

BROKEN RECORD

The Continued Criminalization
of Mental Health Issues



ABOUT US

For more than 90 years, the **John Howard Society of Ontario** has worked to keep the humanity in justice.

Today we continue to build a safer Ontario by supporting the people and communities affected by the criminal justice system. Our 19 local offices deliver more than 80 evidence-based programs and services focused on prevention, intervention and reintegration across the province. These range from helping youth develop the life skills that will let them achieve their full potential, to assisting families navigate issues of criminal justice, to providing job training for those leaving incarceration so they can contribute to their community in a meaningful way. We promote practical, humane policies while raising awareness of the root causes of crime and calling on Ontarians to share responsibility for addressing them. Within our criminal justice system, we work toward the fair treatment of all. As the system evolves to reflect our changing society, we ensure that no one is left behind.

We believe that policy should be grounded in the day-to-day reality of the people it impacts. That's why our **Centre of Research & Policy** specializes in bridging the gap between analysis and frontline service delivery. By collaborating closely with our local offices, the Centre's team of analysts and researchers develops policy positions that truly reflect the needs of each community, advances those positions to governments and other organizations, educates the public on the critical issues, and evaluates program efficacy to guide future work. Through it all, they're committed to ensuring that innovative ideas can translate into real action.



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WHAT IS MENTAL HEALTH?

Mental health is defined as a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to their community.¹

¹ World Health Organization. (2013). Mental health: a state of well-being. Retrieved from: http://www.who.int/features/factfiles/mental_health/en/

JHSO assumes the position that there is a wide mental health spectrum, and all issues relating to mental health deserve appropriate treatment and attention. The definition we endorse is inclusive of a broad range of mental health issues, which includes but is not limited to: mental illness, substance use disorders, addictions, acquired or traumatic brain injury, trauma, developmental disabilities, dementia and fetal alcohol spectrum disorder (FASD).

Therefore, throughout this report, the term mental health issues connotes this inclusive definition, unless otherwise stated.

INTRODUCTION

Popular campaigns to destigmatize mental illness rightly point out that mental health issues can affect us all. Indeed, a significant proportion of Ontarians will experience a mental health issue in their lifetime. While mental health and substance use issues can affect people from all socioeconomic backgrounds, studies show that risk factors for many common mental disorders are strongly tied to social inequalities, **“whereby the greater the inequality the higher the inequality in risk”**.²

Not only do structural and systemic factors influence an individual’s *risk* of experiencing mental health issues, it also shapes their *access* to supports, interventions and resources when mental health issues do arise. This inequity puts people on vastly different health trajectories from very early on in life. People who are precariously housed, who grow up in unstable family environments or have a history of trauma will experience mental health issues differently and disproportionately. Those who experience marginalization, racism, poverty and homelessness have increased likelihood of mental health issues. They also end up more frequently in jail. This is not a coincidence. It is often those who are truly disadvantaged who end up unwell *and* trapped in our criminal justice system.

In many ways, Canada’s justice system has become the largest provider of mental health services to vulnerable people across a variety of backgrounds and needs. Many individuals enter the correctional system with pre-existing mental health issues, which are typically worsened during their incarceration. Other people develop new symptoms due to the negative psychological effects of jail. Whether it is through the imposition of strict conditions of bail or probation, or through segregation and isolation in jails, practices rooted in punishment and control often only exacerbate the challenges facing people with mental health issues and further enmesh them in a system that was never designed to meet their needs.

In 2015, the John Howard Society of Ontario (JHSO) released a report entitled *Unlocking Change*, which called for a reset on how we think about and respond to people with mental health issues when they interface with the justice system. It challenged policymakers to interrupt the reliance on punitive measures and redirect resources to upstream, preventative solutions. It stated, **“When the healthcare system fails to treat mental illness, the criminal justice system punishes the**

² World Health Organization and Calouste Gulbenkian Foundation. Social determinants of mental health. Geneva, World Health Organization, 2014.

symptoms.” There have been positive developments since then, especially in public attitudes and awareness, but overall, like a broken record, the practice of criminalizing and stigmatizing unwell individuals who fall through the social safety net continues on repeat.

The status quo is the result of complex factors, but with a growing population of individuals affected by mental health and substance use disorders, and the clarion calls to examine deeply rooted systemic biases and inequities in the justice system and beyond, there is a pressing need for targeted investments and creative solutions.

This short report will summarize some of the key challenges surrounding the criminalization of mental health issues in Ontario, and present immediately actionable solutions to help our province right the course. This paper is not intended as an exhaustive account of all the issues or solutions – these have been profiled in greater detail by both JHSO and leading mental health organizations elsewhere.³ Instead, we hone in on **5 key areas**, that if reimagined, could move the yardstick on how we respond to those who come into the justice system’s crosshairs as a result of or while experiencing mental health issues.

