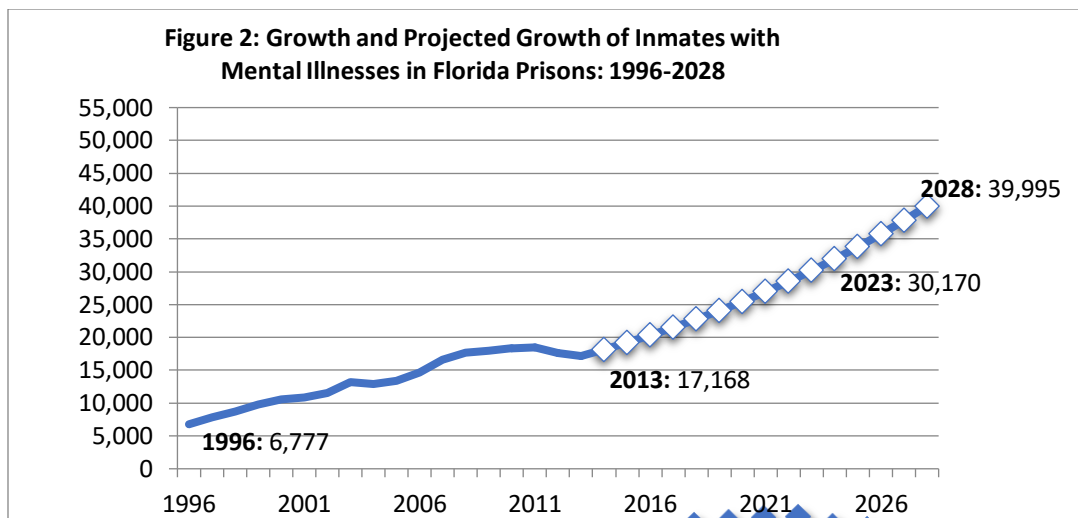
need of psychiatric medication, as shown in Figure 1. In Broward and Palm Beach counties the rate is 25%.¹³

Because of systematic disinvestment in our state public health system and mental health hospitals,¹⁴ and because of the outsized number of uninsured and medically disenfranchised in Florida, the Miami-Dade County (MDC) jail currently serves as the largest psychiatric facility in the State of Florida.¹⁵ Entanglement in the criminal justice system can appear almost interminable for those with serious mental illness. In fact, people with mental illnesses remain incarcerated in the MDC jail for eight times as long as people without mental illness for the same charge, and at seven times the cost. Lacking access to appropriate care and treatment outside of jail or prison, many individuals cycle through the system for the majority of their adult lives.¹⁶ This may help to explain why Florida incarcerates more adults per capita than 40 of our sister states.¹⁷

Figure 1: Inmates in Select Florida County Correctional Facilities Having a Mental Illness in Need of Psychiatric Intervention/Medication, as Compared to Inmate Population Overall			
County	Average Daily Population	# on Psychiatric Medications	% on Psychiatric Medications
Broward	5,314	1,325	25%
Highlands	480	86	18%
Miami-Dade	7,100	1,191	17%
Okaloosa	657	64	10%
Palm Beach	3,000	748	25%
St. Lucie	1,540	300	19%
Volusia	1,370	350	26%

Source: Miami-Dade County Memorandum, Subject: Mental Health Statistics, To: Hon. Chairman Bruno A. Barreiro and Board of County Commissioners, From: George M. Burgess, County Manager, September 11, 2008. (Note: no recent reports available.)

The number of inmates statewide with mental illness has grown continually over nearly 25 years. Without strategic reform to disrupt the present dynamic, including expansion of Medicaid under the Affordable Care Act, low-income and marginalized individuals with serious mental illness will fuel this continued rise. Figure 2 shows the growth and projected growth of inmates with mental illnesses in Florida prisons from 1996 to 2028.



