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The Intersection Between Substance Use, Incarceration, and Disability: An Exploration of Intervention Efficacy for Persons with Disabilities Within the Criminal Justice System

Sarah A. Bjorling
sbjorling15@gmail.com

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THE INTERSECTION BETWEEN SUBSTANCE USE, INCARCERATION, AND DISABILITY: AN EXPLORATION OF INTERVENTION EFFICACY FOR PERSONS WITH DISABILITIES WITHIN THE CRIMINAL JUSTICE SYSTEM

by

Sarah A. Bjorling

B.A., Southern Illinois University at Carbondale, 2015

A Research Paper

Submitted in Partial Fulfilment of the Requirements for the

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in the Graduate School

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RESEARCH PAPER APPROVAL

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Approved by:

Dr. Jane L. Nichols, Chair

Graduate School

Southern Illinois University Carbondale

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CHAPTER 1

INTRODUCTION

The discussion surrounding illicit substance use and addiction has dramatically changed throughout United States history. As new research findings emerge, our understanding about the neurobiology of various drugs and the influential effects those substances can have on human behavior continues to evolve as well. Professionals from within the human service field have made extensive efforts to utilize more evidence-based practices for the treatment of substance use disorders (daily impairment due to use of one or more substances), integrating the latest scientific findings with individual client preference to yield the most advantageous results (American Psychological Association, 2018). However, the utilization of evidence-based practices is not yet the norm in all programs.

Prison-based addiction interventions, specifically, have fallen behind with fewer prisons utilizing evidence-based practices than community programs, resulting in those treatment programs being under-funded (Lehman, Greener, Rowan-Szal, and Flynn, 2012). The lack of funds and scientifically-based therapeutic protocols have detrimental consequences to the quality of interventions being provided to prisoners with substance use disorders (SUD), which has even further consequences on society. According to the Bureau of Prisons national website, well-designed programs within prison that use evidence-based practices have been shown to not only benefit the individual through reducing relapse and increasing likelihood of employment but also benefitting his/her community through reducing criminality (Federal Bureau of Prisons, 2018). Unfortunately, many prisons are not meeting the needs of the prisoners with addictions, nor are the interventions being used consistently congruent with current scientific findings (Lehman et al., 2012).

Another variable with increasing need to be addressed within United States penitentiaries is disability. There has been a stark incline in the number of inmates incarcerated the past several decades as evidenced by records from 1980 (329,122 state and federal prisoners) and 2015 (1,476,847 state and federal prisoners), showing a population increase of 22% (Carson & Mulako-Wangota, 2015). Among that swelling population is an increase in prisoners with disabilities. Members of the correctional population are aging within prison walls while carrying out long-term sentences, bringing about a multitude of health concerns that commonly afflict older persons. Chronic disease is also becoming more prominent in younger populations, an age group arrested at proportionately higher rates than the others (Spjeldnes, Jung, Maguire, & Yamatani, 2012).

Penitentiaries also house a significant number of persons with mental health issues. A person in mental health crisis, when unidentified as such, can be deemed as dangerous to society, prompting an emergency call be made to authorities. With limited mental health facilities available in some areas, namely remote, rural communities, that person in crisis is likely to be held in a jail cell until services can be provided. It is not hyperbole to state that, "…jails serve as the largest mental health care facility…" for this reason (Spjeldnes et al., 2012).

Prisoners with disabilities are covered by United States law and therefore have rights while serving time. The Americans with Disabilities Act of 1990 (ADA), known as the "Civil Rights" act for persons with disabilities, protects individuals from discrimination on the basis of disability, including offenders. Title II of the ADA states that, "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the public entity, or be subjected to discrimination of any entity." Further prohibiting discrimination of persons with disabilities is

Section 504 of the Rehabilitation Act of 1973, which states that individuals cannot be excluded from programs or activities that receive federal financial assistance (Equip for Equality, 2016).

