

**Treatment not Punishment:
Diverting the Mentally Ill from the Criminal Justice System
SSC Position Paper**

A. Issue

Individuals with serious and persistent mental illness increasingly end up in the Canadian judicial and prison system for a number of reasons:

- i) Mental health services may not be available or accessible. Sadly, needed services are also not used by those in need because of a lack of insight that one is ill.
- ii) An ill family member commits a minor crime after not taking medication or losing contact with family, community and professional resources. At SSC, we often hear that family members are told that the only way to access treatment is for an ill relative to commit a crime.

The criminal court process, however, is a harsh, lengthy and ultimately inappropriate means to treat individuals who need access to timely medical services, compassionate care and family and community support.

B. SSC Position

Principles

- SSC believes that individuals who commit relatively minor crimes as a result of a serious and persistent mental illness should receive appropriate psychiatric treatment in the community - not punishment and incarceration in prison.
- Individuals accused or found guilty of more serious criminal offences with an actual or suspected serious mental illness must receive timely, professional and appropriate assessment, diagnosis and treatment during remand, probation, incarceration and discharge.
- SSC believes that effective court diversion programs will help reduce the current backlog in Canadian courts, reduce the burden on psychiatric services in Canadian jails, allow for a more likely positive health outcome for individuals with serious mental illnesses who come into contact with the legal system and assist in restoring individuals to their community and families.
- Mental health courts are an important element under the umbrella called “court diversion programs” because not only can they divert the mentally ill from the prison system but also, when necessary, can result in the imposition of probation orders that mandate needed treatment.

Action

- SSC urges federal and provincial governments to establish a coordinated system of mental health courts across Canada to effectively address the needs of mentally ill individuals accused of summary offences.
 - Mental health courts must have adequate resources on site including skilled clinicians and individuals who can access and co-ordinate needed community services.
 - Mental health courts can only be successful if there are adequate follow-up services including affordable housing, counselling, psychosocial rehabilitation and medical services in the community.
- SSC urges the federal Minister of Justice and his provincial counterparts to review the *Criminal Code of Canada* and related mental health statutes in order to remove legal impediments to the timely and effective treatment of individuals with serious mental illnesses.
- SSC urges federal and provincial government to provide adequate financial support to police forces across Canada to enable them to train police officers in appropriate techniques to manage interactions with individuals who have serious mental illnesses.

C. Background

Serious Mental Illness and the Judicial System

It would be inappropriate and inaccurate to suggest that a high percentage of individuals with a serious mental illness commit minor or serious crimes. However, in recent years, Canadian judges have increasingly commented about the growing number of individuals with serious and persistent mental illnesses appearing before them on a variety of relatively minor criminal offences.¹ Judges and police officers often observe that courts are becoming the dumping ground for more people with serious mental illnesses who cannot access community or institutional services.

At times, busy courts bog down while dealing with an accused with an apparent mental illness. More importantly, the remand process that is often relied upon to assess the accused is time consuming and may not afford needed treatment and support to the individual or her family in a quick and effective manner. In short, courts should not be a substitute for case management and the prison environment is not the place to treat mental illness.

In a few locations, notably Ontario, New Brunswick and the United States, mental health courts have emerged as an alternative venue to address the immediate treatment needs of serious and persistent mentally ill individuals who come into contact with the criminal justice system.

¹ A study reviewing data in England and Wales from 1950-1980, showed a clear correlation between the decline in the number of psychiatric beds and a rise in the prison population (*Nature*, May 25, 1989).

In Seattle, Washington, the goals of their mental health courts are identified as follows:

- Protect public safety;
- Reduce the use of jail and repeated interaction with the criminal justice system;
- Connect or re-connect mentally ill persons with needed mental health services;
- Improve their likelihood of ongoing success with treatment, their access to housing or shelter, and linkages with other critical support.

A recent study into an Ontario court diversion program shows that treatment compliance improves with the availability of safe housing and a lengthier treatment period.

In brief, there is an alternative to overloaded dockets and delays in treatment through the establishment of a network of mental health courts in Canada that provides on-site assessment, appropriate referral, follow-up and family involvement. This, in turn, will help restore the mental health of individuals whom, through no fault of their own, come into contact with the judicial system.

Legal Barriers

In their book *Canadian Mental Health Law and Policy*, Dr. John Gray and Margaret Shone refer to a number of “legal barriers” that cause treatment delays and, in cases, result in individuals with serious mental illness coming into contact with the criminal justice system. In particular they note:

- The barrier created by provincial mental health laws that allow committal only if a person is dangerous.
- The use of the “not criminally responsible on account of mental disorder” defence to access treatment through the forensic psychiatric service because it is the only way to access needed services.
- The disincentive for a police officer to use court diversion alternatives instead of charging an individual. In the event of non-compliance with a court diversion program, the individual cannot subsequently be charged.
- The limitations on a judge to order treatment, with the exception of ensuring an accused will be fit to stand trial.

SSC believes there is a pressing need to examine systemic legal barriers that serve to prevent appropriate treatment. This can best be done through an appropriate national effort involving officials from provincial and federal justice ministries, as well as community service professionals and family members.

We believe the issue of legal barriers to treatment must be addressed in a way that protects the constitutional rights of individuals with serious and persistent mental illness while recognizing the injustice that results from lack of treatment.

Role of Police

Police officers are often the first party to come into contact with an individual who commits a minor or more serious criminal offence. As a result, police need special training on how to interact with a person with an apparent mental illness. In addition, police and Crown prosecutors should be trained so they understand when diversion can be appropriately used.

D. Main Messages

1. It's unfair and ineffective to subject mentally ill people who commit minor crimes to the court and jail system.
 - They need treatment or probation - not incarceration.
 - The jails are the worst environment to treat and cure individuals with serious and persistent mental illnesses.
 - A humane and effective alternative will help reduce the backlog in the court system and enable ill individuals to receive care.
2. Federal and provincial governments should work together to develop a system of Mental Health Courts, based on the experience in Ontario, New Brunswick and the United States.
3. To be effective, mental health courts require sufficient resources to ensure effective treatment.
 - This includes professionals skilled in diagnosis and social workers who can arrange for needed services in the community, including safe housing and ongoing counselling.
4. Police and Crown prosecutors require appropriate training to work effectively with mentally ill individuals.