³ See Centre for Addiction and Mental Health (2020). Mental Health and Criminal Justice Policy Framework. Toronto: CAMH <https://www.camh.ca/-/media/files/pdfs--public-policy-submissions/camh-cj-framework-2020-pdf.pdf>; JHSO’s *Unlocking Change: Decriminalizing Mental Health Issues in Ontario* (2015); and, the Housing, Health, and Justice Community of Interest’s *Closed Quarters: Challenges and Opportunities in Stabilizing Housing and Mental Health Across the Justice Sector* (2019), to name a few



POLICE

Police officers are the gatekeepers of the criminal justice system. They have also increasingly become first responders in situations involving people with mental illness.

Police in Ontario respond to thousands of calls related to mental health every year. In Toronto alone, there were approximately 20,000 instances where police were dispatched in 2015 due to mental illness.⁴ One in five people with a mental illness or substance use disorder have had some sort of contact with the police. In a comprehensive literature review conducted by the Mental Health Commission of Canada, it was discovered that 40% of people with mental illness have been arrested in their lifetime.⁵ It is important to note that only a small proportion of these interactions were due to participation in criminal activity.

Police have considerable discretion around how to respond in a situation involving a person with mental illness. Their choices for resolving issues range from taking no action, informal sanctions such as giving a verbal warning, or more serious formal criminal justice or mental health responses such as arrest or hospitalization. Police are also responsible for deciding whether an individual will be processed through the criminal justice system or will receive a mental health diversion.⁶

Individuals with mental health issues are more likely to be arrested in a police interaction, even when related to minor offences. A study comparing the characteristics of police interactions involving suspects with mental illness to those without mental illness, found that police interactions with those with mental illness were actually less likely to be related to more severe offences, compared to interactions with people without mental illness.⁷ However, minor offences were more likely to lead to an arrest outcome when they involved a person with mental illness. The study also concluded that police interventions involving individuals with a mental illness took twice as much time compared to the control sample, and that an intervention involving an individual with a mental illness used nearly 90% more resources than interventions involving the control sample.

In addition, police officers often play a significant role in a person's pathway to accessing care, with three in ten people with mental illness reporting having the police involved in their care pathway in one study.⁸ This includes people who interacted with police on their way to inpatient or outpatient mental health services, including emergency care (e.g., being transported to the hospital during an acute crisis).

⁴ Iacobucci, Frank. Police encounters with people in crisis: An independent review. Toronto Police Service, 2015

⁵ Coleman, T. G., & Cotton, D. (2014). TEMPO: Police interactions: A report towards improving interactions between police and people living with mental health problems. Mental Health Commission of Canada

⁶ Diversion in this context refers to moving the individual away from being subject to the systems of traditional criminal justice prosecution towards a path focused on treatment and rehabilitation of the mental illness

⁷ Charette, Y., Crocker, A. G., & Billette, I. (2011). The judicious judicial dispositions juggle: characteristics of police interventions involving people with a mental illness. *The Canadian Journal of Psychiatry*, 56(11), 677-685

⁸ Brink, J., Livingston, J., & Desmarais, S. (2012). A study of how people with mental illness perceive and interact with the police. Mental Health Commission of Canada

COURTS & BAIL

Most people with mental health issues go through the regular **court** process, despite needing more treatment-based options.

Accessing **bail** is a challenge and when they are released, people with mental health issues are often given conditions that are difficult to adhere to.

Although some individuals are diverted out of the criminal justice system into the forensic mental health system, most individuals with mental health issues enter the court system and proceed through the typical court processes, following arrest and charging by police. Despite Canadian law having a presumption of release, reasonable and timely bail is difficult to obtain, even though crime rates have dropped significantly over time. Even worse, those who are granted bail are frequently subjected to unreasonable or overly strict conditions surrounding their release.

In order to secure bail, accused persons often agree to a host of onerous conditions that impose restrictions on their liberties or attempt to modify their behaviours. These can include conditions to seek treatment or detox, to abstain from alcohol and/or drugs, and to reside at certain facilities or shelters or to follow a curfew. In a study of bail in 2013, the John Howard Society of Ontario examined 337 case files of individuals under bail supervision in Ontario. The study found that this population faced significant health and social challenges: 70% of all individuals had issues with substances (alcohol or drugs), over 40% reported current mental health issues and 31% reported having both concurrently.⁹ These same individuals were subjected to numerous bail conditions that were shown to set them up for failure.