As a public entity, correctional facilities have the legal obligation to ensure reasonable accommodations are available; however, the overall structure of prison life itself is not conducive for persons with disabilities. Disabilities with minor impact to an individual's daily functioning in society can create major complications behind bars. As Spjeldnes et al. expanded upon in their article, common activities of daily living (ADLs) prisoners are expected to perform include bathing, dressing, getting off assigned bunks, promptly dropping to the floor upon command or at the notice of an alarm, and being able to follow orders amidst noise and commotion (2012). Such activities may be difficult depending on the type and severity of disability present - correctional facilities that are not designed to accommodate persons with disabilities greatly reduces the rehabilitative outlook for those individuals.

Prisoners with a disability and a substance use addiction are at an even greater disadvantage than their counterparts. Penitentiaries already struggle to adequately address substance use – only 10-15% of the estimated 70% who qualify for substance use treatment receive those services – without the addition of a cognitive (intellectual, developmental, learning), hearing or vision, or mobility disability, which can pose a challenge for untrained providers (Lehman et al., 2012). Though national statistics on the number of prisoners with both a disability and SUD are scarce, it is imperative to note that there is an overrepresentation of people with an intellectual disability (limitations in reasoning, learning, and adaptive behaviors) within the criminal justice system. Many offenders with an intellectual disability (ID) also have a SUD, and in general the risk of abusing substances is substantially higher for persons with an ID (McGillivray & Newton, 2016). It can be surmised based upon these facts that there is a likely an

overlooked population among prisoners whose barriers to rehabilitation, chief among them the presence of a disability and SUD, are not being adequately accounted for.

Purpose

The purpose of this literature review is to explore the complex challenges experienced by incarcerated persons with both a disability and a SUD to discover what factors should be present in prison-based substance use treatment to effectively reintegrate people with disabilities back into United States society. Persons within the legal system are an underserved and forgotten population in many realms, including among mental health and substance use providers, though their claim to receiving quality services is no less worthy than any other group of individuals. Taking into consideration the connection between disability, substance use, and incarceration will be of upmost importance to treatment providers as the number of individuals who qualify for prison-based substance use interventions continues to increase and recidivism rates remain high. An investigation into current incarceration trends, factors that attribute to being incarcerated, and the treatment modalities being offered within United States penitentiaries to treat addiction with a focus on whether adaptations for persons with disabilities are available will be the primary direction of exploration into these complex challenges.

Definition of Terms

The following definitions will be adhered to:

Disability – The ADA defines disability as a, "…physical or mental impairment that substantially limits one or more major life activities." (Equip for Equality, 2016). Unless otherwise specified, use of the term "disability" will encompass all types of disability, including cognitive (intellectual, developmental, learning), deaf or vision, and physical (mobility).

Federal vs. State Prisons – Inmates convicted of federal offenses serve sentences in federal prisons while inmates convicted of state offenses serve sentences in state prisons. Statistics referencing population ratios will differentiate between the two to avoid misinterpretation of the data.

Parole – The release of a prisoner temporarily or permanently before completing his/her sentence on the premise of good behavior

Probation – The release of an offender from detention with the expectation of good behavior while under supervision from the law

Recidivism – The tendency of a convicted criminal to reoffend.

Substance Use Disorder (SUD) – Disorder in which the use of one or multiple substances causes significant impairment on a person's life. It will commonly be referred to by the acronym "SUD".

CHAPTER 2

REVIEW OF LITERATURE

Incarceration Rates and Substance Use Offenses

The National Institute of Corrections and Federal Bureau of Justice publicize annual reports cataloging demographic data from the various branches of the criminal justice system, including prisons, jails, probation, parole. As of 2015, there were 710 inmates for every 100,000 residents in the United States (National Institute of Corrections, 2018). The total number of inmates in federal and state prisons across the country was 1,476,847 (Carson & Mulako-Wangota, 2015). That figure more than quadrupled the combined inmate population from both federal and state prisons in 1980, which totaled 24,363 inmates in federal and 304,759 inmates in state (Kalish, 1981). The breakdown of persons in each branch per 100,000 offenders that same year was as follows:

a. State and Federal Prison = 26,607

b. Jail = 13,851

c. Probation = 58,624

d. Parole = 19,973 (National Institute of Corrections, 2018).

