RE-INVENTING CRIMINAL JUSTICE:

THE FIFTH NATIONAL SYMPOSIUM

FINAL REPORT

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The Fifth National Criminal Justice Symposium

On 18 and 19 January 2013, 81 members of the criminal justice system[1] gathered in Montreal, Quebec, for the fifth of a series of unique opportunities for police, defence counsel, prosecutors, judicial officers, and government officials from across the country to meet and discuss issues relating to the criminal justice system. The primary purpose of these symposia is to allow influential members of the system to share, off the record, candid perspectives on and solutions to the challenges of fashioning a responsive, accessible and accountable criminal justice system.

Overview

In response to a survey completed by participants at the 2012 symposium, the Montreal meeting focused on a single theme with multiple dimensions – how can the criminal justice system most effectively respond to and work with others to reduce the over-representation of people living with mental illness in the system while enhancing public safety?[2] The sessions were arranged around hypothetical scenarios based on three stages of a criminal incident - the initial response by the police, the post-charge process and disposition/trial. Discussion papers[3], fact sheets[4] and academic literature[5] circulated prior to the Symposium, presentations by mental health experts at the Symposium and the combined experience of the participants were used as a basis for discussing how people with mental health problems are drawn into the criminal justice system and why their initial contact so often leads to increased involvement. An important goal of the Symposium was to identify the most effective responses to mental health issues at the different stages of the criminal justice process. Successful

[1] Symposium participants were invited in their personal capacity and not as representatives of courts, employers, or organization.

[2] There was a 27% increase in the number of people with a mental disorder admitted to correctional facilities in Ontario between 1995 and 2006 (*Ontario Ministry of Health and Long-Term Care, A Program Framework for Mental Diversion Court Services*, 2006, p. 4). *The Annual Report of the Correctional Investigator* has noted this over-representation in successive reports since its 2004/5 observation; "The proportion of federal offenders with significant, identified mental health needs has more than doubled over the past decade" (p. 14).

[3] John Pearson, *Preparatory Discussion Paper* and Alison MacPhail and Simon Verdun-Jones, *Mental Illness and the Criminal Justice System* (January 2013, International Centre for Criminal Law and Justice Reform).

[4] Charlotte Fraser, Menaka Raguparan and Valerie Bourdeau, *Just Facts: Prevalence of Mental Disorder in the Criminal Justice System* (January 2013, Research and Statistics Division, Department of Justice Canada).

[5] Morris B. Hoffman, *Therapeutic Jurisprudence, Neorehabilitationism, and Judicial Collectivism: the Least Dangerous Branch Becomes Most Dangerous*, 29 Fordham Urb. L. J. 2063.

programs and best practices assisting people living with mental illness to contact mental health and social services (e.g. to obtain affordable and stable housing) were highlighted. Finally, a series of practical recommendations were developed for circulation to leaders in the criminal justice, mental health and social services systems.

Time constraints precluded consideration of other aspects of the response of the criminal justice system to people living with mental illness. The Symposium did not examine issues relating to the small number of people found not criminally responsible on account of mental disorder. Time was also not available to consider the correctional, community corrections and post release stages of the process.

Mental Health Myths

The public's fear of people living with mental illness and public assumptions about the likelihood of these people committing serious violence are grossly disproportionate to the actual level of risk.[6] The over-representation of people living with mental illness in the criminal justice system suggests to the uninformed that there must be a link between serious mental illness and violence and recidivism. However, statistics show that as a group, those with mental illness are no more violent than any other group in society. The Mental Health Commission of Canada noted in a 2012 report[7] that people living with mental illness are more likely to be **victims** of violent crime than perpetrators.