People will often agree to all conditions requested by the courts, since the alternative is staying in jail. The effects of such court practices often lead to further criminalization: in Canada, “breaching” or failing to comply with a bail condition is a crime unto itself (called an “administration of justice offence”), and having convictions for failing to comply with bail orders has significant negative effects on the likelihood of receiving bail in the future.

⁹ John Howard Society of Ontario. (2013). Reasonable Bail? <https://johnhoward.on.ca/wp-content/uploads/2014/07/JHSO-Reasonable-Bail-report-final.pdf>

SPOTLIGHT: MENTAL HEALTH COURTS

Mental health courts operate with the intention of diverting those with mental health issues out of the traditional criminal court stream into a system focused on treatment and rehabilitation.* Mental health courts work to connect individuals with medical and community supports to reduce recidivism, improve community safety, facilitate access to community services and supports, and improve health and well-being of clients.** Mental health courts involve legal, medical and mental health support staff working with justice stakeholders to carry out the courts objectives.

Most courts have some form of eligibility criteria and screening, beyond willingness of the participant, to determine who is eligible to access court processes and diversion programs. In most cases, the court requires that there be some link between the offence in question and the individual’s mental health issue and sometimes, certain offences may render the individual ineligible. Lack of dedicated funding has been cited as a major challenge of mental health courts in Ontario as these courts often run using existing resources and the initiative of a small group of stakeholders.*** In addition, based on eligibility requirements, not all individuals who could benefit from diversion and connection to community-based resources are able to benefit from this alternative stream.

* Michalski, J. H. (2017). Mental health issues and the Canadian criminal justice system. *Contemporary justice review*, 20(1), 2-25

** Human Services & Justice Coordinating Committee. (2017) *Mental Health Courts in Ontario: A Review of the Initiation and Operation of Mental Health Courts Across the Province*. <https://ontario.cmha.ca/wp-content/uploads/2017/11/Mental-Health-Courts-in-Ontario-1.pdf>

*** Ibid

Criminal charges for violating bail conditions are common. In its 2014 study, CCLA found that an administration of justice charge was the *most serious charge* in over 20% of the criminal and federal cases completed in Canada; about half of these cases stemmed from violations of bail conditions.¹⁰ Justice Wyant, in a 2016 report on bail and remand in Ontario, tells the story of a young vulnerable accused woman with a substance use disorder, whose only substantive charge was related to prostitution, but through a series of conditions imposed and subsequent violations, had become cyclically enmeshed in the justice system. He wrote:

“We, the system, made that record for her and there are countless other people in the system that are in the same position. We make our own business and, often, we do it on the poor, the needy and the vulnerable who do not pose a threat to society.”¹¹

In summary, people are often arrested for breaching bail or probation conditions that criminalize otherwise legal behaviour, like drinking or being out past 9:00pm. This over-conditioning bogs down courts and fills our jails with people who are generally low risk but who suffer from mental health or substance use issues. It is not a good use of resources to continue to charge and incarcerate people for these low-level offences.

SPOTLIGHT: NOT CRIMINALLY RESPONSIBLE

Not criminally responsible on account of mental disorder (NCRMD) is a legal defence for people who were suffering from a mental illness that made them incapable of understanding their actions when they committed a criminal offence. These individuals are directed to the forensic mental health system for treatment instead of being punished in the criminal justice system. Only a very small number of people with mental illness who commit crimes are found to be NCRMD, representing only about 1% of the total adult criminal cases processed annually.* Unlike criminal sentences where individuals are sentenced to a fixed amount of time before their release (i.e. receiving a sentence of 2.5 years), persons found NCRMD receive an indeterminate sentence meaning that they can be detained in a psychiatric facility indefinitely with no projected date of release – their release into the community is entirely dependent on the progression of their mental illness.**

* Statistics Canada (2014) Verdicts of not criminally responsible on account of mental disorder in adult criminal courts, 2005/2006-2011/2012 Retrieved from: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2014001/article/14085-eng.htm>

** Crocker, A. G., Livingston, J. D., & Leclair, M. C. (2017). Forensic mental health systems internationally. In R. Roesch & A. N. Cook (Eds.), *International perspectives on forensic mental health. Handbook of forensic mental health services* (p. 3–76). Routledge/Taylor & Francis Group. <https://doi.org/10.4324/9781315627823-2>

¹⁰ Canadian Civil Liberties Association and Education Trust. (2014) Set up to Fail: Bail and the Revolving Door of Pre-trial Detention. <https://ccla.org/cclanewsites/wp-content/uploads/2015/02/Set-up-to-fail-FINAL.pdf>

¹¹ Justice Raymond E. Wyant. (2016). *Bail and Remand in Ontario*



JAIL

Jails are not designed to provide care to people with mental health issues. Conditions associated with **incarceration** can create mental health issues or make existing issues worse.

