

Diversion, Mental Health Courts and Schizophrenia

Background Information Prepared by the Diversion and Mental Health Court Task Force*¹ Schizophrenia Society of Canada

June 2005

A. Purpose

In October 2004, the Schizophrenia Society of Canada (SSC) established a task force to prepare a background paper about diversion from the criminal justice system. SSC is a family-based support organization whose members are increasingly concerned about the unnecessary and unproductive incarceration of individuals with serious and persistent mental illness.

The purpose of this paper is to provide a primer about this important issue and assist related efforts to advocate for diversion programs, including mental health courts. This paper is not intended to be used as a submission to government; rather, it is a resource to schizophrenia organizations in Canada and any of our common-cause partners. This paper is based, in part, on a literature review developed by researchers in Newfoundland (“Mental Health Courts and Persons with Mental Illness in Conflict with the Law: A Literature Review, August 2004”).

B. Introduction

Too many individuals living with schizophrenia and other serious and persistent mental illness come into contact with the criminal justice system because of inadequate mental health systems and community services. The interaction with the criminal justice system often involves a relatively minor criminal offence. More importantly, it sets into motion incalculable grief and worry for family members and places individuals living with a mental illness in a harsh environment not oriented to treatment and compassion.

The collision between mental illness and the justice system underlines a failure of the health and social service systems to intervene effectively by providing timely and needed medical, counselling, and other community-based support services.

Over the past few years, a number of efforts have begun to divert individuals with a mental illness from the court and prison systems, back to health and social support systems in the community where they can be more appropriately treated. Diversion offers the opportunity to treat individuals effectively while meeting overall societal objectives of protection and justice. For governments concerned about budgets, treatment in the community is a more cost-effective option to incarceration or inappropriate interaction with the judicial system.

¹ See Appendix I for a list of the task force members.

C. Background

Prevalence: Researchers agree that individuals with a mental illness are over-represented in the criminal justice system. Two Canadian studies illustrate the prevalence of mental illness among in-prison populations: i) A 1994 study of the Calgary Remand Centre found almost one-half of females and 56% of males had disorders such as schizophrenia and depression. ii) An earlier study in 1990 at the Edmonton Remand Centre showed that 92% of inmates had a psychiatric disorder during their lifetime (of which 87% had a dual diagnosis of substance abuse).

Criminalization of the Mentally Ill: The Schizophrenia Society of Canada believes the high prevalence of people with mental illness in our criminal justice system is the result of a number of significant problems including:

- The declining number of hospital beds for people with serious mental illness.
- The failure to provide comprehensive community mental health services (including services for early detection and treatment, rehabilitation and other recovery programs).
- The inadequacy of income support programs that create significant additional stress on people living with a serious mental illness – in some cases, leading to the committal of minor crimes.
- The lack in most provincial jurisdictions of appropriate legislation such as community treatment orders, which help prevent relapse into illness, and, in some cases, the committal of criminal offences.

Jails are not the place to treat individuals with a mental illness who commit minor crimes. Nor is it helpful to process mentally ill offenders through a laborious court system. Both are costly for taxpayers, injurious to individuals with mental illness and more than often, ineffective from a treatment perspective.

Diversion Efforts: There are at least three types of diversion from the courts and jails:

1. *Pre-booking Diversion Programs* – This often sees police forces teaming up with mental health crisis teams to deal with an individual who has engaged in behaviour that may result in an arrest or criminal charge. For pre-booking programs to succeed, police officers must be properly trained, follow defined police procedures that are appropriate for the circumstance and, if needed, have ready access to in-hospital services in a way that avoids long waiting periods in an emergency room.
2. *No-Plea Diversion* – Under this type of diversion effort, an individual is charged but not required to enter a plea. Instead, the individual is directed to mental health and other community services. This type of diversion is considered for relatively minor offences such as: property crimes (including shoplifting), public nuisance, minor assault and breach of probation. It is not an option for more

serious offences including domestic assault, weapons charges, driving under the influence and assault where blood is drawn.