Despite the public perception that people living with mental illness are dangerous, less than 3% of violent offences are attributable to people with mental illness who do not have co-occurring substance abuse disorders.[8] It is only a small subgroup of people with severe and persistent mental illnesses and specific kinds of symptoms which are not being appropriately treated that pose a risk of violence.[9] The vast majority of people living with mental illness who interact with the criminal justice system do so because of minor property and nuisance offences. Often they are engaged in conduct that may not be criminal, but because it causes community disturbance or involves drunkenness police intervention is required.[10]

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[6] Canadian Mental Health Association, http://cmha.ca/mental_health/myths-about-mental-illness/[03/26/2013 2:38;02 PM].
[7] Citing Stuart, Heather L.; Arboleda-Florez, Julio E. *Psychiatric Services*, Vol 52(2), May 2001, 654-659.
[8] Stuart, Heather L.; Arboleda-Florez, Julio E. *Psychiatric Services*, Vol 52(2), May 2001, 654-659.
[9] Canadian Mental Health Association, B.C. Division *"Violence and Mental Illness: Unpacking the Myths"* Online:http://cmha.bc.ca/files.
[10] Canadian Mental Health Association, B.C. Division, *Criminalization of Mental Illness*, (March 2005) Online:http://cmha.bc.ca/files.2_criminalization.pdf (last accessed August 29, 2012).

Research has shown that serious mental illness (primarily schizophrenia and other psychoses) alone is not significantly predictive of criminal behavior.[11] More significant factors are antisocial personality, psychopathy, neurocognitive brain impairments and substance abuse, as well as having antisocial associates and living in a chaotic and antisocial environment with few positive social supports. These factors are less responsive to traditional mental health treatment. Cognitive–behavioral programs appear to be the most effective responses. They are more typically provided by community corrections rather than the health community.

These findings have significant implications for both the criminal justice system and the health system. It is important to treat the mental illness, but programs and services must also address the other factors that are more directly responsible for the criminal behavior. For individuals whose problems intersect both the criminal justice and health systems, participants at the Symposium felt that existing approaches in both sectors are neither appropriate nor adequate. There is a need to integrate services and reallocate resources for the large group of people living with a variety of health and mental health challenges who end up in the criminal justice system and in hospital emergency rooms. Long-term strategies must aim at preventing crime, promoting mental health and responding effectively to the needs of persons living with mental illness.

A major lesson emerging from the Symposium was that the criminal justice and health systems alone cannot effectively respond to the needs of people with mental health problems that come into contact with the criminal justice process. A consistent observation was the need for stable housing, including transitional housing[12], together with appropriate supports to manage or minimize addictions and anti-social behavior. Addressing these needs leads to significantly reduced police contacts and emergency room visits.

The lack of appropriate services for people living with mental illness at every stage of the criminal process remains a huge concern. In an environment of fiscal restraint, it is important to better understand how money is actually spent on this group of individuals in order to determine whether ways can be found to re-allocate funding in order to intervene earlier and more effectively. This will require the involvement of a variety of

[11] MacPhail, Alison; Verdun-Jones, Simon, *Mental Illness and the Criminal Justice System*, (January 2013, International Centre for Criminal Law and Criminal Justice Reform), citing Hiday, V.A., Putting community risk in perspective; A look at correlations, causes and controls, *International Journal of Law and Psychiatry*, Vol. 29, Issue 4, July-August, 2006, Pages 316-331 and Rice, M.E. & Harris, G.T. [1995] Violent recidivism; Assessing predictive validity, *Journal of Consulting and Clinical Psychology,* 63, 737-748.

[12] Similar observations were made at the *Building Bridges Symposium* held in Calgary, Alberta on May 25 and 26, 2011.

service sectors – police, other criminal justice personnel, health, housing and income assistance providers.

The Symposium concluded that it might be easier to find collaborative solutions at the local level, which could also involve partnerships with municipal governments and the private sector. However, there needs to be better information on the most promising strategies. The compendium of best practices compiled by federal, provincial and territorial governments is a good start[13], but there needs to be more evaluation as well as cost/benefit analyses to support informed local deliberations. Existing research could be better disseminated and used to inform strategies. For example, research has shown that police officers who are trained to identify potential mental illness issues tend to find alternatives to the criminal justice system more often.[14] Collaboration and training of health and police personnel permit police to triage cases and reduce the burden on hospital emergency rooms.