Incarceration is perhaps the single most harmful event for individuals experiencing mental health issues. In spite of this, mental health issues are 2-3 times more prevalent in Canadian prisons than in the general population.¹² It is estimated that approximately 41% of Ontario prisoners will experience at least one severe mental health problem during their incarceration, while 35% of female inmates and 18% of Indigenous inmates serving sentences in provincial facilities are more likely to have two or more symptoms of severe mental illness.¹³ Many individuals begin their journey through the prison system already experiencing some form of mental health problem, which can become further exacerbated as they move deeper into the system. An estimated 1 in 10 males and 3 in 10 females enter federal custody with pre-existing mental health issues.¹⁴ However, others arrive with no pre-existing issues, but develop situational mental health problems as a result of the psychological distress linked to experiences of incarceration.

Perhaps not surprisingly, jails are ill-equipped to provide appropriate care to people with mental health issues. The delivery of health care in Ontario is divided: the Ministry of Health (MOH) oversees health care services to the vast majority of Ontarians while the Ministry of Solicitor General is responsible for health care in Ontario's correctional institutions. Embedded in this administrative split are a number of unique challenges characterizing the current state of health care in Ontario's correctional institutions. Understaffing, security concerns, and lack of resources have historically made the provisions of adequate health care exceptionally difficult in correctional settings.¹⁵ Correctional institutions are not typically viewed as health care settings that deserve to be equally part of the broader health care funding, coordination and planning. This disconnection of service providers also misses an otherwise opportune moment to connect those with mental health issues to quality health care while they are incarcerated, which they may not have been receiving in their community.¹⁶

Reports from the Office of the Correctional Investigator and the provincial Independent Review of Ontario Corrections have both noted a lack of mental health treatment options within federal and provincial correctional facilities. Furthermore, individuals with mental health issues are often subjected to the inappropriate use and overuse of segregation. Between July 1, 2018 – June 30, 2019, 12 059 prisoners in Ontario were placed in segregation. 46% of those prisoners had a mental health alert on file.¹⁷ Time spent in segregation ranged from 1 day to 365 days.

¹² Sapers 2011

¹³ Brown, G. P., Hirdes, J. P., & Fries, B. E. (2015). Measuring the prevalence of current, severe symptoms of mental health problems in a Canadian correctional population: Implications for delivery of mental health services for inmates. *International journal of offender therapy and comparative criminology*, 59(1), 27-50

¹⁴ Sapers 2010

¹⁵ JHSO 2016 Fractured Care

¹⁶ (COI Report, 2019)

¹⁷ Ministry of Solicitor General. (2019) 2019 Data Release.

<http://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/DatainmatesOntario/2019Datarelease.html#>

Research has evidenced the detrimental effects that prolonged periods of isolation have on physical and mental health, especially for those with pre-existing mental health issues. Psychological effects of solitary confinement include hallucinations, cognitive disabilities, insomnia, self-harm, paranoia and suicidal tendencies, not to mention exacerbating pre-existing mental health conditions.¹⁸

Individuals with mental health issues are often placed in segregation due to behaviours associated with symptoms of mental illness. Frustrating, violent, or impulsive behaviour that generally accompanies severe mental disorder such as bipolar or schizoaffective disorder, may be interpreted by correctional staff as a threat to the safety of the prisoner themselves or other prisoners/staff, which may lead to higher rates of disciplinary violations and increased instances of segregation as a form of behaviour management.¹⁹ JHSO has prepared a number of submissions and positions on the use of segregation and the need for reform, along with many other stakeholders such as the Ontario Human Rights Commission, the Ontario Ombudsman and the Institute for Advancements in Mental Health (formerly Schizophrenia Society of Ontario).²⁰ In addition, the Jahn Settlement²¹, and subsequent Consent Order developed a number of prescribed changes to policy and practice aimed at addressing the use of segregation and treatment of prisoners, particularly those with mental health issues.

¹⁸ Smith, P.S. (2006). The effects of solitary confinement on prison inmates: A brief history and review of the literature. *Crime and Justice*, 34, 1, 441-528.; Arrigo, B. A. and Bullock, J.L. (2008). The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units Reviewing What We Know and Recommending What Should Change. *International Journal of Offender Therapy and Comparative Criminology*, 52, 6, 622-640; and, Kupers, T. (2008). What to do with the survivors? Coping with long-term effects of solitary confinement. *Criminal Justice and Behavior*. 35, 8, 1005–1016

¹⁹ Luigi M, Dellazizzo L, Giguère C-É, Goulet M-H and Dumais A (2020) Shedding Light on “the Hole”: A Systematic Review and Meta-Analysis on Adverse Psychological Effects and Mortality Following Solitary Confinement in Correctional Settings. *Front. Psychiatry* 11:840

