

UNLOCKING CHANGE:

Decriminalizing Mental Health Issues in Ontario



PRISON
SEGREGATION
COURT
PUNITIVE LAW
Confinement
POVERTY
SYSTEMS
POLICE
Revolving Door
HEALTH
STIGMA
Addiction
ISOLATION
BAIL
LAW
Punishment
TRIAL
DISABILITY
PAROLE
HEALTH
Guilty
BARRIERS
CORRECTIONS
POVERTY
CRIMINALIZE
HOMELINESS

JohnHoward
SOCIETY OF ONTARIO

ABOUT THE JOHN HOWARD SOCIETY OF ONTARIO

The John Howard Society of Ontario (JHSO) is a leading criminal justice organization advancing the mandate, “effective, just and humane responses to crime and its causes.” We work towards our mission through the delivery of services to those in conflict with the law and at-risk, both adult and youth, provided by our 19 local offices who are active in communities across the province. In 2003, JHSO’s provincial office established its Centre of Research, Policy & Program Development (the Centre) to contribute to the evidence-based literature and policy discourse in order to further advance our mandate.

Local John Howard Society (JHS) offices provide services in a broad continuum of care from prevention through aftercare. Programming is sensitive to and reflective of the unique needs of the community it serves.

JHS is often the first point of contact for programs and services for people who have mental health issues and who are justice-involved. JHS has a reputation for providing services that are accessible, welcoming, and safe for those who have experienced the criminal justice system.

JHS staff conduct assessments to identify individual strengths, needs and risk factors. Evidence-based services target the criminogenic risks and needs¹ and the social determinants of health² to ensure that the services are responsive to the specific client and his/her circumstances. When a person has mental health issues, staff adjust their case management approach in order to ensure that service delivery targeting identified criminogenic factors is responsive to and addresses a person’s mental health needs. JHS services aim to reduce the risk of criminal behaviour while building on an individual’s strengths. Our offices maintain an open-door policy offering long-term follow-up to clients who have accessed services.

Phone: 416.408.4282

Fax: 416.408.2991

Email: info@johnhoward.on.ca

JohnHoward
SOCIETY OF ONTARIO



1. Criminogenic risks or needs are those factors – individual and structural/social – which have been found to be statistically correlated with criminal activity. Much research has been conducted in Canada on risk assessment models-- such as the Risk-Need-Responsivity Model (RNR)-- which focus service providers’ interventions on targeting the criminogenic factors in order to produce successful outcomes (i.e. a reduction in recidivism).

2. Social Determinants of Health (SDoH) are social factors that can contribute to health and can include poverty, unemployment, social exclusion, inadequate housing, and lower literacy and education levels.

TABLE OF CONTENTS

MENTAL HEALTH: DEFINED	4
EXECUTIVE SUMMARY	5
INTRODUCTION.....	7
KEY CHALLENGES FACING PEOPLE WITH MENTAL HEALTH ISSUES WHO ARE JUSTICE-INVOLVED	10
1. The Nexus Between Social Determinants of Health and the Criminal Justice System Involvement.....	10
2. A Criminal Justice System that Punishes Mental Health Issues	11
3. The Impact of Incarceration on Mental Health.....	13
4. Stigma.....	16
5. Service and Funding Siloes.....	17
MOVING TOWARDS DECRIMINALIZATION:.....	19
KEY RECOMMENDATIONS	19
1. Adopt and Apply an Inclusive Definition of Mental Health.....	19
2. Invest in Prevention: Create a Proactive and Accessible Mental Health Care System.....	20
3. Target the Social Determinants of Health	21
4. Recognize Community Criminal Justice Organizations as Key Mental Health Partners.....	23
5. Invest in the Creation of a Criminal Justice Community that can Respond Appropriately to People with Mental Health Issues	24
6. Foster Effective and Humane Corrections.....	27
7. Support Successful Re-entry and Reintegration.....	28
8. De-Stigmatize Mental Health, Police Records and Past Justice Involvement.....	29
CONCLUSION	31

MENTAL HEALTH: DEFINED

Mental health is not simply the absence of signs or symptoms of mental illness or addiction. JHSO endorses a positive and inclusive definition of mental health, such as that put forward by the World Health Organization:

“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 her or his community.”³

Mental health – or lack thereof – is too often viewed through a narrow lens. 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, 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.

³ World Health Organization. (2013). Mental health: a state of well-being. Retrieved from: http://www.who.int/features/factfiles/mental_health/en/

EXECUTIVE SUMMARY

Since the closure of institutions serving individuals with mental illness and developmental disabilities, the criminal justice system has become a repository for individuals who lack adequate resources to cope with living in the community. Mental health issues are significantly related to justice involvement and incarceration, but using the criminal justice system as a conduit to secure mental health treatment for Ontarians is not the answer. In recent years, the criminal justice community, recognizing the trend towards criminalization of mental health issues, called for enhanced access to specialized courts, more responsive mental health crisis services, and increased access to case management services. The unintended consequence of these well-intentioned responses is that the criminal justice system has become one of the few access points for mental health treatment for those in need.

Today, the criminal justice system is more involved with persons with mental health issues than ever before. The costs associated with this involvement are astronomical - both in terms of the financial burden placed on the police, courts and corrections, and the devastating costs to persons with mental health issues who are forced to navigate a system that was never intended to be therapeutic. Our province simply cannot afford to continue down the costly path of criminalizing mental illness.

People with mental health issues who are justice-involved face a myriad of challenges, which both give rise to conflict with the law, and that are *consequences* of past justice system involvement. Individuals facing social and economic disadvantage are not only overrepresented in the criminal justice system – they are disproportionately impacted by negative health outcomes. Issues such as homelessness, unemployment, and poverty are tied both to differential health outcomes (i.e. mental health) as well as disproportionate contact with police and the justice system. Once an individual with a mental health issue comes into conflict with the law, they do not fare well. 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 is not designed to meet their needs.

For these reasons – the social, human and fiscal costs associated with the continued criminalization of mental health issues – we propose a series of recommendations aimed at shifting Ontario away from justice responses toward a prevention lens. Proper prevention requires that the availability of and access to clinical and community-based mental health care across Ontario be prioritized. Prevention is inclusive: as a province we should be targeting the social determinants of health, so that we can reduce the health inequities across socioeconomic groups and communities that give rise to both justice involvement and mental health issues.

Effective prevention also requires a criminal justice community that responds appropriately to people with mental health issues and that identifies and diverts individuals, pre-charge and post-charge, out of the justice system wherever possible. Justice system involvement and incarceration are incredibly damaging experiences that undermine mental health generally, and should be avoided at all costs for those with pre-existing mental health issues. Effective prevention necessitates a collaborative approach among community-based agencies serving clients with mental health issues. Provincial commitment to combat the stigma associated with mental health issues and criminal justice involvement is also needed.

This report's recommendations are organized in a way to prioritize and emphasize prevention. Recommendations start with those focused on prevention and early intervention, and then move further along the temporal spectrum to reintegration and de-stigmatization. The recommendations are categorized under the following sections:

1. **Adopt and Apply an Inclusive Definition of Mental Health**
2. **Invest in Prevention: Create a Proactive and Accessible Mental Health Care System**
3. **Target the Social Determinants of Health**
4. **Recognize Community Criminal Justice Organizations as Key Mental Health Partners**
5. **Invest in the Creation of a Criminal Justice Community that can Respond Appropriately to People with Mental Health Issues**
6. **Foster Effective and Humane Corrections**
7. **Support Successful Re-entry and Reintegration**
8. **De-Stigmatize Mental Health, Police Records and Past Justice Involvement**

INTRODUCTION

The criminalization of individuals with mental health issues is a significant and growing problem in Ontario. The overrepresentation of persons with mental health issues among those who have contact with the police and justice system has trended upward since the deinstitutionalization of mental health treatment and hospitals, which started in the latter half of the 20th century.⁴ The premise informing deinstitutionalization was that persons with mental illness would be better served in the community. It is well documented that since the closure of institutions serving individuals with mental illness and developmental disabilities, many unintended consequences arose, including difficulty accessing mental health treatment, a shortage of supportive housing units, and the inadequate resourcing of community-based services.⁵

One of the most troubling consequences of deinstitutionalization has been the increased contact between persons with mental health issues and the police. The criminal justice system has become a repository for individuals who lack adequate resources to cope with living in the community. In recent years, the criminal justice community, recognizing the trend towards criminalization of mental health issues, called for enhanced access to specialized courts, more responsive mental health crisis services and increased access to case management services. The unintended consequence of these well-intentioned responses is that the criminal justice system has increasingly become one of few access points for mental health treatment.