Although the discussions addressed the different stages of the criminal justice process considered by the Symposium individually, participants recognized that there were many common themes and approaches. A number of the challenges identified at the Symposium relate to the need to balance public safety with the interests of those living with mental illness. The following recommendations were made in response to these challenges.

Training

Training with respect to mental illness is critical for **all parts** of the justice system to facilitate a more effective and appropriate response, and should include everyone who may come into contact with people living with mental illness.

Recommendations

1. Recognizing that police are the first point of contact with the criminal justice system, provide comprehensive training to key individuals in police organizations, e.g. dispatchers, as well as police officers.

[13] In October 2009, F/P/T Ministers Responsible for Justice agreed that mental health issues in the justice system should be a standing item for discussion. Officials were asked to develop three products to support a more in-depth study and discussion, including an inventory of best practices and programs (see *Building Bridges Symposium* held in Calgary, Alberta on May 25 and 26, 2011 at Page 2).

[14] *Police & Mental Health: A Critical Review of Joint Police/Mental Health Collaborations in Ontario*, Provincial Human Services and Justice Coordinating Committee, January 2011.

2. Encourage and facilitate joint training of police services and mental health professionals.

3. In addition to police, training should also be provided to judges, prosecutors, defence counsel, legal aid staff, court staff, victim service workers and corrections staff.

4. Joint or cross-sectoral training is beneficial to ensure that all justice and mental health participants understand each other's role.

5. Develop standardized manuals for police and mental health professionals.

6. Develop practice standards for defence and duty counsel, including checklists/templates to assist counsel.

7. Recognize that police programs for dealing with those living with mental illness represent a core police service.

8. Increase training of prosecutors on how to best identify and respond to cases involving mental illness, including current information about community supports and training on how to best exercise discretion regarding release conditions, diversion and sentencing.

Integration

In light of the multifaceted problems often faced by persons living with mental illness, it is crucial that the criminal justice system work in an integrated way with the health, housing and social service sectors.

Recommendations

9. Responses should not be limited to police services and mental health providers (e.g. the provision of housing through social services).

10. Centralized support, with twenty four hour and seven day a week access to information about resources and programs, should be provided to service providers and justice personnel.

11. Where possible, cases involving people living with mental health problems should be kept out of both the criminal justice system and the traditional health care system. Alternatives include:

a. Programs that work with people where they live and work;

b. Co-ordination centres to collaborate/share information, align and streamline programs; and

c. Good communication and information sharing within an integrated network.

12. Adopt and adapt best practices now in place (e.g. the following).

a. The Calgary Police and Crisis Team is composed of five police officers with mental health professionals from Alberta Health Services and a consulting psychiatrist.[15]

b. The Ottawa Police Service Mental Health Unit (MHU) responds to calls related to mental health issues. Some of the Unit's responsibilities are: linking members of the public with community resources and support systems during and following a crisis; assisting front line officers with cases that fall under the Mental Health Act and working with community partners in mental health networks to identify and resolve community/issues.[16]

c. A local steering committee of police, mental health caregivers, social service workers, community corrections staff and other service providers with information about what resources are available, review files and collectively determine a course of action (referred to as HUBS in some locations).

13. Expand innovative, integrated mental health response teams that include:

a. Rural, twenty four hour and seven day of week service;

b. The use of video conferencing to allow distance counseling and treatment, where possible and appropriate;

c. Mobile response teams; and

d. The use of alternative measures before charges are laid (e.g. support to police for on site evaluation, specially trained police or immediate access to clinical advice to support referral to other services).[17]

[15] These teams are available from 6 a.m. to 1 a.m. seven days a week and pair police ability to apprehend and apply mandatory assessment and treatment conditions with the mental health system's knowledge of needed treatment, options for diversion away from mental health and justice systems and capacity for providing complete mental health assessment. The teams have been 73% successful in linking clients with appropriate services.