Of the inmates in federal prisons during 2016, 47% (81,900) were at least partially incarcerated on drug offenses. When broken down by sex, 56% (6,300) of the total females and 47% (75,600) of the total males in federal prison qualified as having a drug offense. In 2015, 25% (947,450) of the 3,789,800 offenders on probation and 31% (269,855) of the 870,500 on parole had a drug charge as their most serious offense (Carson, 2018). The Bureau of Justice documented the primary drug of choice for federal prisoners during 2015 as well. More than half (54%) of the inmates listed cocaine or crack as their primary drug of choice, followed by

methamphetamine (24%), marijuana (12%), heroin (6%), and "other" drugs (3%), including LSD, prescription opiates, and Ecstasy/MDMA (Taxy, Samuels, & Adams, 2015).

The Price of Incarceration – Is it Worth it?

Experts estimate that the annual cost of mass incarceration in the United States is $80-$81 billion (Picchi, 2014). This is an ambiguous figure, however, as recent research has uncovered. The $80-$81 billion covers the operating costs of the public correction agencies (prisons, jails, probation, and parole), but it does not include outside expenditures associated with incarceration. When all aspects of the criminal justice system are included – income for public employees, health care within the system, policing, utilities, prosecution, indigent defense, etc. – the cost of mass incarceration skyrockets to a staggering estimated total of $182 billion. There are parties within this total that profit from incarceration. Roughly half of the $80-$81 billion spent in operating the correctional facilities goes towards employee incomes, which some organizations such as the Equal Justice Initiative (EJI) argue have formed, "…an influential lobby [staff] against criminal justice reform." in order to maintain mass incarceration profits (2017). Bail bond companies and phone companies also accrue profits from incarceration. $1.4 billion of non-refundable bail is paid annually by defendants to bond companies, and for every 15-minute call a prisoner makes, phone companies charge up to $24.95 to the families (Equal Justice Initiative, 2017).

Maintaining mass incarceration comes at a high price for the American economy. Sources estimate that it costs roughly $32,000 per inmate to be housed in a correctional facility for one year (National Institute of Corrections, 2018). The price of housing inmates and incarceration in general could be justified if safety within communities was improved by aggressive deterrence efforts through the threat of losing one's freedom, but the outcomes of

imprisonment have not been favorable. High incarceration rates within specific areas have consistently not yielded lower rates of drug use, drug overdoses, or arrests even when standard demographic variables were controlled (PEW, 2018). In fact, one study conducted by the Washington State Institute concluded that prisons produce only $0.37 in public safety benefit (Justice Policy Institute, 2010). These outcomes, in addition to the high rates of recidivism, would suggest that mass incarceration is not a cost-effective method for addressing crime and/or substance use.

"War on Drugs" Declared

On June 17th, 1971, former President Richard Nixon declared drug use as America's "Public Enemy Number One", which would later be referred to as the launching point for the "War on Drugs" (Nieson, 2011). He and the US Advertising Council joined efforts (a mutual benefit to both parties) to combat what was identified as a surge of problematic drug use resulting in increased crime among the nation's youth. False reports were issued on major networks – with Nixon's approval - that heroin use accounted for $2 billion worth of stolen goods per year, in addition to articles in *Time* magazine highlighting marijuana use as a precursor for adolescents to become engaged in 'harder' drugs such as heroin. Advertisements publicized during this time were also often sensationalized with contradictory or hyperbolic information; regardless of the misinformation, Nixon's political movement resulted in harsher punishments for persons abusing substances (Nieson, 2011).