In addition, many persons with mental health issues facing criminal charges are being dealt with through regular court channels (as opposed to specialized

⁴ Kirby J.L., and Keon, W.J. (2006). Out of the shadows at last: transforming mental health, mental illness and addiction services in Canada. Ottawa (Ontario): The Standing Senate Committee Ontario Social Affairs, Science and Technology. Retrieved from: <http://www.parl.gc.ca/Content/SEN/Committee/391/soci/rep/rep02may06-e.htm>

⁵ Chaimowitz, G. (2012). The Criminalization of People With Mental Illness: A Canadian Psychiatric Association Position Paper. Retrieved from: <http://publications.cpa-apc.org/media.php?mid=1268>

courts or in the forensic system⁶), and wind up in our increasingly overcrowded detention centres. A recent study found that among those who commit a criminal offence and receive a ruling of “Not Criminally Responsible on Account of Mental Disorder” (NCRMD), most had prior psychiatric hospitalizations.⁷ Many also had prior criminal convictions before receiving a NCRMD. This suggests that the absence of accessible mental health care services offering preventative care and treatment for persons with mental health issues has translated into their increased criminalization. Studies have demonstrated that persons with mental health issues experience disproportionate contacts with police, higher levels of arrests, criminal charges and custodial rates.⁸ Indeed, mental health issues are estimated to be around 2-3 times more common in Canadian prisons than in the general population.⁹

Once charged with a criminal offence, persons with mental health issues do not tend to fare well in our criminal court system. Common practices in our courts often (inadvertently) further criminalize those with mental health issues, rather than diverting them out of a system that is designed for punishment and accountability, not therapeutic intervention. Prisons are not treatment centres. Once incarcerated, many individuals with mental health issues are unable to extricate themselves from a system that is incapable of appropriately responding to their illness. Inside jails, people with mental health issues are often vulnerable in the general prisoner population. Prisoners who are presenting with the most severe symptoms of mental illness are frequently housed in segregation units, which only serve to exacerbate mental health

⁶ Under Canadian criminal law, “No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.” (*Criminal Code*, Section 16). The legal threshold for being found “Not Criminally Responsible on Account of Mental Disorder” is quite high. Those given a NCRMD ruling are then subject to Review Boards, and are often placed under the care of what is commonly referred to as the “forensic” mental health system. Many persons accused of criminal offences who have mental health issues, however, are not exempt from criminal responsibility and are convicted and sentenced through the criminal court processes. To learn more about the forensic/NCRMD system, see the 2006 report by the Department of Justice Canada, “The Review Board Systems in Canada: An Overview of Results from the Mentally Disordered Accused Data Collection Study” accessible at: http://www.justice.gc.ca/eng/rp-pr/csj-sic/jsp-sjp/rr06_1/rr06_1.pdf.

⁷ Crocker A.G., Nicholls T.L., Seto M.C., Charette, Y., Côté, G., and Caulet, M. (2015). The National Trajectory Project of Individuals Found Not Criminally Responsible on Account of Mental Disorder in Canada. Part 2: The People Behind the Label. *Canadian Journal of Psychiatry*, 60, 3, 106-16.

⁸ Hartford, K., Heslop L., Stitt L., and J. S. Hoch. (2005). Design of an algorithm to identify persons with mental illness in a police administrative database. *International Journal of Law and Psychiatry*, 28, 1–11.

⁹ Sapers, H. (2014). Annual report of the Office of the Correctional Investigator 2013–2014. Ottawa, Ontario: The Correctional Investigator of Canada. Retrieved from: <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20132014-eng.pdf>

issues. This treatment of prisoners with mental illness is inhumane and can lend itself to human rights violations.¹⁰

Unfortunately, people are often only connected to treatment and programming as a result of justice involvement - if at all: "The criminal justice system has moved from a position of last alternative to first, often times because it provides the only available option."¹¹ Family members, often desperate to connect loved ones in crisis to psychiatric care, call the police. The criminal justice system is viewed as the only way to secure much-needed psychiatric treatment¹² -- treatment that should be readily available in the community health system. Mental health issues are significantly related to justice involvement and incarceration, but using the criminal justice system as a conduit to secure mental health treatment for Ontarians is not the answer. Today, the criminal justice system is more involved with persons with mental health issues than ever before. The costs associated with this involvement are astronomical - both in terms of the financial burden placed on the police, courts and jails, and the devastating human and social costs to persons with mental health issues.

People with mental health issues who are justice-involved also face stigma and a confluence of barriers flowing from both their mental health issues as well as criminal justice involvement. Research clearly indicates that, compared to the general population, adults involved in the criminal justice system are significantly more likely to experience issues with substance abuse, mental health and homelessness.¹³ These three variables are not only predictors of future justice involvement; they are also *consequences* of justice involvement. Often perceived as dangerous due to a criminal record or recent incarceration, many people with mental health issues are 'banned' from shelters and other

¹⁰As a recent example of how the use of segregation can give rise to human rights complaints on the basis of discrimination around health-related issues, see: "Toronto jail inmate says he was sent to solitary for having HIV" by Amy Dempsey, January 23 2015, *Toronto Star*: <http://www.thestar.com/news/insight/2015/01/23/toronto-jail-inmate-says-he-was-sent-to-solitary-for-having-hiv.html>

¹¹Hartford, K., Heslop L., Stitt L., and J. S. Hoch. (2005). Design of an algorithm to identify persons with mental illness in a police administrative database. *International Journal of Law and Psychiatry*, 28, 1–11, p. 2.

¹²The National Trajectory Project of Individuals Found Not Criminally Responsible on Account of Mental Disorder in Canada. Part 2: The People Behind the Label.

¹³See Tim Riordan. (2004). *Exploring the Circle: Mental Illness, Homelessness and the Criminal Justice System in Canada*. Parliamentary Information and Research Service at the Library of Parliament. Accessible at: <http://www.parl.gc.ca/content/lop/researchpublications/prb0402-e.pdf> and Maire Sinha. (2009). "An Investigation into the Feasibility of Collecting Data on the Involvement of Adults and Youth with Mental Health Issues in the Criminal Justice System." Accessible from: <http://www.statcan.gc.ca/pub/85-561-m/2009016/section-a-eng.htm>

traditional services upon release from jail. These individuals usually end up on the doorstep of community criminal justice organizations like the John Howard Society, either on their own initiative or by referral.