[16] The Mental Health Units consist of four Constables and one Sergeant who work in partnerships with the Ottawa Hospital Mobile Crisis Team (MCT) – a team comprised of social workers and nurses trained in mental health. The team also has a consulting psychiatrist who is available to go out on mobile assessment in the community.

[17] In a number of locations across the country (including in Quebec, where they are called *Urgence Psycho Sociale*), innovative programmes provide crisis centres that are accessible twenty four hours a

14. Priority should be placed on meeting the housing needs of accused/defendant. Once these needs are met, mental health services are more likely to be effective.

15. When dealing with people presenting chronic rather than acute mental health conditions, special tools (e.g. accessible databases) should be available.

Privacy, Communication and Information Sharing

Privacy concerns, real or imagined, can impede appropriate information sharing. It was suggested that this is an area where governments could usefully undertake a review of federal and provincial privacy legislation to see if rules around the appropriate sharing of personal information could be clarified. The importance of good and timely communication among the different people who may have contact with or will be providing service to people living with mental illness was stressed.

Recommendation

16. Improve communication/information sharing amongst the systems responsible for providing services to people living with mental illness. This will require:

a. Considering whether legislative change or Ministerial directives are necessary to permit the sharing of information without violating confidentiality and self-incrimination rights;

b. The promotion of information sharing protocols, e.g. Project Link; and

c. The sharing of plans and information before a person is handed off from one resource, agency, program, etc. to another.

Partnerships

Integration needs to be supported and developed by the senior leadership in all organizations. However, even where the organizations are provincial or national in scope, local partnerships are critical to facilitate the best use of existing services and the development of new services to fill the gaps, community by community. Innovative

day and seven days a week to provide support to people undergoing crisis, including mental health problems.

local responses that take into account the unique needs and resources at the community level are particularly important.

Recommendation

17. Introduce methods by which, at the local level in particular, collective and collaborative decision-making on the allocation of finite resources can take place.

Victims

People living with mental illness are more likely to be victimized than people without a mental illness. Consequently, criminal justice personnel need to be aware that they may be required to respond to the needs of victims living with mental illness.

Recommendations

18. Training of justice officials should include the delivery of services to victims of crime living with mental illness.

19. Where the accused is living with mental illness, the complainant/victim needs to understand why the criminal justice system response may be different than usual. If necessary, the complainant/victim should receive information about ensuring their safety.

20. The victim needs to be considered in resolution discussions, with early communication back to victim/community regarding the process and outcome.

Diversion

Alternatives to formal criminal justice system processing (e.g. diversion) should be considered at every stage in the criminal process where appropriate. Training as recommended above will facilitate both the identification of appropriate alternatives and the most effective way to triage people to the most appropriate services. Senior leadership support for the exercise of appropriate discretion at all stages of criminal proceedings involving persons living with mental illness is critical in order to discourage traditional or risk averse responses.

There is a wide range of ways to divert persons from the criminal justice system into programs and resources that meet their mental health and other needs. Of particular

value are programs that allow for early triage and referral (e.g. at the incident site; post-arrest, pre-bail) with clinical support. Enhanced duty counsel programs and specialized training for defence counsel, prosecutors and community corrections staff are essential. Participants agreed that if it is possible and appropriate, when police initially respond to an incident involving a person living with mental illness the primary focus should be on intervention that keeps the person out of the criminal justice system.

Recommendations

21. Promote triage approaches and early risk assessment through:

a. Increased training for police officers on the exercise of discretion by arresting officers and the officer in-charge of the station;

b. Provide specially trained police officers as a resource to guide and assist other police officers;

c. Early assessment of risk and mental health needs, using scientifically developed risk assessment tools (e.g. Waterloo Police Services);

d. Effective intervention at first contact that focuses on needs broadly defined. For instance, intervention that takes a holistic, preventative approach with a particular focus on housing (e.g. Quebec's At Home Chez Soi program); and

e. Adequately resourced diversion programs.

22. Introduce innovative post-charge measures to divert accused/defendants out of the criminal justice system, such as using bail as an opportunity to connect an accused/defendant with mental health services to help them stabilize to a degree that may justify staying of the charge. These mental health services can include diversion programs which address the underlying mental illness driver. They can also employ a mental health coordinator to provide support and accountability.