Diversion may occur at the first appearance in court (or shortly thereafter) or after the accused has been found fit to stand trial. While the Crown stays the charge against the accused, there is potential to reinstate the charges.

The Crown's principal role, in conjunction with in-court mental health professionals, is to arrange for treatment and community services, including safe housing and counselling. Toronto's Mental Health Court is one example of this type of diversion effort.

3. *Plea-based Diversion* - The principal distinction for this type of diversion is that the accused must accept responsibility for criminal actions (after being found fit to stand trial and criminally responsible). As with "no-plea diversion" programs, only individuals charged with minor offences are eligible. The accused is directed to take a judicially monitored program. If the program is successfully completed, charges are withdrawn or a non-custodial sentence is imposed. Mental health courts in the United States and Saint John, New Brunswick follow this model.

D. Best Practices for Mental Health Courts

Mental health courts were developed to address the needs of individuals who are better treated in the community than in the corrections environment. These specialized courts are an alternative to pre-booking diversion programs.

Modelled on the drug courts of the day, the first mental health court was established in 1980 in Marion County, Indiana. In 2000, President Bill Clinton authorized the creation of 100 similar courts across America. The first Canadian mental health court came into being in Toronto in 1998; the Saint John, N.B court was established almost five years ago (please see Appendix II for more information about both courts; Appendix III has information about the mental health court pilot project in Newfoundland). Australia has also established a few mental health courts.

Informal reports about mental health courts are positive. Assessments of the various court processes and their results are currently in progress (a number of U.S. agencies are currently reviewing the American experience; a review of the Toronto mental health court is pending; an assessment of the Saint John court is expected to be completed during 2005).

While we await the results of the noted program assessments, it is fair to identify some characteristics that typify well-functioning mental health courts:

1. *Clarity of Purpose* – The objectives of a mental health court must be clear. Such goals might include: i) Protecting the public safety. ii) Reducing the use of jail and repeated interaction with the criminal justice system. iii) Reducing the time spent in custody awaiting assessment and appropriate treatment.
2. *Court Expertise* – It is critical that particular Crown prosecutors, judges and duty counsel be designated and receive appropriate training to enable them to better deal with individuals with a mental illness on first appearance in court. Early intervention during the court process is key to an effective diversion program and only trained individuals can intervene in a manner that meets the unique needs of a mentally ill person.
3. *Comprehensive Court Services Team* – An appropriately skilled mental health team with expertise in assessment, treatment options and community referral must be part of the judicial team that first deals with an accused who is mentally ill.
4. *Links with Community Services* – Before a judge rules or an accused is referred to community-based services, there must be assurances that the system can accept the new referral. Therefore, the court mental health team must have direct links with housing, medical and counselling services in the community to ensure the client's urgent medical and day-to-day needs are addressed.
5. *Appropriate Follow-Up* – In some cases, the court may not have the capability to follow-up on individuals who are diverted from prosecution. Minimally, a community agency must be empowered to ensure clients are monitored appropriately.
6. *Adequate and Secure Funding* – In order to ensure an appropriate mental health and judicial team are in place, it is clear that sufficient public funding must be available to ensure the success of diversion and mental health court programs.

Effective diversion focuses on intervention at the earliest possible opportunity during contact with the police or the court system. In cases, where this is not possible and an accused proceeds to trial or to prison, there is a need for:

- Effective probation processes (that link up with needed community services).
- Timely and high quality in-prison mental health services with access to visiting psychiatrists and suitably trained mental health workers, nurses and guards.
- Appropriate treatment environments such as hospital units within the prison and specialized forensic psychiatric facilities.

E. Public Policy Issues

There are a number of public policy issues to keep in mind as SSC advocates for diversion and mental health courts.

The Economic Argument – Governments may look favourably on diversion and mental health courts if there is a supporting economic argument that shows it is cost-effective. While data is scarce in Canada, the Calgary Diversion Project (CDP) released an evaluation of its program in January 2005.