Source: University of Miami Department of Psychiatry and Behavioral Sciences, and Eleventh Judicial Circuit Court of Florida, Poster: “Outcomes of the Miami-Dade County Forensic Alternative Center: A Diversion Program for Mentally Ill Offenders”.

HEALTH COVERAGE STATUS OF JUSTICE-INVOLVED INDIVIDUALS

Owing to a confluence of factors, significant numbers of justice-involved Floridians are uninsured.¹⁸ Traditional employment, and the attendant employer-sponsored health insurance, is often out of reach for those with a criminal record.¹⁹ Additionally, the justice-involved are more likely, when employed, to enter low-wage employment, leaving them ineligible for subsidies for reduced cost coverage.²⁰ Finally, too few individuals with a history of incarceration qualify for our state’s narrowly drawn Medicaid program, which serves only extremely low-income adults who are also parents living with their minor children, pregnant women, seniors, or people with disabilities. Were Florida to join 36 of our sister states in expanding Medicaid to cover all adults up to the age of 65 with incomes up to 138% of the federal poverty level, far more justice-involved Floridians would have access to healthcare coverage.

Under federal law inmates of correctional institutions are generally unable to access their Medicaid benefits while in custody,²¹ however incarcerated individuals may be deemed eligible for Medicaid and state Medicaid agencies must accept applications and process renewals for incarcerated individuals.²² Additionally, under Florida law, Medicaid enrollees who become incarcerated in a state, county, or municipal correctional facility remain eligible for Medicaid while incarcerated.²³

It is also worth noting that Florida has taken an affirmative step to connect incarcerated individuals to Medicaid. Specifically, the state’s Agency for Healthcare Administration (AHCA) requires that Medicaid managed care plans must “make every effort...to provide medically necessary community-based services” as well as psychiatric services for plan enrollees, “likely enrollees” and other Medicaid recipients “who have justice system involvement.”²⁴ While it is unclear how consistently this is actually done, if it is done at

all, this is an important first step. Moreover, this obligation to build/revive connections to Medicaid services for those departing correctional facilities would be infinitely more impactful if Florida were to expand Medicaid, and the universe of those impacted by this outreach would rise significantly.

ANTICIPATED BENEFITS OF MEDICAID EXPANSION FOR JUSTICE-INVOLVED INDIVIDUALS

“With (Medicaid expansion) dollars, we can make a big change here in our mental health system. We need to rethink it. Just don’t assume that the current system is the one we want.”

-- **Bob Sharpe, former Deputy Secretary, Florida Agency for Healthcare Administration²⁵**

Expanding access to health insurance is essential to diverting the mentally ill from the criminal justice system, and to supporting access to needed care for those exiting prisons and jails. Unsurprisingly, Medicaid coverage significantly improved treatment rates for substance use and depression among justice-involved individuals.²⁶

Additionally, a study from Pinellas County, FL found that among people with severe mental illness who were released from jail, those who were enrolled in Medicaid at the time were more likely to access community mental health and substance abuse services than those without Medicaid.²⁷

The healthcare needs-- mental, physical, and behavioral—of justice-involved individuals are acute. Expanding Medicaid in Florida is a necessary strategy to getting this population the care they require. In fact, researchers have found that in states that have expanded Medicaid, uninsurance rates declined among justice involved individuals of all ages by nearly 10 percentage points following expansion.²⁸

Connection to healthcare has also been shown to reduce rates of recidivism, particularly among individuals with mental health and substance abuse disorders. The Pinellas County study found that one year post-release, the individuals enrolled in Medicaid had fewer detentions and stayed out of jail longer than others who were not enrolled or were enrolled for less time.²⁹ A Michigan intervention similarly found that rates of recidivism fell by more than half when newly released prisoners were connected to a medical home and helped to access needed medications and care.³⁰ Making this sort of progress is essential in Florida, where one-third of male prisoners who require mental health treatment at the time of release return to prison within three years.³¹

THE COSTS OF DOING NOTHING

“Using a population health model to deal with people with severe mental illnesses, instead of a community justice model, would improve public safety, save critical tax dollars, and would give people a chance to recover.”