23. Training for community corrections staff to ensure that assessments for alternative measures as well as presentence reports take into account opportunities for addressing risk outside of the criminal justice system.

Criminal Process

There was general agreement that the further a case becomes involved in the criminal justice system, the fewer options are available to respond to the needs of the accused/defendant living with mental health issues. However, there are a number of measures that can be implemented at this stage.

Recommendations

24. Careful consideration should be given to the conditions imposed on release from custody to avoid setting up the individual for failure. Programs should be put in place to support accused/defendants on bail to reduce the likelihood of them failing to comply with their bail conditions, including specialized bail supervision programs. Measures should be taken at an early stage to identify individuals likely to spend long periods of time in pre-trial detention and to develop innovative responses to minimize this risk.

25. Implement special measures to identify and assist those who are, or are at risk of becoming, chronic offenders, such as:

a. Specialized and accessible information systems;

b. Interdisciplinary teams focused on the management of these cases;

c. The provision of more information to ensure good decision-making and the imposition of appropriate bail conditions; and

d. Post-arrest, pre-bail review with clinical support followed by confidential discussions and possible resolution involving Crown, duty counsel and clinician done in a way that protects the rights of the accused and victim and the interests of the public.

26. Improve the effectiveness of the court process for accused living with mental health issues through:

a. Enhanced duty counsel programs[18];

b. Early prosecutor, defence counsel and court access to information;

c. Court lists that, where possible, give priority to cases involving persons living with mental health issues;

d. Duty counsel and prosecutor continuity for these cases, where possible;

e. Management of the case from the beginning to avoid inappropriate involvement with the criminal justice system; and

f. Giving consideration to further specialization of all professional participants in the process including the judiciary.

[18] Enhanced Duty Counsel is provided by a few Legal Aid Plans. EDC entails use of experienced duty counsel lawyers, with court and case continuity, and court support workers (non-lawyers) knowledgeable about community supports who work in triage with the lawyers.

27. Decision makers should avoid imposing unnecessary sentencing conditions that increase the likelihood of failure to comply with conditions.

Some jurisdictions have introduced mental health courts providing an intensive therapeutic response using specialized treatment programs and monitoring of the accused/defendant by the Court. Other jurisdictions place emphasis on early diversion from the criminal justice system. Symposium participants agreed that each jurisdiction should consider this issue and how it wishes to respond. The resources available to mental health courts (e.g. psychiatric support and court officers with special training) should be accessible at earlier stages (e.g. the bail stage).

Sentencing and Post Sentencing

The above recommendations relate to the handling of cases through to the disposition/trial stage. The Symposium did not address the situation of persons found not criminally responsible on account of mental disorder and review board processes, or with sentencing and all of the issues related to corrections, including the role of community corrections in diversion, pre-sentence reports, community supervision, correctional programming, release planning and supervision, which participants recognized are all important parts of the criminal process in need of critical examination.

However, after all alternatives have been considered and a sentence is required, carefully worded reasons for the decision must accompany the offender, whether into community supervision or into custodial care. Correctional authorities are encouraged to fully consider these reasons as correctional plans are developed. Symposium participants noted the development in 2011 of the National Strategy for Mental Health and Corrections and encourage activity by all stakeholders to operationalize the vision in the Strategy.[19]

Legislative barriers

It was suggested that decision makers require significant discretion when it comes to cases involving persons living with mental illness. Restrictive policies or statutory restrictions on discretion can interfere with the responsible exercise of discretion. It was

[19] The principles of the Strategy are set out and explained at http://www.csc-scc.gc.ca/text/pblct/health/tcc-eng.shtm [03/26/2013 4:22:10 PM].

also suggested that a review of provincial mental health legislation might identify best practices for consideration by other provinces and territories. As well, consideration should be given to whether *Criminal Code* amendments are required to allow for earlier assessments of the mental health needs of the defendant.