The former President's motives for cracking down on substance use were benign on the surface, but many historians have highlighted the underlying racial bias in the "War on Drugs". Illegal drug use was primarily identified as a minority problem even though the White, middle class was experiencing an increase in substance abuse (Nieson, 2011). This created an

association between the "evil" drugs and, chiefly, African Americans due to substance use being common in low-income, minority communities (LoBianco, 2016). Criminalizing addiction instead of addressing some of the root causes of it – poverty, lack of jobs, and few social services available as the result of systemic racism – served as a more "economically opportune" solution for politicians (Nieson, 2011). An article from CNN in 2016 provided further testament to the racial undertones of Nixon's political agenda with released statements made by one of Nixon's top advisors, John Ehlrichman, from decades prior. Ehlrichman explained that the administration, "…couldn't make it illegal to be against the war or black, but by getting the public to associate the hippies [anti-war] with marijuana and blacks with heroin and then criminalizing both heavily, we could disrupt those communities…" (LoBianco, 2016). The declaration of illegal drug use as "Public Enemy Number One" in the 1970's, though wrought with injustices and fallacies, still has consequences on American policy concerning addiction and incarceration today.

Entry Point into Judicial System

The examination of factors that dispose a person for developing problematic substance use and/or committing offending behaviors is riddled with inequalities. Experiencing one factor will often lead into another, forming a web of intersectionality that has potential to greatly affect the direction of one's life. There are many factors that can increase the risk for using substances and being incarcerated, including boredom, loneliness, poverty, poor physical and mental health, and negative social interactions like childhood trauma (McGillivray & Newton, 2016). Majority of factors are not experienced in a vacuum – for example, having low income (poverty) decreases the likelihood of receiving proper medical care, which can cause a person to be unable to leave the home (loneliness) resulting in a decline of mood (mental health). Unfortunately,

many of these factors are consequences of being members of specific groups, including persons with disabilities and minority populations.

The use of force while policing, an entry point into the judicial system, poses more concern to persons with disabilities and minority populations because of societal biases and lack of proper law enforcement training (Blanck, 2017). Approximately 10% of police interactions involve people with mental health or cognitive, hearing or vision, and physical disabilities. Misunderstandings can occur during these exchanges when police officials are inadequately trained in how to interact with people with different needs - “misunderstandings” often escalate the situation and result in negative consequences for the individual (Spjeldnes et al., 2012).

Worth noting are the disproportionate rates of intellectual and development disabilities among low-income, racial/ethnic minority groups. Racial/ethnic minority groups experience higher rates of police involvement in their communities, which increases the number of persons incarcerated with disabilities (Blanck, 2017). The federal prison population broken down by race demonstrates America’s societal biases toward certain groups of individuals. In 2015, there were 499,400 inmates who identified as White, 523,000 as Black, 319,400 as Latino/a, and 135,100 categorized as Other (Carson & Mulako-Wangota, 2015). The presence of racial prejudice in the United States cannot be denied when comparing incarceration figures to society’s current racial/ethnic population ratios, and those disparities have further implications for persons with disabilities and substance use.

Recidivism

It is statistically likely that a person who commits a crime will reoffend regardless of punishment severity for the original crime. Approximately two-thirds of offenders return to prison within three years of being released, signifying that incarceration is not an effective

deterrent (Sellers, 2016). High recidivism rates equally elude to the necessity of improving services available to inmates during the transition out of the judicial system and post-incarceration. Research studies have highlighted the importance of offering continuous services from prison to community-based programs at home to yield effective treatment results for people with SUDs due to the chances for reoffending being exponentially increased when there is a lack of social services upon an individual's release from prison. Transitional programs are becoming more prevalent in institutions nationwide, but there are still not enough resources available for recently released prisoners to provide support through the adjustment period while integrating back in society. Insurance benefits, depending on length of incarceration, were likely suspended or terminated completely upon entry into prison. If suspended, the individual may be able to access services relatively quickly, but the termination of insurance often requires several months to reactivate. Lacking insurance limits access to health care services, psychotropic medications, and addiction treatment, creating a high risk for relapse (Spjeldnes et al., 2012).