The government of Ontario has identified mental health as a priority in recent years, and is currently implementing its ten-year strategy, *Open Minds, Healthy Minds*. It seems an opportune time to profile the key challenges facing those in conflict with the law who have mental health issues – one of the most marginalized and stigmatized populations – as well as to advance policy solutions aimed at the prevention and decriminalization of mental health issues. This report’s recommendations are organized in a way to prioritize and emphasize prevention: recommendations start with those focused on prevention and early intervention, and then move further along the temporal spectrum to reintegration and de-stigmatization

KEY CHALLENGES FACING PEOPLE WITH MENTAL HEALTH ISSUES WHO ARE JUSTICE-INVOLVED

1. The Nexus Between Social Determinants of Health and the Criminal Justice System Involvement

Social Determinants of Health (SDoH) are social factors that influence health outcomes and inequities. These include poverty, unemployment, inadequate housing, and low educational attainment. These factors interact with one another, and are influenced by broader societal and global factors such as the economy, the social safety net, and healthcare system, in a complex and cumulative manner.¹⁴ As stated in the introduction, the criminal justice system continues to be used to catch those who fall through the gaps in Canada’s social safety net. Individuals facing social and economic disadvantage are not

¹⁴ John Howard Society of Ontario. (2012). *Effective, Just and Humane: A Case for Client-Centered Collaboration*. Retrieved from: <http://johnhoward.on.ca/pdfs/FINAL%20Community%20Report%20May%202012.pdf>

only overrepresented in the criminal justice system¹⁵ – they are disproportionately impacted by negative health outcomes.¹⁶

Individuals with mental health issues from marginalized communities have a much greater likelihood of coming into contact with the police, and becoming involved in the criminal justice system. They are more likely to be held in detention and denied bail;¹⁷ and those held in detention are more likely to plead guilty and be convicted of their charges, regardless of their innocence.

Due to a lack of early identification and intervention, many persons with undiagnosed mental illness and developmental disabilities self-medicate with substances like alcohol and/or illicit drugs. Self-medicating can lead to addiction (and concurrent disorders), which in turn further increases conflict with the law.

2. A Criminal Justice System that Punishes Mental Health Issues

Once charged with a criminal offence, people with mental health issues generally do not fare well in the traditional court processes.¹⁸ In a recent study of bail in Ontario¹⁹, JHSO looked at a population of persons under bail supervision in Ontario, examining their self-reported health and social issues as well as their bail orders. The population faced significant health and social challenges: 70% of all bail supervision clients had issues with substances (alcohol or drugs), over 40% reported that they have current mental health

¹⁵ Statistics Canada. (2009). The incarceration of Aboriginal people in adult correctional services. Retrieved from: <http://www.statcan.gc.ca/pub/85-002-x/2009003/article/10903-eng.htm#a6>

¹⁶ As an illustration of the overlap between SDoH and justice-involvement, a recent case study conducted by JHSO on the John Howard Society of Toronto's housing program found that upon accessing the program, 72.7% previously justice-involved program clients self-reported issues with addiction; 63.6% reported mental health issues; 59% reported physical health issues; 63.6% had employment issues; 86.3% of participants reported financial problems; and all were living in transient living accommodations.

¹⁷ Kellough, G. and Wortley, S. (2002). Remand for plea: Bail decisions and plea bargaining as commensurate decisions. *British Journal of Criminology*, 42, 186–210.

¹⁸ By this we refer to non-specialized courts; there are specialized courts in some communities in Ontario aimed at more appropriately responding to accused persons with mental health issues. Given the tremendous number of individuals with mental health issues cycling through the justice system, most are streamed through usual bail courts and do not benefit from nuanced approaches.

¹⁹ John Howard Society of Ontario. (2013). Reasonable Bail? Retrieved from: <http://www.johnhoward.on.ca/wp-content/uploads/2014/07/JHSO-Reasonable-Bail-report-final.pdf>

issues, 31% had concurring mental health and substance use issues, and approximately one-third reported being homeless.²⁰ Most individuals among the sample were given multiple bail conditions (8 being the most common number of conditions), many of which were not at all tied to the alleged criminal charges but rather more focused on behaviour modification or improvement. Bail conditions targeting an accused person's mental health are common – these can include conditions to seek treatment or detox, to abstain from alcohol and/or drugs, and to reside at certain facilities or shelters. The bail conditions and treatment plans imposed by courts often come from well-intentioned places – to help the individual or to attempt to minimize risk – but the effects of such practices often lead to further criminalization.

In Canada, “breaching” or failing to comply with a bail condition is a crime²¹ and having convictions for failing to comply with bail orders has significant negative effects on the likelihood of receiving bail in the future. As an illustration of how our justice system inadvertently criminalizes mental health issues, consider the following: of those bail supervision clients noted above who reported having current issues with alcohol or substance use, approximately 81% had a related bail condition to abstain from the substance to which they were addicted. These bail conditions – to abstain from alcohol and to abstain from drugs – along with curfew conditions, were found to be correlated with future failure to comply charges.²² Quite simply, these bail conditions set people with mental health issues up to fail. Our justice system is, in a sense, policing mental illness and addiction.

Research has clearly shown that in Ontario, the frequency and types of bail conditions imposed by courts on accused persons are often in contravention of the law on bail.²³ Despite this, accused persons, when facing the prospect of staying in jail (being denied bail), will often agree to any and all conditions the court demands in order to secure release. Marginalized populations, including Aboriginal persons and racialized communities, are often subject to unreasonable and onerous conditions on court orders by virtue of their social

²⁰ Ibid.

²¹ These criminal offences fall under a category of offences called “administration of justice” offences. Relatedly, administration of justice charges represent the most serious current charge of 20% of individuals admitted to pre-trial detention in Ontario.

²² John Howard Society of Ontario. (2013). Reasonable Bail? <http://www.johnhoward.on.ca/wp-content/uploads/2014/07/JHSO-Reasonable-Bail-report-final.pdf>

²³ Canadian Civil Liberties Association. (2014). Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention. Retrieved from: <http://ccla.org/wordpress/wp-content/uploads/2014/07/Set-up-to-fail-FINAL.pdf>

and economic disadvantage²⁴ – conditions that often invite breach. The legal language of bail orders and bail conditions can be difficult to comprehend, making compliance even more challenging. These conditions imposed on people with mental health issues frequently fuel a cycle of re-charging, re-arrest, and re-incarceration – with each new justice system contact entrenching them further.

3. The Impact of Incarceration on Mental Health

a) Access to Treatment and Medication in Jail

It is important to note that provincial jails house prisoners serving less than two years in custody or those on remand - that is, persons awaiting their bail hearing, trial or sentencing. On any given day, over 60% of prisoners in our provincial jails are on remand. Many people in provincial jails are not provided with proper medical or psychiatric assessments and treatment. Correctional institutions are not equipped to deal with people who have severe mental health issues, and access to prescription medication and healthcare for mental health issues is limited. Continuity of individuals' medication is a significant issue. Individuals are frequently incarcerated without their medication and have to sometimes wait weeks to get access to medication that they were accustomed to taking daily.

Individuals without diagnosis or obvious symptoms of mental illness are often overlooked in the general correctional population and are not seen by a specialist unless an outside agency or legal counsel advocates for them to be seen. There also exists a serious lack of timely and meaningful programming and counselling in relation to addictions, mental health, relapse prevention treatment, and harm reduction in correctional institutions. All of these challenges are more pronounced for prisoners with mental health issues who are awaiting trial – access to treatment for this population is very limited.

²⁴ Rudin, Jonathan. (2005). Aboriginal Peoples and the Criminal Justice System.
http://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/research/pdf/Rudin.pdf

b) Segregation, Overcrowding and Mental Health

Humans are social beings. Research has shown that prolonged periods of isolation can cause a variety of negative physical and mental health effects.²⁵ Hallucination, cognitive disabilities, insomnia, self-mutilation, paranoia, and suicidal tendencies are only some of the reported effects of prolonged segregation.²⁶ Segregation is especially damaging for those with pre-existing mental health issues, as it can aggravate or lead to other psychiatric symptoms.

Many prisoners with mental health issues in Ontario's provincial jails are isolated in segregation units in an effort to protect them from victimization or self-harm, as well as the security of institutions. Broadly speaking, segregation is used to maintain the security of the institution or to discipline misconduct.²⁷ Segregation units are very different from the general population units: prisoners are locked in isolation in their cells for 23 hours a day without programming or privileges. All communication is done through a slot in the door and meals are served in this manner. Incarceration in general deteriorates mental health, and the practice of segregation has far more deleterious effects, particularly for those with pre-existing mental health issues.