Research and evaluation

There is a lack of adequate data regarding the incidence and nature of cases involving offenders living with mental health issues or sufficient evaluative research on the effectiveness of various interventions.

Recommendation

28. Improve data gathering relating to the number and characteristics of individuals living with mental illness issues who interact with the criminal justice system and support additional research and evaluation into the most effective and efficient ways of responding to the needs of offenders living with mental health issues.

Conclusion

Deinstitutionalization of people living with mental illness has been a major step forward. It allows them to reside and be treated in the community and has afforded them greater social acceptance and respectful treatment. Thanks to the advent of more effective medications and a better understanding of the types of community supports they require, most people with mental health problems live successfully in the community. But for a minority of people, usually those with multiple complex needs, deinstitutionalization combined with a lack of comprehensive community support systems has resulted in another type of institutionalization, within prisons and jails rather than hospitals.[20]

The research literature and this Symposium indicate a number of factors have contributed to disproportionate incarceration of persons living with mental illness, including 1) lack of sufficient community support, 2) a high rate of substance abuse, 3) unfair stigmatization as criminals,, 4) lack of specialized cross-training for both criminal

[20] Canadian Mental Health Association, B.C. Division, *Criminalization of Mental Illness*, (March 2005) Online:http://cmha.bc.ca/files.2_criminalization.pdf (last accessed August 29, 2012).

justice and mental health professionals,5) lack of timely access to mental health assessment and treatment and 6) ineffective treatment.

The participants in the Symposium unanimously agreed that an effective and efficient justice system which supports a goal of public safety requires responses that address the mental health drivers of chronic intersection with the criminal justice system. If possible and depending on the circumstances of the case, persons living with mental illness **should be treated rather than punished**. For that reason, the Symposium developed a series of recommendations calling, *inter alia*, for police to be better trained to recognize symptoms of mental illness and to have the capacity to immediately refer the individual to mental health services instead of the criminal justice system. Prosecutors, duty and defence counsel and judges must also become more educated on the issues and solutions for persons living with mental illness. **People living with mental illness must have additional supports that neither the justice system nor the health system can provide, including affordable and stable housing, a dependable income, and the opportunity to develop employment skills.**

Comments on Future Symposia

Participants expressed their appreciation for the Symposium and support for its continuation. The Chair of the Symposium Steering Committee invited participants to become involved in the work of the Steering Committee and noted the value of Steering Committee renewal. A survey will be circulated to participants to seek feedback on this year's Symposium and input on future Symposium themes.

Further Reading

Building Bridges, *Mental Healthy and the Justice System, a Symposium to Promote Collaboration*, Calgary, Alberta, May 25 & 26, 2011

Human Services and Justice Coordinating Committee Ontario*, Police & Mental Health, A Critical Review of Joint Police/Mental Health Collaborations in Ontario*, January 2011, www.hsjcc.on.ca.

Canadian Institute for Health Information, Improving the Health of Canadians 2008: Mental Health, Delinquency and Criminal Activity, *Report*, www.cihi.ca/cphi.

James D. Livingston, Principal Investigator, *Criminal Justice Diversion for Persons with Mental Disorders: A Review of Best Practices*, Research in Addictions and Mental Health Policy and Services Program, March 31, 2008.

Canadian Mental Health Association, B.C. Division, Criminalization of Mental Illness, March 2005, www.cmha-bc.org.

Paul Calarco, *R. v. Szostack: Counsel's Ethical Duties and the Mentally Ill Client,*

H. Archibald Kaiser, Too Good To Be True: Second Thoughts on the Proliferation of Mental Health Courts, *Canadian Journal of Community Mental Health*, Vol. 29, no. 2, fall 2010.

Schneider, R.D. (2010). Mental health courts and diversion programs: A global survey. *International Journal of Law and Psychiatry, 33*(4), 201.

Schneider, R.D., Bloom, H., & Heerema, M. (2007). *Mental health courts: Decriminalizing the mentally ill.* Toronto, ON: Irwin Law.