-- Judge Steve Leifman, Eleventh Judicial Circuit Court of Florida³²

The failure to make a continuum of community-based care accessible to people with severe mental illness has myriad costs. First, as discussed above, is the rise in arrest, incarceration, and criminalization of people with mental illnesses. Second is the attendant cost-shifting from less expensive, more efficient front-end services in the public mental and behavioral health system to more expensive, less appropriate services in the juvenile justice and criminal justice systems. Third, by failing to address severe mental illness, we sacrifice public safety. Further, society bears the cost of our abnegation of some of our most vulnerable citizens, as seen in increased rates of chronic homelessness among those with mental illness.³³

The price tag associated with just the first of these, the incarceration of individuals who would be better served with appropriate mental health treatment, is astronomical. **Housing people with mental illnesses in Florida’s prisons and forensic treatment facilities³⁴ costs the state approximately \$625 million dollars annually, or \$1.7 million per day.** Incarceration of people with mental illnesses in local jails costs counties an additional \$400 million dollars annually, or \$1.1 million daily. Over the next decade, state expenditures are projected to increase by as much as a billion dollars annually if present trends continue.³⁵

NELSON
MIAMI, FL

Nelson Duarte knows the importance of staying on his medications. He struggles with bipolar disorder and schizophrenia, as well as diabetes and high blood pressure.

Nelson first had hallucinations at age thirteen, and he soon found himself caught in the criminal justice system’s revolving door. Ironically, prison provided Nelson with medications for effectively managing his mental illness.

Now released and a free man, he cannot get the brand-name medications needed to treat his schizophrenia. Without insurance, he can only afford generic medications that are far less effective at managing his symptoms. And because he struggles to manage his symptoms, finding employment has been challenging.

In the meantime, Nelson wrestles with his symptoms and struggles to survive.

ANTICIPATED SAVINGS OF MEDICAID EXPANSION IN THE CRIMINAL JUSTICE CONTEXT

Expanding Medicaid will offer Florida multiple pathways for recouping costs currently borne at the state and local levels. First, expansion will connect many uninsured Floridians with mental illness and/or substance use disorder to health care. This will mean access to medication and treatment that will help control their conditions, and reduce the likelihood of justice involvement or recidivism.

Second, though Medicaid payments are disallowed for most health care services received by individuals while incarcerated in prison or jail, Medicaid reimbursement is available for care provided to eligible individuals admitted to an inpatient facility, such as a hospital or psychiatric center. Medicaid expansion would mean significantly more incarcerated individuals covered by Medicaid for their inpatient care. This would allow for important savings to the state and counties, as has been documented in other states.³⁶ New Jersey's Department of Corrections found that enrolling incarcerated individuals in Medicaid led to a 20% reduction in hospitalization costs, while Ohio saw hospital costs for incarcerated individuals reduced by more than half.³⁷ Were Florida to expand Medicaid, the state could see a projected savings of up to \$57.5 million for the inpatient hospital care of incarcerated individuals.³⁸

Expanding Medicaid, and the impact of expansion on the justice-involved population, will contribute to further state and local savings by reducing uncompensated/charitable care costs for the justice-involved, upon release.³⁹ A Montana study found significant savings as federal Medicaid dollars replaced other funding streams that financed substance use disorder services for previously uninsured Montanans.⁴⁰ Medicaid expansion could save Florida up to \$200 million dollars currently used for mental health and substance use services for uninsured Floridians with low income, including formerly incarcerated individuals, who would now be eligible for Medicaid.⁴¹

Finally, expanding Medicaid would mean that individuals like Nelson will have access to the care they need to realize their potential. With the medications necessary to fully manage his illness, Nelson's dignity would be restored, as would his ability to support himself, and contribute fully to his family and his community.