Currently, a growing number of segregation admissions in Canada are due to overcrowding and population management efforts.²⁸ Provincial jails have been overcrowded for years; two or three prisoners often sleep in cells designed for one.²⁹ Prisoners do not generally cope well with overcrowding; however, for persons with mental health issues, the impact is more pronounced and creates risk for the most vulnerable prisoners.³⁰ Overcrowding escalates tensions both

²⁵ 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.

²⁶ 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.

²⁷ R.R.O. 1990, Reg. 778: GENERAL under Ministry of Correctional Services Act, R.S.O. 1990, c. M.22
<http://www.ontario.ca/laws/regulation/900778%20-%20BK13>

²⁸ Harris, K. (2013, August 6). Isolation of inmates rising in crowded prisons Ombudsman concerned segregation being used to house 'marginalized, vulnerable' inmates. *CBC*. Retrieved from: <http://www.cbc.ca/news/politics/isolation-of-inmates-rising-in-crowded-prisons-1.1310608>

²⁹ Ombudsman of Ontario. (2013). The Code. Retrieved from:
http://www.ombudsman.on.ca/Files/sitemedia/Images/Newsroom/The_Code_ENGLISH.pdf

³⁰ Office of the Correctional Investigator of Canada. (2013). Segregation in Canadian Federal Corrections: A Prison Ombudsman's Perspective. [Presentation at *Ending the Isolation: An International Conference on Human Rights and Solitary Confinement*]. Retrieved from: <http://www.oci-bec.gc.ca/cnt/comm/presentations/presentations20130322-23-eng.aspx>

among prisoners and between prisoners and correctional officers, creating an unsafe environment for all. Ontario is increasingly utilizing segregation as a means of managing an increasing number of individuals with physical and mental health concerns.³¹

The use of segregation in Ontario's provincial jails is particularly unsettling considering the experience of segregation may be worse for remanded populations compared to sentenced populations. Those awaiting an outcome to their trial are particularly vulnerable due to the debilitating uncertainty in the outcome of their case, and having to cope with the shock of transitioning from freedom to incarceration. Studies show that remanded populations commit suicide and self-harm - almost always while in isolation - at higher rates compared to sentenced populations.³²

The United Nations Committee Against Torture called upon Canada to abolish the use of solitary confinement for prisoners with "serious or acute mental illness."³³ The provincial government of Ontario recently announced it will be undertaking a review of its policy on the use of segregation.³⁴ The overcrowding in Ontario's provincial jails is in large part attributable to issues related to bail in Ontario. In addition, the imposition of mandatory minimums and harsher punishment resulting from recent changes to federal legislation may increase the number of prisoners in Ontario's provincial prisons suffering from mental health issues. These larger systemic issues, in addition to the lack of resourcing for mental health/psychiatric care in institutions, will also require redress if the prevalence of persons with mental health issues in our jails is to be reduced.

c) Loss of income and housing when incarcerated

Housing is critically important for people with mental health issues. As noted in the Ministry of Health and Long-Term Care's mental health strategy, *Open Minds, Healthy Minds*, "safe housing and stable employment are crucial for the

³¹ Dempsey, A. (2014, December 22). Ontario Ombudsman: Get Sick Inmates out of Solitary. *The Toronto Star*. Retrieved from: http://www.thestar.com/news/gta/2014/12/22/ontario_ombudsman_get_sick_inmates_out_of_solitary_confinement.html

³² 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.

³³ United Nations Committee Against Torture. (2012). Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture.

³⁴ Read the statement here: <http://news.ontario.ca/mcscs/en/2015/03/yasir-naqvi-minister-of-community-safety-and-correctional-services-made-the-following-statement-toda.html>

mental health and well-being of all Ontarians. If we have means of supporting ourselves and a place to call home, we are more likely to be able to cope.”³⁵ Conversely, homelessness can give rise to mental health issues or exacerbate pre-existing health conditions. People who are homeless are significantly more likely to have mental health issues, along with other physical health challenges.³⁶ If charged with a criminal offence and detained in jail, individuals are not able to attend work, and those receiving social assistance benefits are cut off or suspended. Social housing tenants who are detained on remand and are absent from their units for an indeterminate period of time may be deemed ineligible for social housing in some localities across Ontario. Others who had housing may face eviction. As noted, loss of housing and personal effects presents a significant problem for individuals with mental health issues – housing is key to stability and recovery.³⁷ Studies show that many individuals who had housing when initially incarcerated end up homeless upon release from prison.³⁸

Inadequate discharge planning in Ontario’s correctional institutions often results in individuals being released to no fixed address, with inadequate clothing, and no psychotropic medication. This creates a cyclic effect of recidivism and a sense of hopelessness.

4. Stigma

The stigmatization of persons with mental health issues, while still very much problematic, is increasingly being viewed as unjust and discriminatory. The stigmatization of persons with police records is widespread, unchallenged and often considered legitimate. Once a person with mental health issues becomes involved in the criminal justice system, there appears to be less concern regarding the stigmatization of the individual. They are now doubly stigmatized, which ultimately undermines both recovery and reintegration.

³⁵ Ministry of Health and Long-term Care. (2011). “Open Minds, Healthy Minds: Ontario’s Comprehensive Mental Health and Addictions Strategy” at page 12. Retrieved from:

http://www.health.gov.on.ca/en/common/ministry/publications/reports/mental_health2011/mentalhealth_rep2011.pdf

³⁶ Gaetz, S. (2012). *The Real Cost of Homelessness: Can We Save Money by Doing the Right Thing?* Toronto: Canadian Homelessness Research Network Press. Retrieved from:

http://www.homelesshub.ca/sites/default/files/costofhomelessness_paper21092012.pdf

³⁷ Nelson, G., Clarke J., Febraro, A., and Hatzipantelis, M. (2005). A narrative approach to the evaluation of supportive housing: stories of homeless people who have experienced serious mental illness. *Psychiatric Rehabilitation Journal*, 29, 2, 98-104.

³⁸ John Howard Society of Ontario, S. Gaetz, and B. O’Grady. (2006). *The Missing Link: Discharge planning, Incarceration and Homelessness*. <http://www.johnhoward.on.ca/wp-content/uploads/2014/09/the-missing-link-aug-2007.pdf>

The use of background checks for screening for employment, volunteer work and educational opportunities is increasingly prevalent in Ontario. The provincial government recently committed to regulating and standardizing what information can be disclosed on police record checks in Ontario,³⁹ in particular around the disclosure of non-conviction information, which is a positive step forward.⁴⁰

Despite these steps forward there remains little regulation of the *demand* for record checks. Record checks are becoming increasingly standard requests from companies, even for entry-level positions. There are no human rights protections in Ontario for people who are denied employment opportunities on the basis of a record of criminal convictions, or non-conviction information, such as pending charges or withdrawn charges. Research has clearly shown that the barriers a criminal record creates are significant, and are especially pronounced for marginalized populations, such as those with mental health issues.⁴¹

5. Service and Funding Siloes

When an individual with mental health issues commits a crime, public sympathy dissipates, and services that may have been available to them prior to justice contact can be denied. Since most justice-involved individuals with mental health issues do not get streamed through the forensic mental health system, many of them begin their rehabilitative journey by walking through the doors of community criminal justice organizations (CCJOs).

CCJOs serve some of the highest-needs individuals, offering a wide range of essential programs, services and referrals for those with mental health issues. Services offered by CCJOs often target the social determinants of health and prevent health crises for individuals with mental health issues who are justice-involved, and where available, connect them to the clinical care that they need.

³⁹ Cribb, R. (2014, December 4). Province to legislate what police can disclose about innocent Ontarians. The Toronto Star. Retrieved from:

http://www.thestar.com/news/queenspark/2014/12/04/province_to_legislate_what_police_can_disclosure_about_innocent_ontarians.html

⁴⁰ Currently some police services in Ontario release non-criminal mental health police contacts on record check products for employment, volunteer and educational purposes.