SUDs Treatment in Prison

Reducing recidivism for inmates with SUDs begins prior to being released from prison. The ideal outcome from serving time would be that individuals gain an understanding about the consequences that follow his/her actions and that learning was able to take place about how to be a productive member of society. High incarceration and recidivism rates, among other factors, have unfortunately revealed that rehabilitation has not been the overall outcome from institutionalization. However, there have been promising results from prison-based substance use treatment programs. There is growing evidence for both the overall effectiveness and cost-efficiency of offering services to inmates before being released (Lehman et al., 2012). When prison-based substance use programs are catered specifically to the culture of the incarcerated

population (while still allowing for individualization) and use evidenced-based practices, reductions in relapse, criminality, and recidivism are documented. Those participants also experienced increased employment, improved physical and mental health, and improved personal relationships as well (Federal Bureau of Prisons, 2018).

There are different levels of substance use services that can be offered within prisons based on an inmate's therapeutic needs. In order from least to most intensive, these levels include Drug Abuse Education, Nonresidential Drug Abuse Treatment, and Residential Drug Abuse Program (RDAP). Drug Abuse Education is a series of classes that teach inmates about substance use disorders and the effects drugs can have on one's life, as well as to screen for possible need of further intervention. Nonresidential Drug Abuse Treatment is a 12-week program that utilizes Cognitive Behavioral Therapy (CBT) principles during group therapy sessions. To qualify for Nonresidential, inmates are required to have had a positive urinalysis test prior to being incarcerated. These inmates are usually serving shorter sentences and either preparing to transition back into the community or are awaiting approval for admittance into RDAP. True to CBT, the program provides skill-building through rational thinking (exploring the link between thoughts, feelings, and behaviors) and developing communication skills. An emphasis is also placed on preparing the participants for adjusting to civilian life after spending an extended period institutionalized. RDAP is the most intensive. It follows a therapeutic community model where inmates live in a separate wing from the general prison population for nine months. CBT principles are taught during various types of treatment sessions for half the day with the other half of the day is dedicated to work, school, or vocational activities. Studies have shown that RDAP makes a positive difference in the lives of participants after they return to

their home communities with significantly less risk of relapse and recidivism (Federal Bureau of Prisons, 2018).

Outcomes for Persons with Disabilities in Prison

Inmates with disabilities of all types – physical, cognitive, deaf or vision – face unique challenges while incarcerated compared to the general population. Having a disability often places a person in a vulnerable position to be taken advantage of through being misunderstood due to communication barriers, resulting in a greater risk for injuries caused by being the victim of violence from fellow inmates. There is also increased risk for sustaining injuries from unintentional causes, such as difficulty navigating around poorly-designed environmental structures in the cellblock. Inmates with disabilities are at risk for inadequate rehabilitation as well (Spjeldnes et al., 2012).

Under ADA legislation and Section 504 from the Rehabilitation Act of 1973, however, an inmate with a disability should not receive inadequate rehabilitation on the grounds of his/her disability. Public entities, including penitentiaries, are required to provide reasonable accommodations that enable an individual with a disability to fully participate in programs and activities. Reasonable accommodations are alterations that benefit the inmate but does not cause undue hardship to the prison in the form of cost or safety. An example of a reasonable accommodation would be providing an assessment risk test in larger font for an inmate with poor vision (Equip for Equality, 2016). Inmates with disabilities may be inadvertently denied equal participation if reasonable accommodations are not available. Common areas that require reasonable accommodations in penitentiaries are housing, specialized cells, work-release programs, education materials, and treatment programs. In the absence of reasonable accommodations, inmates with disabilities have less opportunity to engage in meaningful

activities such as the prison-based substance use treatment programs, which could impair their ability to recover from a SUD. Lacking accommodations also has been shown to lead to the individual engaging in alternative, unsanctioned "accommodations" or using "coping mechanisms" by which to overcome the disability, often placing the person at greater health and safety risks (i.e. trading food for a task to be completed by another inmate) (Spjeldnes, 2012).