²⁰ See for instance JHSO’s 2017 FactSheet on Solitary Confinement <https://johnhoward.on.ca/wp-content/uploads/2017/02/Solitary-Confinement-FactSheet-Final-1.pdf> and our 2015 Submission to the Segregation Review: <https://johnhoward.on.ca/wp-content/uploads/2015/12/JHSO-Segregation-submission-2015-final.pdf>

²¹ Christina Nadine Jahn v. Her Majesty the Queen in Right of Ontario as represented by the Minister of Community Safety and Correctional Services September 24, 2013 Schedule “A”



AFTER JAIL

Homelessness is what awaits many individuals with mental health issues **exiting jail**. Connecting returning individuals to services and supports is crucial to preventing homelessness, reducing recidivism and increasing public safety.

For those leaving corrections, discharge planning is a crucial tool to help support their reintegration into society, and has other benefits including reduced recidivism, increased public safety, and reduced homelessness.²² Discharge planning is an opportunity to link vulnerable people to resources that can assist them in finding housing, accessing medical care, income supports, or other social services.²³ A longstanding issue is that discharge planning is not provided for remand populations – 70% of those in Ontario’s correctional institutions on any given day – leaving these individuals without any plan or support when they exit the institution’s doors. And what is available for sentenced populations varies by institution and the length of one’s sentence. Implementing early and comprehensive discharge planning for all correctional populations, including those on remand, has many advantages for both the individual and the broader community.

A primary concern for individuals leaving jail is lack of adequate housing. Homelessness and mental health are closely intertwined, as housing instability can create or further intensify mental health and addiction problems, while having mental health problems increases the likelihood of experiencing homelessness.²⁴

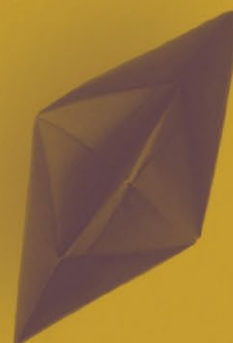
Discharge planning is key to effective re-entry, but there is also the larger matter of the critical shortage of available housing options for people who are both justice-involved and experiencing mental health issues. Often perceived as dangerous due to a criminal record or recent incarceration, many people with past justice involvement with complex needs are often ‘banned’ from shelters and other traditional housing options. This stigma has only worsened since the onset of the COVID-19 pandemic, where people exiting institutions face added barriers due to the perceived heightened health exposure risk resulting from incarceration. In order to ensure people land successfully on their feet, there needs to be a supply of appropriate housing options, matched to acuity levels, for people exiting corrections. Simply put, the housing need greatly outpaces available options across the province.

²² (Petersilia, 2001; Travis & Petersilia, 2001)

²³ Independent Review of Ontario Corrections, 2017

²⁴ Munn-Rivard, Laura. Current issues in mental health in Canada: homelessness and access to housing. Library of Parliament, 2014

**BREAKING THE CYCLE:
*SHIFTING THE STATUS QUO***





Respond to Mental Health Issues like Physical Health Issues

If we wait until acute mental health crises trigger police responses, we are doing a disservice to both our community members and the police. As many commentators have pointed out, we need to fund upstream community health and housing, so that police are not the first or even last point of contact for those in crisis.

Mental health care needs to be as accessible as any other kind of physical health care, to make crises less likely. And when crises do happen, communities deserve options beyond the police – dedicated first responders trained in handling mental health cases humanely and effectively: the mental health equivalent of paramedics.²⁵

The justice system needs to be accountable for restricting its involvement with people with mental health issues, and reducing harm when interactions do occur. If there are incidences involving persons in crises that rise to the threshold of needing police support, mental health workers should “ride along” with police on calls that could benefit from their expertise in what are referred to as mobile crisis teams. Peaceful de-escalation should always be the priority. There are many examples of such programs in Ontario, some of which were just recently expanded by the provincial government, which is a laudable step forward.²⁶

The bottom line is making sure that communities, and in particular, marginalized communities, have robust access to community mental health and housing supports that are culturally appropriate and evidence-based, for people and families at all stages of life.

²⁵ See Centre for Addiction and Mental Health (2020). Mental Health and Criminal Justice Policy Framework. Toronto: CAMH. <https://www.camh.ca/-/media/files/pdfs--public-policy-submissions/camh-cj-framework-2020-pdf.pdf> for interesting policy discussion of promising models in other jurisdictions

²⁶ <https://news.ontario.ca/en/release/59241/ontario-expanding-mobile-crisis-services-to-respond-to-mental-health-emergencies>

2

Raise the Threshold to Criminal Justice System Entry

There are many individuals who are marginalized and have ongoing substance use and/or mental health issues, who are known to the justice system and are frequently cycling in and out of police and correctional detention. They may not necessarily be in a state of acute crisis when police come into contact with them, but that doesn't mean they shouldn't benefit from diversion.