⁴¹ John Howard Society of Ontario. (2014). [Help Wanted*: Reducing Barriers for Ontario's Youth with Police Records.](#)

The provincial government has prioritized health and justice collaboratives, and has taken steps to break down the service siloes that exist in recent years. While these steps are positive, work still needs to be done to build a seamless and client-centered health and social service system. As an example, CCJOs are not currently eligible for provincial health funding. The provision of services to clients places enormous pressures on the financial resources of CCJOs, many of which lack the infrastructure to manage the numbers of clients seeking assistance. In some communities, CCJO services are sub-contracted by agencies receiving health care funding to provide housing and services that target criminogenic risk factors. Clearly, CCJOs are important partners in serving justice-involved individuals with mental health issues. In moving forward, it is recommended that CCJOs be recognized as important partners in the community-based provision of mental health services.

MOVING TOWARDS DECRIMINALIZATION: KEY RECOMMENDATIONS

Ontario has the capacity to take bold and immediate action to decriminalize mental health issues in our province. For years, the criminal justice system has reacted to mental health issues with little success; this is because, quite simply, the justice system is the wrong place for people with mental health issues. When the healthcare system fails to treat mental illness, the criminal justice system punishes the symptoms.

There is a need for proactive, preventative approaches to mental health that ensure that people get the help that they need before they become at risk – of homelessness, crisis, unemployment or conflict with the law. The justice system should not be seen as the first viable access point for treatment. The provincial government has signaled its commitment to addressing mental health in Ontario, having released a ten-year mental health strategy in 2011. Our following recommendations, many of which are consistent with the direction outlined in the province’s strategy, aim to comprehensively shift the balance of our province’s efforts toward prevention and early identification, and away from justice system responses.

1. Adopt and Apply an Inclusive Definition of Mental Health

JHSO endorses a positive definition of mental health; mental health is not simply the absence of signs or symptoms of mental illness or addictions, as noted at the opening of this report. Accordingly, JHSO recommends that the province of Ontario adopt a similarly inclusive and broad definition of mental

health across all of its Ministries and that this definition infuse service paradigms, to ensure that all Ontarians with mental health issues are being treated appropriately and sensitively.

2. Invest in Prevention: Create a Proactive and Accessible Mental Health Care System

Mental health care should be as accessible and widespread as all other healthcare services in our communities. Illnesses affecting the mind should receive comparable amounts of resourcing to physical ailments and disease. Families who suspect their loved ones are exhibiting early signs of mental health issues should have access to information, services and treatment options in their community. They should also *know about these services and know how to avail themselves of them*. Building an accessible mental health care system in all communities across Ontario will require significant upfront investment, but it will pay dividends in terms of the long-term savings from other social and justice services –such as policing, criminal courts, correctional systems, hospital emergency departments, social benefits and homelessness.

At the time of publishing this report, the province of Ontario is currently implementing the second phase of its ten-year mental health strategy, *Open Minds, Healthy Minds*.⁴² The first three years (and phase) were focused on child and youth mental health. Many of the recommendations in this section are complementary to or supportive of the direction the province is proposing in its mental health strategy documents.

Building a Mental Health Infrastructure

Consistent with the recommendations of the Report to the Legislature by the Select Committee on Mental Health and Addictions (2010), as well as the provincial government’s 10-year mental health strategy, *Open Minds, Healthy Minds*:

⁴² Ministry of Health and Long-Term Care. (2014). *Open Minds, Healthy Minds: Ontario’s Comprehensive Mental Health and Addictions Strategy* (November 2014 Update). Retrieved from: http://www.health.gov.on.ca/en/public/programs/mentalhealth/docs/open_minds_healthy_minds.pdf

- 2.1 We endorse the recommendation that a “core basket” of evidence-based mental health care services be available in all communities in Ontario for children, youth, families and adults. These core services, and the expertise involved in their provision, should reflect the range of mental health issues captured in the broad and inclusive definition endorsed in Section 1. There is a pressing need for investment in core institutional, residential and community-based facilities and services in Ontario, including in-patient and out-patient beds, harm reduction programs and crisis intervention. There is an urgent need for meaningful access to psychiatric professionals and clinical care. Monitoring demand, wait lists, and evaluating the impact of these core services is essential to ensure that the supply of services is adequate and effective.
- 2.2 These core services should be inclusive of the range of service noted above, from prevention, intervention to recovery. They should also be culturally appropriate and sensitive to unique populations’ needs. The Ministry of Children and Youth Services’ draft *Child and Youth Mental Health Service Framework* (2013) enumerates a list of critical core services that should be made available across all communities for children and youth, as well as establishing clear and streamlined pathways into and out of the mental health service system.⁴³ These are both key targets that should be translated to the adult population in the next phase of the ten-year mental health strategy.
- 2.3 We further endorse the Select Committee (2010) recommendation calling for system navigators who can help individuals and their families access appropriate treatment and community support services.
- 2.4 In addition to system navigation assistance, family members need meaningful access to crisis intervention, respite and counselling services.

3. Target the Social Determinants of Health

Health is a universal human right⁴⁴, though there are many systemic and socioeconomic barriers to many individuals’ ability to access health. We

⁴³ Ministry of Children and Youth Services. (2013). Draft Child and Youth Mental Health Service Framework. Retrieved from: <http://www.children.gov.on.ca/htdocs/English/topics/specialneeds/mentalhealth/moving-on-mental-health.aspx>

⁴⁴ “The right to the enjoyment of the highest attainable standard of physical and mental health” See the 2008 World Health Organization and the Office of the United Nations High Commissioner for Human Rights co-published Fact Sheet 31, “The Right to Health” available at: <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

advance the following recommendations to target the factors underpinning health inequities.

Poverty and Income

- 3.1 Poverty reduction strategies must aim to ensure adequate social assistance incomes, social housing initiatives, and quality early childhood education programs, particularly for vulnerable communities.
- 3.2 Improve the accessibility, structure and allowance rates of social assistance, as per the Social Assistance Review Commission's recommendations.
- 3.3 Recently the provincial government raised the minimum wage in Ontario to \$11/hour. It further announced that the minimum wage will increase to \$11.25/hour for general employees effective October 2015, and that increases will be tied to inflation⁴⁵, which is very encouraging. We would further recommend that the floor for minimum wage remain above the Low Income Measure/Poverty Line, so that those working full-time are not living in poverty.

Employment and Volunteer Opportunities

- 3.4 Develop a comprehensive strategy informing investment in evidence-based programs to ensure that marginalized young Ontarians, including those with criminal records, have the opportunity to develop life skills, attain education and training, and acquire meaningful work and volunteer experience.
- 3.5 Regulate the current employer demand for police record checks during hiring processes. For specific legislative and policy recommendations around this issue, see JHSO's recently released report, [*Help Wanted*: Reducing Barriers for Ontario's Youth with Police Records.*](#)

Homelessness Prevention and Housing First Funding

- 3.6 Implement an eviction prevention strategy for people on remand at a provincial level. The goal of this program should be to prevent loss of housing

⁴⁵ See the government of Ontario's press release: <http://news.ontario.ca/mol/en/2015/03/ontario-increasing-minimum-wage.html>

for people entering custodial facilities for short-term periods and prior to sentencing.

- 3.7 Expand proven Housing First⁴⁶ models, with designated beds for those with serious mental illness, to more communities in Ontario.
- 3.8 Fund a housing program that ensures the number of affordable housing units meets the demand. Monitor and reduce the percentage of Ontario tenants spending 30% or more of income on housing.
- 3.9 Fund additional rent-geared-to-income and supportive housing for low-income individuals who have mental health issues. Furthermore, the province needs to invest in interim housing and safe beds for individuals with mental health issues who are exiting custody, so that they have a greater likelihood of not returning to jail upon release. Moreover, adequate funding for round-the-clock staffing of the various models of supportive housing units is critical. Beds alone are not enough – there must be an appropriate level of trained staff available to address client needs at all times.
- 3.10 Provide individuals with mental health issues secure placement in supportive housing immediately upon release from custody to promote a more positive and successful reintegration into the community. Additional funding for system navigators would assist individuals in accessing financial resources, treatment, medication and clothing and prevent crises upon release.