CONCLUSION

Our disinvestment from a robust mental health care and coverage system has led to the institutionalization of the severely mentally ill in our prisons and jails. In the process, we fail to meet the basic health needs of some of our most vulnerable residents, with often tragic outcomes, while at the same time imperiling public safety, and unnecessarily straining state and local budgets.

Medicaid expansion is key to changing this dynamic. Medicaid expansion in Florida will open pathways to community-based care and treatment for large numbers of people with mental illness, bringing down recidivism, averting inappropriate and expensive incarceration, and furthering prosperity in the process.

¹ Mental Health in America, Prevalence Data, 2020, available at <https://www.mhanational.org/issues/mental-health-america-prevalence-data>

² Id.

³ Mental illness and substance use are co-occurring, meaning that substance use is more frequent among adults with mental illness. More than a quarter of adults with serious mental illness also have a substance use disorder. Yet, nationwide, nearly half of these adults with co-occurring AMI and an SUD did not receive care for either condition. (U.S. Substance Abuse and Mental Health Services Administration (SAMHSA), “Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health”, August 2019, <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf>)

⁴ Treatment Advocacy Center, “Prevalence of Serious Mental Illness Among Adults by State”, 2017, available at: <https://www.treatmentadvocacycenter.org/storage/documents/smi-prevalence-chart.pdf>, See also Miami Dade County Office of the Mayor, Mental Health Task Force, “Care Comes First” 2007, available at <http://www.pacenterofexcellence.pitt.edu/documents/Miami-Dade-County-Final-Report.pdf>

⁵ Mental Health in America, Access to Care Data, 2020, available at <https://www.mhanational.org/issues/mental-health-america-access-care-data>

⁶ Id.

⁷ Tampa Bay Times and Sarasota Herald Tribune, “Insane. Invisible. In Danger.” October 29, 2015, available at <https://projects.tampabay.com/projects/2015/investigations/florida-mental-health-hospitals/cuts/>

⁸ Mental Health in America, Adult Data, 2020, available at <https://www.mhanational.org/issues/mental-health-america-adult-data#five>

⁹ Guin Becker Bogusz, “Health Insurers Still Don’t Adequately Cover Mental Health Treatment”, National Alliance on Mental Illness, March 13, 2020, available at <https://www.nami.org/Blogs/NAMI-Blog/March-2020/Health-Insurers-Still-Don-t-Adequately-Cover-Mental-Health-Treatment>

¹⁰ Florida Behavioral Health Association, “Facts About Mental Health in Florida”, 2018, available at https://cdn.ymaws.com/www.fadaa.org/resource/resmgr/files/mental_health/MentalHealthInFlorida_Brochu.pdf

¹¹ U.S. Office of the Surgeon General, U.S. Center for Mental Health Services, U.S. National Institute of Mental Health, U.S. Substance Abuse and Mental Health Services Administration, “Mental Health: Culture, Race, and Ethnicity, A Supplement to Mental Health: A Report of the Surgeon General”, August 2001, <https://www.ncbi.nlm.nih.gov/books/NBK44243/>

¹² FL Department of Health, “Florida’s State Health Assessment, 2017” available at http://www.floridahealth.gov/about/state-and-community-health-assessment/ship-process/StateHealthAssessment_FINAL_SE.pdf

¹³ George M. Burgess, Miami-Dade County County Manager, Memorandum, Subject: Mental Health Statistics, To: Hon. Chairman Bruno A. Barreiro and Board of County Commissioners, September 11, 2008.