Police and prosecutors should be required to quickly divert people with mental health issues out of the criminal justice system entirely when offences are minor. This direction should be strengthened in both police and Crown prosecutorial directives.

But an even bigger step could be taken. Many criminal cases that end up in our courts ultimately get thrown out. The number of charges withdrawn by Crown counsel in Ontario per year has continued to rise since 2014, as has the average number of days/appearances before charges are withdrawn.²⁷ According to the Auditor General's report, in 2018/2019, there were a total of 84,820 cases withdrawn by Crown attorneys.²⁸ The costs to the court system and personal costs to the accused, especially those with mental health issues, associated with these figures are significant. The costs to the prosecution for cases that were eventually withdrawn for reasons other than a resolution (like plea bargaining) was an estimated \$38 million.²⁹

In Ontario, charges are laid by police officers without prior screening from a Crown prosecutor. Once charges are laid, the Crown must determine whether to proceed with the charges, considering whether there is reasonable prospect of conviction and if prosecution is in the public interest. In British Columbia, New Brunswick and Quebec, a pre-charge screening process requires officers to investigate a criminal matter and submit evidence to Crown counsel, who then makes the final determination on how many charges will be laid, if any, and what charges would be appropriate.

Pre-charge screening can promote efficiencies and ease burdens on the already stretched court system. Ontario should consider implementing a pre-charge screening approach where Crown counsel must review all potential charges and the relevant evidence prior to the laying of any charges. There is not just the time and money spent on unnecessary court appearances to consider, but also the significant costs and harms associated with

²⁷ Auditor General of Ontario. (2019). 2019 Annual Report Volume 3: Reports on Correctional Services and Court Operations. http://www.auditor.on.ca/en/content/annualreports/arreports/en19/2019AR_v3_en_web.pdf

²⁸ Ibid.

²⁹ Ibid.

pre-trial detention that could be prevented, especially for vulnerable populations who are low-risk. In addition, pre-charge screening provides an opportunity to connect individuals with pre-charge diversion programs or treatment.

The province could test out this approach as a pilot by identifying several mid-sized jurisdictions where pre-charge approval would be instituted and evaluated for impact on court volumes, case outcomes, efficiencies, admissions to custody and qualitative feedback from key justice system actors.

3

Do Justice Differently

Judges need new tools and options to respond to crime, especially low-level criminal offences. Community courts or justice centres are an opportunity for justice system actors to work with people in the community to create creative responses to local issues. These alternatives to the formal court process can reduce incarceration, connect individuals to supports and address underlying issues causing crime. Community justice centres are a proven model that combine courtrooms and social services under one roof to better address the root causes of crime in communities, including addressing mental health issues.

In Ontario, the Ministry of Attorney General has initiated four justice centres with locations in Toronto (2 locations), Kenora and London. These justice centres follow the model of community courts adopted in jurisdictions around the world, bringing together justice, health and social service partners. The focus in Toronto-downtown East is community health as its needs assessment highlighted the role homelessness, poverty, and mental health and addiction issues play in cycles of justice involvement and victimization. Other justice centres focus on Indigenous justice and youth issues based on the needs assessments of their communities.

Justice centres provide opportunities to explore innovative, locally and culturally safe responses to crime in order to respond in a more holistic manner, make connections to needed supports and promote sustainable community safety. The Ontario government's commitment to exploring justice centres is a positive step forward. Evaluation and continued investment are needed to ensure they can fulfill their potential, and expand to serve more communities.

4

Create Parallel Healthcare in Corrections.

Since mental health issues are so widespread in jails and prisons, triage and screening by a regulated health professional should be completed for all inmates no later than 96 hours following admission, and reassessments should take place on a regular basis.³⁰

Prior to the COVID-19 pandemic, the provincial government embarked on a major health care system transformation to improve the coordination of patient care. With the creation of a new overarching health agency, Ontario Health, along with Ontario Health Teams to coordinate local care, there is a unique opportunity to integrate health services for incarcerated populations with the community health care system. The pandemic has demonstrated in often painful ways how prison health is public health; never has there been a time when the need to reimagine the provision and standard of health care in our jails been more urgent. Care should be continuous and integrated – people transitioning between the community and jail and back again should get seamless, coordinated care, including access to medication, harm reduction measures and methadone. The integration of health care systems has been shown in other jurisdictions to improve continuity of care, access to community services and improve health outcomes.