4. Recognize Community Criminal Justice Organizations as Key Mental Health Partners

A comprehensive mental health strategy should recognize community criminal justice organizations as key partners in delivering essential services to individuals with mental health issues, since so many of community criminal

⁴⁶ See Goering, P., Veldhuizen, S., Watson, A., Adair, C., Kopp, B., Latimer, E., Nelson, G., MacNaughton, E., Streiner, D. and Aubry, T. (2014). National At Home/Chez Soi Final Report. Calgary, AB: Mental Health Commission of Canada. Retrieved from: <http://www.mentalhealthcommission.ca> and Schiff, J. W. and Rook, J. (2012). Housing first – Where is the Evidence? Retrieved from: http://www.homelesshub.ca/sites/default/files/HousingFirstReport_final.pdf

justice organizations serve clients with health-related needs. As partners, community criminal justice organizations can bring to the continuum of health service a nuanced expertise responding to justice-involved mental health clients.

- 4.1 Invest in community criminal justice organizations, which are currently delivering services to at-risk or justice-involved individuals with mental health issues, often unfunded.
- 4.2 Establish core funding streams available to CCJOs to resource mental health caseworkers, social service navigators, and housing support workers.
- 4.3 Establish protocols that address the health funding resource inequities between justice and health service providers.
- 4.4 Ensure adequate representation of CCJOs during provincial strategic planning and policy development regarding the mental health strategy in Ontario, as well as at provincial coordinating bodies such as the Human Services and Justice Coordinating Committees (HSJCC).

5. Invest in the Creation of a Criminal Justice Community that can Respond Appropriately to People with Mental Health Issues

Until we have a community mental health system that proactively identifies and effectively treats people, individuals with mental health issues will continue to come into contact with the justice system at the current rate. A criminal justice community that responds appropriately is one that recognizes that punitive responses to people with mental health issues have not been effective, and that in order to actually reduce crime and respond humanely, a new approach must be taken.

When individuals become involved with the justice system, the emphasis of these interactions should be on screening people with known or suspected mental health issues *out* of the justice system (pre-charge and post-charge), and only using jail as an absolute last resort. This is not to suggest that persons with mental health issues who commit crimes should never be held to account, nor is it a recommendation to expand the Not Criminally Responsible regime.

Police and courts already possess the power and discretion to screen individuals with mental health issues out of the traditional court processes by exercising restraint in the laying of charges, or through existing diversion or extrajudicial measures. Individuals with mental health issues who are alleged to have committed minor crimes and/or administration of justice charges are an obvious place to start from a policy perspective.

The criminal justice system must also strike a fine balance: it must respond appropriately and humanely to persons with mental health issues, while being cautious not to further entrench itself as a key entry point to healthcare for those in need. The recommendations below aim to shift the current criminal justice system response to people with mental health issues.

5.1 Examine alternative responses to drug use in Canada. A key contributing factor to the prevalence of mental health issues among our prison populations are our drug laws. Studies and commentators on drug policy increasingly underline how a prohibition-based approach to drug use has been a losing battle, and that prevention, harm reduction and treatment-based responses to drug use are more effective and less costly.⁴⁷ In 2014, the Centre for Addiction and Mental Health (CAMH) released its Cannabis Policy Framework, which posits that the legalization of cannabis with strict regulation is the most effective way for Canada to reduce the harm associated with its use.⁴⁸ In order to ensure that we are not punishing individuals for illnesses, which is demonstrably ineffective and expensive, we recommend that our current approach to drug policy should be closely examined in Canada in light of the extant and growing public health literature. In its Cannabis Policy Framework, CAMH calls for a public health approach to substance use in Canada: “A public health approach to substance use treats it as a health issue – not a criminal one. Such an approach is based on evidence-informed policy and practice, addressing the underlying determinants of health and putting health promotion and the prevention of death, disease, injury, and disability as its central mission.”⁴⁹ Other jurisdictions have successfully re-visited prohibition-based policies, and shifted toward public health models; we recommend that Ontario (and Canada) seriously consider following suit.

⁴⁷ Centre for Addiction and Mental Health. (2014). Cannabis Policy Framework. Retrieved from:

http://www.camh.ca/en/hospital/about_camh/influencing_public_policy/Documents/CAMHCannabisPolicyFramework.pdf

⁴⁸ Ibid.

⁴⁹ Ibid, Page 8.

- 5.2 Expand the capacity of pre-charge and post-charge diversion programs to divert people with mental health issues out of the criminal justice system. Concerted efforts to divert individuals out of the justice system through an expansion of community-based programming would pay for itself through the savings rendered for corrections through reduced remand and sentenced population admissions and counts. Community sanctions and community corrections have been repeatedly shown in the research to be more effective and affordable responses to crime, compared to incarceration.⁵⁰ Involvement in community programming also avoids many of the negative effects of incarceration on individuals.
- 5.3 Reduce the large remand population and overcrowding in Ontario's provincial jails by meaningfully addressing bail in Ontario. As noted earlier, individuals struggling with mental illness and addiction are frequently released on bail with abstinence and other stringent conditions, which leads to further criminalization and incarceration. See JHSO's recent Report, *Reasonable Bail?* for a list of recommendations aimed at improving the systemic issues concerning bail in Ontario.
- 5.4 The Ministry of the Attorney General should consider expanding the availability and capacity of Bail Verification and Supervision programs in Ontario.
- 5.5 Fund clinical counselling programs, which treat trauma, and intensive, evidence-based interventions which target criminogenic risk factors (i.e. the root causes of involvement in the justice system), and long-term follow-up to sustain change.
- 5.6 Maintain a youth justice system that emphasizes non-custodial responses, with an expanded focus on the prevention of crime, diverting youth away from the criminal justice system to community-based supports (and mental health treatment).
- 5.7 Increase the investment in community-based youth programs to provide at risk youth with skill building, emotional self-regulation and self-esteem to prevent their involvement in the criminal justice system.

⁵⁰ The average cost to incarcerate a prisoner in Ontario in 2012/2013 was \$185 per day for adults, and \$451 per day for youth.

- 5.8 Commit to the funding and expansion of specialized courts such *Gladue* courts, mental health courts and drug treatment courts.
- 5.9 In 2014, the provincial government committed a significant amount of funds to Legal Aid Ontario to expand its range of services and the coverage for low-income Ontarians.⁵¹ In particular, this phased investment resulted in the first increase to the income eligibility threshold for legal aid services since 1991. This represents a very welcome step forward; however, the government should not stop there. It should continue to improve access to legal representation for low-income Ontarians through ongoing investments in Legal Aid Ontario. The financial eligibility threshold, though just raised, remains below the poverty line and should be flagged for ongoing increases to ensure that marginalized Ontarians have equitable access to justice. Similarly, the legal test to determine eligibility for access to legal aid certificates in Ontario, recently expanded to include a wider proportion of individuals seeking criminal law assistance, should continue to be reviewed for further investment to allow for greater coverage for low-income Ontarians, many of whom have mental health issues.⁵²

6. Foster Effective and Humane Corrections

Given the current prevalence of individuals behind bars who have mental health issues, we make the following recommendations for their humane treatment:

- 6.1 A standardized and validated mental health assessment/screening tool should be administered in a timely manner during admission to **all** incarcerated individuals. Where possible, there should also be consistency in the screening tools used across justice and health systems to ensure continuity of care.