¹⁴ Tampa Bay Times and Sarasota Herald Tribune, “Insane. Invisible. In Danger.” October 29, 2015, available at <https://projects.tampabay.com/projects/2015/investigations/florida-mental-health-hospitals/cuts/>

¹⁵ Statement of Judge Steve Leifman, Chair, Supreme Court of Florida Task Force on Substance Abuse and Mental Health Issues in the Courts before the Subcommittee on Oversight and Investigations of the Energy and Commerce Committee of the United States House of Representatives concerning People with Mental Illnesses Involved in the Criminal Justice System, available at <https://docs.house.gov/meetings/IF/IF02/20140326/101980/HHRG-113-IF02-Wstate-LeifmanS-20140326.pdf>

¹⁶ Miami Dade County Office of the Mayor, Mental Health Task Force, “Care Comes First” 2007, available at <http://www.pacenterofexcellence.pitt.edu/documents/Miami-Dade-County-Final-Report.pdf>

¹⁷ Mental Health America, “Access to Mental Health Care and Incarceration”, <https://www.mhanational.org/issues/access-mental-health-care-and-incarceration>

¹⁸ Josiah D. Rich, et al., “How Health Care Reform Can Transform The Health Of Criminal Justice–Involved Individuals”, *Health Affairs*, 33:3 March 2014 available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2013.1133>. See also Center on Budget and Policy Priorities, “The Truth About Health Reform’s Medicaid Expansion and People Leaving Jail”, June 25, 2014, available at: <https://www.cbpp.org/sites/default/files/atoms/files/6-25-14health.pdf>

¹⁹ New York Times, “Out of Trouble, But Criminal Records Keep Men Out of Work”, February 28, 2015, available at <https://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html>

²⁰ Urban Institute, “Criminal Background Checks and Access to Jobs: A Case Study of Washington D.C.”, July 2017, available at https://www.urban.org/sites/default/files/publication/91456/2001377_criminal_background_checks_and_access_to_jobs_dc_case_study.pdf

²¹ 42 CFR § 435.1010; and Centers for Medicare and Medicaid Services, Letter to State Health Officials, “To Facilitate Successful Re-entry for Individuals Transitioning from Incarceration to Their Communities,” Apr. 28, 2016, available at <https://www.medicare.gov/sites/default/files/Federal-Policy-Guidance/Downloads/sho16007.pdf>

²² Centers for Medicare and Medicaid Services, “To facilitate successful re-entry for individuals transitioning from incarceration to their communities”, State Health Official Letter SHO #16-007, April 2016, available at <https://www.medicare.gov/federal-policy-guidance/downloads/sho16007.pdf>

²³ Fla. Stat. Ann. § 409.9025(1)-(2) states: [I]n the event that a person who is an inmate in the state’s correctional system...in a county detention facility...or in a municipal detention facility...was in receipt of medical assistance under this chapter immediately prior to being admitted as an inmate, such person shall remain eligible for medical assistance while an inmate, except that no medical assistance shall be furnished under this chapter for any care, services, or supplies provided during such time as the person is an inmate...Upon release from incarceration, such person shall continue to be eligible for receipt of medical assistance furnished under this chapter until such time as the person is otherwise determined to no longer be eligible for such assistance.”

²⁴ Florida Agency for Health Care Administration, Health Plan Model Contract Attachment II–Core Contract Provisions (Tallahassee: Florida Agency for Health Care Administration, 2013), 118–19.

²⁵ Dara Kam, “Experts: Two-thirds of Mentally Ill in Florida Go Untreated”, Palm Beach Post, January 24, 2013, available at <https://www.palmbeachpost.com/lifestyles/health/experts-two-thirds-mentally-ill-florida-untreated/zR2okXCSBDWXMnggiNSicP/>

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- ³² Unpublished interview of Judge Steve Leifman by Alison Yager, November 11, 2019, Miami, FL.
- ³³ Statement of Judge Steve Leifman before the Subcommittee on Oversight and Investigations.
- ³⁴ Forensic treatment facilities provide rehabilitation treatment to individuals who have been declared incompetent to proceed to trial, in order to restore competency.
- ³⁵ Statement of Judge Steve Leifman before the Subcommittee on Oversight and Investigations.
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- ⁴⁰ Kaiser Family Foundation, “The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review”, March 17, 2020, available at <https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-august-2019/>
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