To the Ministry of Solicitor General's credit, the creation of a Corporate Health Care and Wellness Branch in 2019 dedicated to improving health care delivery in correctional facilities has elevated the profile and prioritization of the health care needs of those behind bars. Ultimately, the Ministry of Health, through Ontario Health, should assume responsibility for the oversight and system integration of health care in corrections to ensure continuity and equality of care, building on the progress already underway in the corrections ministry.

Ensuring that justice-involved individuals have access to effective case management for their physical and mental health issues while incarcerated, and that they are subsequently connected to appropriate services as they transition back to the community, prevents re-incarceration, saves significant dollars on acute care and ultimately supports successful reintegration.

³⁰ As per the OHRC Consent Order: OHRC v Ontario (Community Safety and Correctional Services), 2018 HRTO 60.

5

Set People Up for Success Upon Release

Planning for an individual's eventual release from jail back into the community should start the day they are admitted to a correctional institution. Meaningful discharge planning that commences upon admission should take place regardless of prisoners' sentence length or sentencing status (i.e. if they are on remand). This would include early screening for risks/needs and arranging housing, mental health treatment, securing an I.D., and other services before release. Early discharge planning will also help identify and triage pressing matters such as imminent loss of benefits, subsidies or eviction, and serve to prevent this, in the case of rapid release. This is especially important for populations with mental health issues who may need added support around stabilization post-release.

Partnering with community-based organizations with expertise serving populations that are justice-involved, and are responsive to the particular needs of BIPOC communities, is critical to ensure re-entry planning is tailored to the needs of returning individuals.

Finally, the provincial government's affordable housing and poverty reduction strategies should recognize the unique and complex needs of justice-involved individuals who also have mental health issues, and ensure dedicated planning and funding streams for these specific populations who often face exclusion from traditional housing options.

The provincial government recently announced further investments in the expansion of safe beds, which is a positive step forward. JHSO sees a continued need for a dedicated policy and planning focus for housing for justice-involved populations. Models that provide housing and wrap-around services facilitate re-entry into the community and address both issues of homelessness and co-occurring challenges preventing further justice system involvement and costly reliance on emergency rooms and shelters. Transitional housing supports for formerly incarcerated populations in particular can produce a lifetime savings of \$350,000 per person.³¹ There is a need for targeted investment in a wide range of housing options, from transitional housing through to long-term, supportive residential options to prevent homelessness and the deterioration of mental health issues that often accompanies it.

³¹ Stapleton, J., Pooran, B., Doucet, R. (2011) Making Toronto Safer: A Cost-Benefit Analysis of Transitional Housing Supports for Men Leaving Incarceration. Toronto: John Howard Society of Toronto at page 2

WORKS CITED

Auditor General of Ontario. (2019). Annual Report Volume 3: Reports on Correctional Services and Court Operations. Retrieved from: http://www.auditor.on.ca/en/content/annualreports/arreports/en19/2019AR_v3_en_web.pdf

Brink, J., Livingston, J., & Desmarais, S. (2012). A study of how people with mental illness perceive and interact with the police. Mental Health Commission of Canada.

Brown, G. P., Hirdes, J. P., & Fries, B. E. (2015). Measuring the prevalence of current, severe symptoms of mental health problems in a Canadian correctional population: Implications for delivery of mental health services for inmates. *International journal of offender therapy and comparative criminology*, 59(1), 27-50.

Canadian Civil Liberties Association and Education Trust. (2014). Set up to Fail: Bail and the Revolving Door of Pre-trial Detention. Retrieved from: <https://ccla.org/cclanewsitewp-content/uploads/2015/02/Set-up-to-fail-FINAL.pdf>

Centre for Addiction and Mental Health (2020). Mental Health and Criminal Justice Policy Toronto: CAMH. Retrieved from: <https://www.camh.ca/-/media/files/pdfs---public-policy-submissions/camh-cj-framework-2020-pdf.pdf>

Charette, Y., Crocker, A. G., & Billette, I. (2011). The judicious judicial dispositions juggle: characteristics of police interventions involving people with a mental illness. *The Canadian Journal of Psychiatry*, 56(11), 677-685.

Coleman, T. G., & Cotton, D. (2014). TEMPO: Police interactions: A report towards improving interactions between police and people living with mental health problems. Mental Health Commission of Canada.

Community Safety and Correctional Services. (2018). OHRC Consent Order: OHRC v Ontario 2018 HRTO. Retrieved from: http://www3.ohrc.on.ca/sites/default/files/OHRC%20v%20MCSCS_Consement%20Order%20_Jan2018_accessible.pdf

Crocker, A. G., Livingston, J. D., & Leclair, M. C. (2017). Forensic mental health systems internationally.