CHAPTER 3

DISCUSSION

The United States has the highest rate of incarceration in the entire world, accounting for 5% of the world's overall population but assuming 25% of its prison population - an irony to the famous American slogan, "Home of the Free". Despite efforts of being "tough on crime" and imprisoning offenders with longer sentences for lesser crimes, public safety has not improved, nor have crime rates or substance use decreased (Justice Policy Institute, 2010). Mass incarceration continues to have an imposing impact financially on American society, costing the country billions of dollars to institutionalize individuals without productive outcomes. The disproportionate arrests of minority groups and growing population of inmates with disabilities, including mental illness, have also garnered public attention. As more entities – legislators, human service providers, researchers – begin to draw attention to the inadequacies of the judicial system's current procedures, the ability to deny our country's need for reform dwindles.

Penitentiaries have a long way to go in terms of progress. With only 10-15% of the prison population having access to substance use treatment while incarcerated out of the 70% who qualify for receiving services, there can be no surprise as to why rehabilitative outcomes are lacking for inmates with SUDs (Lehman et al., 2012). For inmates who are given access to prison-based substance use treatment, however, the rehabilitative outlook is far more optimistic. Evidenced-based practices have shown to reduce relapse and recidivism for those inmates upon being released from prison, but there are still barriers to treatment that providers within corrections must overcome for SUD treatment to be more successful. The question of autonomy is one that cannot be overlooked as persons within the criminal justice system are often placed into treatment involuntarily. It is crucial for providers to consider a person's route of entry into

the program when working with an individual displaying "resistance" and attempt to increase that client's readiness. Lack of resources available for prison-based substance use treatments are also a barrier. Many programs struggle to upgrade intervention materials and to fulfill a proper counselor to client ratio because of their locations in rural settings, which receive less funding than larger, more urban locations (Lehman et al., 2012).

Prison-based programs must additionally consider barriers to treatment for inmates with disabilities if progress is truly to be made. A person should not be denied the chance to overcome his/her addiction because of systemic and/or environmental obstacles due to having a disability. In fact, experts have speculated that the absence of reasonable accommodations is highly likely to increase rates of recidivism (Spjeldnes et al., 2012), and it can be assumed that increased rates of relapse would occur as well.

Designing prison-based substance use treatments to be more effective for both persons with and without disabilities could be attained without undue hardship to institutions. Common practice upon entry into prison is to screen inmates via risk assessments for potential issues to address while imprisoned, including substance use. Implementing a disability identification and monitoring system during the preliminary stages of incarceration in addition to the standard risk assessments would ensure that inmates in need of ADA accommodations would promptly receive those services. A disability monitoring system would additionally enable staff to track a person's specific requests for accommodations and any filed grievances (Spjeldnes et al., 2012). Many counseling approaches that benefit persons with disabilities have the potential to benefit all clients. Interventions that are structured, goal-oriented, concrete rather than abstract, and do not require high levels of literacy have been found to be most effective for persons with IDs; these types of interventions would probably appeal to the general prison population as well due

to the forward nature of the material. Research has also shown that persons with ID usually lack knowledge about substances and the effects drugs can have on a person's health and would therefore benefit from receiving drug use education (McGillivray & Newton, 2016). Drug use education should ideally be already present in various types of substance use treatments, so ensuring that the topic is well-covered would not be burdensome to the provider.

The intersection between substance use, disability, and incarceration is complex. Inmates with both a SUD and a disability face challenges that, without proper accommodation, could prevent recovery and direct the individual down the path of becoming part of the growing relapse and recidivism statistics. It is the responsibility of our society that this forgotten, underserved population be given the opportunity for rehabilitation so that the United States can rebuild her communities and, most importantly, so those individuals can have the opportunity to return *home*.

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VITA

Graduate School
Southern Illinois University

Sarah A. Bjorling

sbjorling15@gmail.com

Southern Illinois University Carbondale
Bachelor of Arts, Psychology, May 2015

Special Honors and Awards:
Trauma Fellow (January 2018 – May 2018)
Trauma-Based Behavioral Health Fellowship, Ginger Meyer, *SIUC*, Carbondale, IL

Research Paper Title:
The Intersection Between Substance Use, Incarceration, and Disability: An Exploration of Intervention Efficacy for Persons with Disabilities Within the Criminal Justice System

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