CDP began in Spring 2001 and operated for three years. The evaluation examined health and police costs for nine months pre- and post-entry into the program for 117 clients.

The study (Calgary Diversion Project, Final Evaluation Report, October 2004) found as follows:

- “A significant reduction in costs to the justice system for these clients because of an overall decrease of 60% in the number of police complaints and charges against them ... there was also a 74% reduction in the number of court appearances ...”
- “A significant reduction in costs to the health system for these clients because their utilization of Calgary Health Region emergency rooms fell by 20% and their number of inpatient hospital days was reduced by 45% ...”
- “A significant improvement in self-reported quality of life with a reduction in police and acute care costs of \$1,721 per client ...”

The study authors caution that their evaluation should not be treated as a complete cost-benefit analysis. Nevertheless, the report provides impressive initial data that diversion has considerable promise.

Siphoning Funds from the Mental Health System – In advocating for diversion and mental health courts, we should ensure that the broader mental health service is properly funded and has the resources to work with individuals at risk of entering the criminal justice system. It would be unfair and unfortunate if the most effective way to access mental health services were through the police or court process.

F. Key Messages

Key messages are the main points or sound bites we make with decision makers such as politicians, senior public servants, the media and common-cause organizations. The following are offered for consideration.

1. The most effective diversion strategy is a properly funded and functioning mental health system.
2. Diversion of mentally ill individuals from the criminal justice system can result in a significant reduction in police and health care costs – early information from the Calgary diversion program shows this.
3. Repeat offences by mentally ill individuals are reduced through effective diversion programs – early information from the Calgary diversion program shows this.
4. It is unfair and ineffective to subject mentally ill people who commit minor crimes to the court and jail system.
 - They need treatment not incarceration.
 - The jails are the worst environment to treat and care for individuals with serious and persistent mental illness.
5. Federal and provincial governments should work together with community stakeholders to develop national standards for diversion programs and the operation of mental health courts.
6. To be effective, diversion programs and mental health courts require sufficient resources to ensure effective treatment.
 - This includes professionals skilled in diagnosis and who can arrange for needed services in the community, including safe housing and ongoing counselling.
7. Police, Crown prosecutors and defence/duty counsel require appropriate training to work effectively with mentally ill individuals and their families.

G. National Advocacy Efforts

Effective advocacy for diversion and mental health courts in Canada requires a shared and coordinated effort by the three levels of schizophrenia societies in this country: national, provincial and community-based. Each has remarkable strengths that can contribute to a successful advocacy strategy.

The task force offers the following suggestions for the national organization to pursue:

1. Work with federal and provincial justice departments to develop national best practices and standards.
2. Work with RCMP and the national association of police chiefs to expand training initiatives.
3. Develop a national brochure that provides advice to family members who must deal with the criminal justice system

H. Possible Provincial Advocacy Efforts

The following are some suggestions for provincial organizations, which want to pursue diversion initiatives.

1. Work in league with other common-cause organizations if it would be advantageous to join forces.
2. Meet with provincial government departments to see what work is underway regarding diversion initiatives. There might be an opportunity to assist an ongoing effort or the chance to further educate government decision makers about the value of diversion.
3. Meet with politicians and enquire how they view diversion programs and, if possible, leave appropriate education materials for their interest.
4. Involve the chapters and community-based schizophrenia organizations and see how provincial and local organizations can advocate together for diversion.

For More Information

If you have additional questions about diversion and mental health courts or need advice regarding advocacy efforts, please contact:

Schizophrenia Society of Canada
National Office
50 Acadia Avenue, Suite 205
Markham, Ontario L3R 0B3

Phone: (905) 415-2007

Toll Free (in Canada): 1-888-SSC-HOPE (772-4673)

We can pass along contact information for provincial organisations.