⁵¹ Legal Aid Ontario. (2015). Unprecedented multi-year expansion of legal eligibility for criminal, family, refugee and other matters. Press Release. Retrieved from: http://www.legalaid.on.ca/en/news/newsarchive/1506-08_eligibilityexpansion.asp

⁵² Legal Aid Ontario. (2015) Certificates For Previously Ineligible Legal Criminal Matters. Retrieved from: http://www.legalaid.on.ca/en/info/backgrounders/eligibilityexpansion/Certificates%20for%20previously%20ineligible%20legal%20criminal%20matters_lawyers.pdf?t=1435247399181

- 6.2 Include in admission intake forms specific questions to screen for homelessness risk upon entry and anticipated risk of homelessness upon release.
- 6.3 Immediately cease the practice of isolating prisoners with serious or acute mental illness in segregation. Evaluate and consider greatly restricting the use of segregation for all people with mental health issues.
- 6.4 Fulfill the obligations outlined in the public interest remedies resulting from the Christina Jahn settlement⁵³ and publically report on the implementation process, including releasing data and statistics regarding psychiatric wait times in Ontario's correctional institutions, and the prevalence of mental health issues.
- 6.5 Ensure the provision of quality, round-the-clock access to medical and psychiatric care in prisons, to prevent escalation of symptoms or acute crises, and suicides. Also, develop policies and protocols to ensure continuity of medication upon release.
- 6.6 Re-invest in prison treatment, work programs, recreation programs, and in-person family visitation, all of which foster rehabilitation.

7. Support Successful Re-entry and Reintegration

Planning for an individual's eventual release back into the community should start the day they are admitted to a correctional institution.

- 7.1 Implement meaningful discharge planning that commences upon admission to prison regardless of prisoners' sentence length or sentencing status (i.e. if they are on remand). The importance of arranging housing, mental health treatment, employment, and other services before release from remand is equally as critical as the planning for sentenced populations.
- 7.2 Build a system of parole that reflects the vital importance of gradual release in effective reintegration. The use of conditional release mechanisms for provincial prisoners, such as parole and temporary absence passes, has long

⁵³ The Ministry of Community Safety and Correctional Services has committed to implementing the following Public Interest Remedies: http://www.mcscs.ius.gov.on.ca/english/publications/Corrections/CS_facility_service_delivery_r.html

been in decline.⁵⁴ Conditional release programs give people a chance to gradually reintegrate into the community under supervision, become settled in housing and have access to treatment and other services. In the absence of conditional release programs, there is an increased likelihood of reoffending.

- 7.3 Protect the social housing eligibility of Ontario's most vulnerable social housing tenants if they are detained pre-trial, potentially saving them from homelessness upon release. Investigate rent supplement programs to allow remanded prisoners to retain housing.
- 7.4 Fund crisis/in-patient psychiatric beds so that if an individual is in crisis, or is ordered for treatment as a condition of probation, they can immediately access it.

8. De-Stigmatize Mental Health, Police Records and Past Justice Involvement

Investment in Better Education

- 8.1 Families, individuals and communities need better information and education about mental health issues, the criminal justice system, and how these issues can intersect. Education is critical for combating the stigma surrounding mental health issues. In addition, better information will mean that Ontarians know where to go to seek help for themselves or loved ones in crisis. Turning to the police should not be viewed as a first or last resort.
- 8.2 Individuals should not be barred from access to housing on the basis of a police record or past criminal justice involvement. Some local municipalities bar individuals with a police records from low income housing. This practice should not be permitted. Barring individuals with mental health needs who may have police records from access to housing is particularly problematic given how important stable housing is for recovery.

⁵⁴ Doob, A.N. Webster, C.M. Manson, A. (2014). Zombie Parole: The Withering of Conditional Release in Canada. *The Criminal Law Quarterly*, 61, 301-328.

- 8.3 Ensure that individuals with high needs are not automatically barred from accessing social services they need due to past criminal justice involvement.
- 8.4 The province of Ontario should be the leader in anti-stigma efforts, both around mental health issues *and* individuals who have had past justice contact (i.e. police records). Other provinces and jurisdictions' governments have championed campaigns to directly address the stigma placed on people who have been justice-involved. For more detailed examples and recommendations, see JHSO's recently released report, [*Help Wanted*: Reducing Barriers for Ontario's Youth with Police Records.*](#)

Human Rights

- 8.5 There is a pressing need for more robust human rights protections for Ontarians with police records; especially to protect individuals from discrimination in the employment context, similar to those that exist elsewhere in Canada. The provincial government should amend the *Ontario Human Rights Code's* "record of offences" provision to broaden its definition to explicitly protect Ontarians against discrimination on the basis of any record of offences – which should include all non-conviction police records, mental health police contacts, criminal convictions and records that have been sealed subsequent to a record suspension.

CONCLUSION

When society fails to adequately identify and treat individuals' mental health issues, the justice system punishes the symptoms. Our province simply cannot afford to continue down the costly path of criminalizing mental illness. There is a pressing need for investment in prevention to reverse the trend of using the criminal justice system as a catchall for individuals whose mental health symptoms were not identified early and treated while they were in the community. Proper prevention requires that the availability of and access to clinical and community-based mental health care across Ontario be prioritized. Prevention is inclusive: as a province we should also be targeting the social determinants of health, so that we can reduce health inequities across socioeconomic groups and communities.

Effective prevention also requires a criminal justice community that responds appropriately to people with mental health issues and that identifies and diverts individuals out of the justice system wherever possible. Justice system involvement and incarceration are incredibly damaging experiences that undermine mental health generally, and should be avoided at all costs for those with pre-existing mental health issues. Individuals with serious mental illness should never be placed in segregation.

Prevention is proactive. It necessitates a collaborative approach among community-based agencies serving clients with mental health issues. Provincial commitment to combat the stigma associated with mental health issues and criminal justice involvement is also needed. Proactive educational efforts to this end are critical for shaping both public and service agency responses to this population. Only through concerted educational efforts and meaningful investment will Ontario begin to move away from a reactive justice response, toward a preventative and holistic approach to mental health.

The John Howard Society of Ontario has lengthy experience working with individuals living with mental illness who are justice-involved. JHSO's 19 local

offices across the province are important partners in providing effective and humane wrap-around service for these vulnerable individuals. In pursuit of effective, just and humane responses to crime and its causes, the Society has examined the issues facing our clientele and offers recommendations for a comprehensive plan for systemic change in our province.

REFERENCES

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.

Canadian Civil Liberties Association. (2014). Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention. Retrieved from: <http://ccla.org/wordpress/wp-content/uploads/2014/07/Set-up-to-fail-FINAL.pdf>

Centre for Addiction and Mental Health. (2014). Cannabis Policy Framework. Retrieved from: http://www.camh.ca/en/hospital/about_camh/influencing_public_policy/Documents/CAMH_CannabisPolicyFramework.pdf

Chaimowitz, G. (2012). The Criminalization of People With Mental Illness: A Canadian Psychiatric Association Position Paper. Retrieved from: <http://publications.cpa-apc.org/media.php?mid=1268>

Cribb, R. (2014, December 4) Province to legislate what police can disclose about innocent Ontarians. *The Toronto Star*. Retrieved from: http://www.thestar.com/news/queenspark/2014/12/04/province_to_legislate_what_police_can_disclosure_about_innocent_ontarians.html

Crocker A.G., Nicholls T.L., Seto M.C., Charette, Y., Côté, G., and Caulet, M. (2015). The National Trajectory Project of Individuals Found Not Criminally Responsible on Account of Mental Disorder in Canada. Part 2: The People Behind the Label. *Canadian Journal of Psychiatry*, 60, 3, 106-116.