Luigi M, Dellazizzo L, Giguère C-É, Goulet M-H and Dumais A (2020) Shedding Light on “the Hole”: A Systematic Review and Meta-Analysis on Adverse Psychological Effects and Mortality Following Solitary Confinement in Correctional Settings. *Front. Psychiatry* 11:840.

Government of Ontario. (2020). Ontario Expanding Mobile Crisis Services to Respond to Mental Health Emergencies. *Investments will increase access to mental health and justice services programs*. Retrieved from: <https://news.ontario.ca/en/release/59241/ontario-expanding-mobile-crisis-services-to-respond-to-mental-health-emergencies>

Housing, Health, and Justice Community of Interest. (2019). Closed Quarters: Challenges and Opportunities in Stabilizing Housing and Mental Health Across the Justice Sector. Retrieved from: https://www.eenet.ca/sites/default/files/2018/Housing%20Health%20and%20Justice%20COI%20Report-%20Final%20-%20Feb%2014%202019_0.pdf

Human Services & Justice Coordinating Committee. (2017). Mental Health Courts in Ontario: A Review of the Initiation and Operation of Mental Health Courts Across the Province. Retrieved from: <https://ontario.cmha.ca/wp-content/uploads/2017/11/Mental-Health-Courts-in-Ontario-1.pdf>

Iacobucci, F. (2014). *Police encounters with people in crisis: An independent review conducted by the Honourable Frank Iacobucci for Chief of Police William Blair, Toronto Police Service*. Toronto Police Service.

Independent Review of Ontario Corrections. (2017). Segregation in Ontario. Retrieved from: https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/IROC%20Segregation%20Report%20ENGLISH%20FINAL_0.pdf

John Howard Society of Ontario. (2017). Solitary Confinement Fact Sheet. Retrieved from: <https://johnhoward.on.ca/wp-content/uploads/2017/02/Solitary-Confinement-FactSheet-Final-1.pdf>

John Howard Society of Ontario. (2016). Fractured Care: Public Health Opportunities in Ontario’s Correctional Institutions. Retrieved from: <http://johnhoward.on.ca/wp-content/uploads/2016/04/Fractured-Care-Final.pdf>

John Howard Society of Ontario. (2015). MCSCS Segregation Policy Review Consultation. Retrieved from: <https://johnhoward.on.ca/wp-content/uploads/2015/12/JHSO-Segregation-submission-2015-final.pdf>

- John Howard Society of Ontario. (2015). Unlocking Changes: Decriminalizing Mental Health Issues in Ontario. Retrieved from: <https://johnhoward.on.ca/wp-content/uploads/2015/07/Unlocking-Change-Final-August-2015.pdf>
- John Howard Society of Ontario. (2013). Reasonable Bail?. Retrieved from: <https://johnhoward.on.ca/wp-content/uploads/2014/07/JHSO-Reasonable-Bail-report-final.pdf>
- Justice Raymond E. Wyant. (2016). Bail and Remand in Ontario. Retrieved from: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/wyant/>
- Michalski, J. H. (2017). Mental health issues and the Canadian criminal justice system. *Contemporary justice review*, 20(1), 2-25.
- Ministry of Solicitor General. (2019). Data Release. Retrieved from: <http://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement/DatamatesOntario/2019Datarelease.html#>
- Munn-Rivard, L., & Munn-Rivard, L. (2014). *Current issues in mental health in Canada: homelessness and access to housing*. Library of Parliament.
- Petersilia, J. (2001). Prisoner reentry: Public safety and reintegration challenges. *The prison journal*, 81(3), 360-375.
- Sapers, H. (2011). Mental health and corrections. In *Presentation at the Department of Psychology Colloquium Series. Antigonish, Nova Scotia: Saint Francis Xavier University*.
- Sapers, H. (2010). Towards a Canadian forum in preventing deaths in custody. *Justice Report*, 25(1), 8-9.
- Stapleton, J., Pooran, B., & Doucet, R. (2011). *Making Toronto Safer: A Cost-Benefit Analysis of Transitional Housing Supports for Men Leaving Incarceration*. John Howard Society of Toronto.
- Statistics Canada (2014). Verdicts of not criminally responsible on account of mental disorder in adult criminal courts, 2005/2006-2011/2012. Retrieved from: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2014001/article/14085-eng.htm>
- Travis, J., & Petersilia, J. (2001). Reentry reconsidered: A new look at an old question. *Crime & Delinquency*, 47(3), 291-313.
- World Health Organization. (2014). Social determinants of mental health. Retrieved from: https://apps.who.int/iris/bitstream/handle/10665/112828/9789241506809_eng.pdf;jsessionid=1E668198DD7655B8F8D49507B8FA8AA3?sequence=1

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