Appendix I: Diversion and Mental Health Court Task Force Members

- Hugh Bennett, Executive Director, Schizophrenia Society of Nova Scotia
- Florence Budden, nurse, President, Schizophrenia Society of Newfoundland and SSC board member
- Jane Duval, policy director, Schizophrenia Society of British Columbia
- Dr. Pam Forsythe, psychiatrist, SSC board member and former president of the Canadian Psychiatric Association
- John Gray, PhD, president, SSC, co-author, Mental Health and Canadian Law
- Ursula Lipski, policy director, Schizophrenia Society of Ontario
- Joan Montgomery, CEO, SSC
- Vince Reed Q.C., retired lawyer, SSC board member
- Chris Summerville D.Min., CPRP, Executive Director, Schizophrenia Society of Manitoba, Chair, Alliance on Mental Illness and Mental Health in Manitoba, Member, Provincial Advisory Council on Mental Health in Manitoba
- Kathleen Thompson PhD (student), former Executive Director, Schizophrenia Society of Saskatchewan, Project Consultant, Saskatchewan Judicial Reform Initiative, (Schizophrenia Society of Saskatchewan and Canadian Mental Health Association, Saskatchewan division)
- David Berger, task force chair

Appendix II: The Toronto and Saint John Mental Health Courts

Toronto Mental Health Court

- Established in May 1998.
- Presiding provincial court judge.
- Operates on a daily basis out of one courtroom.
- Adjoining holding cells reduce time transporting the accused.
- Special duty counsel assigned to the court.
- Mental health court workers are located on site and include expertise in assessing a person's mental health status. They provide information to families and are linked to community services.
- On-site psychiatric staff provides assessments of fitness to stand trial.
- A medium-secure inpatient unit provides multidisciplinary forensic assessment regarding fitness to stand trial and not criminally responsible determinations.
- Diversion from the court process occurs prior to the involvement of the judge, at the discretion of the Crown.
- The diversion program does not require a guilty plea; the charge is stayed.
- Individuals who are released to the community are passed onto other agencies for continuing care.

Saint John Mental Health Court

- In place since 2000.
- Sits every second Friday.
- Provincial court judge presides.
- The mental health court team includes the judiciary, Crown, duty defence counsel, probation officer, psychiatrist, psychologist, mental health nurse and a caregiver from the Salvation Army.
- The accused must accept personal responsibility and pleads guilty; s/he is then directed to a judicially monitored program.
- From November 2000 to April 2004, 35 of 48 individuals completed the Mental Health Court program (a 73% completion rate). Graduation occurs when the judge determines that an accused has successfully completed the program, at which time the charges are withdrawn or a non-custodial sentence is imposed.

Appendix III: Mental Health Court/Court Support Services Pilot Project in Newfoundland and Labrador

The Mental Health Court/Court Support Services is a pilot project of the Provincial Court of Newfoundland and Labrador, the Public Prosecutions Division of the Department of Justice, the Canadian Mental Health Association, the Health Care Corporation of St. John's, the Mental Health Project of the Newfoundland and Labrador Legal Aid Commission, and Victim Services.

The aim of the project is to assist individuals who have come into contact with the law in re-establishing themselves in the community with an appropriate level of support.

The target population is individuals aged 18 or older with persistent and recurring mental illness where the criminal behaviour complained of has its origins in the mental disorder and related issues. Further, these individuals will have deficits in relation to their community support network.

Other individuals that may also be considered are those with acquired brain injuries who have been charged with a criminal offence and have inadequate community supports.

Participation in the Mental Health Court pilot is voluntary.

The Mental Health Court sits every second Wednesday afternoon in Provincial Court at St. John's.

Generally, cases accepted to the Mental Health Court are dealt with as follows:

- i) Charges may be withdrawn, or
- ii) Sentencing postponed to allow supports and programming to be implemented and for the individual to develop a record of compliance.

Referrals can come from self-referrals as well as a range of other sources, such as: legal field, medical field, community organizations, etc.

The Mental Health Court/Court Support Services Referral Form is used to refer clients to the Mental Health Court team. The team screens referrals and an appointment is set up with the person being referred.