Dempsey, A. (2014, December 22). Ontario Ombudsman: Get Sick Inmates out of Solitary. *The Toronto Star*. Retrieved from: http://www.thestar.com/news/gta/2014/12/22/ontario_ombudsman_get_sick_inmates_out_of_solitary_confinement.html

Department of Justice Canada. (2006). The Review Board Systems in Canada: An Overview of Results from the Mentally Disordered Accused Data Collection Study. http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr06_1/rr06_1.pdf

Doob, A.N. Webster, C.M. and Manson, A. (2014). Zombie Parole: The Withering of Conditional Release in Canada. *The Criminal Law Quarterly*, 61, 3, 301-328.

Gaetz, S. (2012). *The Real Cost of Homelessness: Can We Save Money by Doing the Right Thing?* Toronto: Canadian Homelessness Research Network Press. Retrieved from: http://www.homelesshub.ca/sites/default/files/costofhomelessness_paper21092012.pdf

Goering, P., Veldhuizen, S., Watson, A., Adair, C., Kopp, B., Latimer, E., Nelson, G., MacNaughton, E., Streiner, D. and Aubry, T. (2014). *National At Home/Chez Soi Final Report*. Calgary, AB: Mental Health Commission of Canada. Retrieved from: <http://www.mentalhealthcommission.ca>

Government of Ontario. (2015). Ontario Increasing Minimum Wage. Press release. Retrieved from: <http://news.ontario.ca/mol/en/2015/03/ontario-increasing-minimum-wage.html>

Harris, K. (2013, August 6). Isolation of inmates rising in crowded prisons Ombudsman concerned segregation being used to house 'marginalized, vulnerable' inmates. *CBC*. Retrieved from: <http://www.cbc.ca/news/politics/isolation-of-inmates-rising-in-crowded-prisons-1.1310608>

Hartford, K., Heslop L., Stitt L., and J. S. Hoch. (2005). Design of an algorithm to identify persons with mental illness in a police administrative database. *International Journal of Law and Psychiatry*, 28, 1–11.

John Howard Society of Ontario. (2012). *Effective, Just and Humane: A Case for Client-Centered Collaboration*. <http://www.johnhoward.on.ca/wp-content/uploads/2014/09/effective-just-and-humane-a-case-for-client-centered-collaboration-may-2012.pdf>

John Howard Society of Ontario. (2014). *Help Wanted*: Reducing Barriers for Ontario's Youth with Police Records*. <http://www.johnhoward.on.ca/wp-content/uploads/2014/07/johnhoward-ontario-help-wanted.pdf>

John Howard Society of Ontario, Gaetz, S., and O'Grady, B. (2006). *The Missing Link: Discharge planning, Incarceration and Homelessness*. <http://www.johnhoward.on.ca/wp-content/uploads/2014/09/the-missing-link-aug-2007.pdf>

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

Kellough, G. and Wortley, S. (2002). Remand for plea: Bail decisions and plea bargaining as commensurate decisions. *British Journal of Criminology*, 42, 186–210.

Kirby J.L., and Keon, W.J. (2006). Out of the shadows at last: transforming mental health, mental illness and addiction services in Canada. Ottawa (Ontario): The Standing Senate Committee Ontario Social Affairs, Science and Technology. Retrieved from:
<http://www.parl.gc.ca/Content/SEN/Committee/391/soci/rep/rep02may06-e.htm>

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.

Legal Aid Ontario. (2015). “Unprecedented multi-year expansion of legal eligibility for criminal, family, refugee and other matters” Press Release. Retrieved from:
http://www.legalaid.on.ca/en/news/newsarchive/1506-08_eligibilityexpansion.asp

Legal Aid Ontario. (2015). “Certificates For Previously Ineligible Legal Criminal Matters.” Retrieved from:
http://www.legalaid.on.ca/en/info/backgrounders/eligibilityexpansion/Certificates%20for%20previously%20ineligible%20legal%20criminal%20matters_lawyers.pdf?t=1435247399181

Maire, S. (2009). “An Investigation into the Feasibility of Collecting Data on the Involvement of Adults and Youth with Mental Health Issues in the Criminal Justice System.” Retrieved from:
<http://www.statcan.gc.ca/pub/85-561-m/2009016/section-a-eng.htm>

Ministry of Children and Youth Services. (2013). Draft Child and Youth Mental Health Service Framework. Retrieved from:
<http://www.children.gov.on.ca/htdocs/English/topics/specialneeds/mentalhealth/moving-on-mental-health.aspx>

Ministry of Community Safety and Correctional Services. (2014). Correctional Services. Public Interest Remedies. Retrieved from:
http://www.mcscs.jus.gov.on.ca/english/publications/Corrections/CS_facility_service_delivery_r.html

Ministry of Community Safety and Correctional Services. (2015). Statement by Minister Yasir Naqvi on review of segregation policy in Ontario correctional system. Retrieved from:
<http://news.ontario.ca/mcscs/en/2015/03/yasir-naqvi-minister-of-community-safety-and-correctional-services-made-the-following-statement-toda.html>

Ministry of Health and Long-Term Care. (2014). Open Minds, Healthy Minds: Ontario's Comprehensive Mental Health and Addictions Strategy (November 2014 Update). Retrieved from:
http://www.health.gov.on.ca/en/public/programs/mentalhealth/docs/open_minds_healthy_minds.pdf

Nelson, G., Clarke J., Febraro, A., and Hatzipantelis, M. (2005). A narrative approach to the evaluation of supportive housing: stories of homeless people who have experienced serious mental illness. *Psychiatric Rehabilitation Journal*, 29, 2, 98-104.

Office of the Correctional Investigator of Canada. (2013). Segregation in Canadian Federal Corrections: A Prison Ombudsman's Perspective. [Presentation at *Ending the Isolation: An International Conference on Human Rights and Solitary Confinement*]. Retrieved from:
<http://www.oci-bec.gc.ca/cnt/comm/presentations/presentations20130322-23-eng.aspx>

Ombudsman of Ontario. (2013). "The Code". Retrieved from:
http://www.ombudsman.on.ca/Files/sitemedia/Images/Newsroom/The_Code_ENGLISH.pdf

Riordan, T. (2004). Exploring the Circle: Mental Illness, Homelessness and the Criminal Justice System in Canada. Parliamentary Information and Research Service at the Library of Parliament. Retrieved from: <http://www.parl.gc.ca/content/lop/researchpublications/prb0402-e.pdf>

R.R.O. 1990, Reg. 778: GENERAL under Ministry of Correctional Services Act, R.S.O. 1990, c. M.22
<http://www.ontario.ca/laws/regulation/900778%20-%20BK13>

Rudin, J. (2005). Aboriginal Peoples and the Criminal Justice System.
http://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/research/pdf/Rudin.pdf

Sapers, H. (2014). Annual report of the Office of the Correctional Investigator 2013–2014. Ottawa, Ontario: The Correctional Investigator of Canada. Retrieved from: <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20132014-eng.pdf>

Schiff, J. W. and Rook, J. (2012). Housing first – Where is the Evidence? Retrieved from:
http://www.homelesshub.ca/sites/default/files/HousingFirstReport_final.pdf

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.

Statistics Canada. (2009). The Incarceration Of Aboriginal People In Adult Correctional Services. Retrieved from:

<http://www.statcan.gc.ca/pub/85-002-x/2009003/article/10903-eng.htm#a6>

Statistics Canada. (2014). Canadian Income Survey, 2012. Retrieved from:

<http://www.statcan.gc.ca/daily-quotidien/141210/dq141210a-eng.htm>

United Nations Committee Against Torture. (2012). Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture.

World Health Organization and the Office of the United Nations High Commissioner for Human Rights. (2008). Fact Sheet 31, "The Right to Health". Retrieved from:

<http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

World Health Organization. (2013). Mental health: a state of well-being. Retrieved from:

http://www.who.int/features/factfiles/mental_health/en/

JohnHoward

SOCIETY OF ONTARIO

Phone: 416.408.4282

Fax: 416.408.2991

Email: info@johnhoward.on.ca



@ReducingCrime

EFFECTIVE
JUST
HUMANE

JohnHoward
SOCIETY OF ONTARIO