Mental Health
Commission
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Commission de
la santé mentale
du Canada

Mental Health and the Criminal Justice System: 'What We Heard'

Evidence Summary Report

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Contents

Introduction

> In order for [people living with mental health problems and illnesses] to reintegrate back into the community successfully, we need to take a wholistic approach to treatment and planning in order to ensure the individual's basic needs are being met, and we are setting them up for success. The lack of availability of resources results in [people] falling into a gap that becomes a cycle of poverty, homelessness, criminality, and addictions.
>
> — survey respondent

The relationship between the law and people living with mental health problems and illnesses is complex. Despite the widespread recognition that they are more often victims than perpetrators of crime,[1] they are disproportionately involved in the justice system: 40 per cent are arrested at least once in their lifetime.[2]

These individuals routinely experience discrimination and human rights violations, and they are systematically barred from employment opportunities, housing, and access to critically needed health services. When incarcerated, they become isolated from their community supports and services, which can worsen their symptoms and cause significant psychological distress. Under such conditions, they must also rely on mental health services that are frequently inadequate.[3]

In addition, people in the criminal justice system can develop mental health problems and illnesses due to incarceration and other stressors that hinder recovery and healing.[4] The rate of mental health problems and illnesses among people involved with the criminal justice system is substantially higher than in the general population, a rate that has been worsening over time.[5]

Prevalence rates of any mental illness diagnosis, including mood, psychotic, substance use, anxiety, and eating disorders:

- 73% of federally incarcerated men met the criteria for one or more current[*] mental disorders.[6]
- 79% of federally incarcerated women met the criteria for a current mental disorder.[7]

Prevalence rates of serious mental illness, including bipolar, major depressive, and psychotic disorders:

- 12% of federally incarcerated men met the criteria for a current major mental illness.[8]
- 17% of federally incarcerated women met the criteria for a current major mental illness.[9]

Our mandate

The Mental Health Commission of Canada's (MHCC's) 2019-2021 mandate from Health Canada identified mental health and the criminal justice system as a renewed area of focus. This mandate

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[*] Defined as prevalent at the time of the study.

includes learning about what is being done in this area and where the MHCC could align its resources to amplify and support those of others.

The MHCC is also seeking to mobilize key stakeholders in the mental health and criminal justice system to disseminate best practices, promote evidence-based research, and improve collaboration in the delivery of services for justice-involved people living with mental illness.

> **Justice-involved.** Refers to individuals with first-hand experience or involvement with the criminal justice system.

The current focus and scope of this initiative are broad and non-prescriptive. During the MHCC's initial "listening phase," we reviewed policies and literature, connected with key stakeholders, and conducted a survey to identify major challenges and opportunities and explore potential areas for further attention.

This report provides a summary of what we've heard so far.

The state of mental health and criminal justice in Canada

We used three sources of information to understand the state of mental health and the criminal justice system: a scoping review, key informant interviews, and a national survey.[*]

The MHCC's commitment to sex- and gender-based analysis was embedded across our search strategies and data collection instruments. Specifically, our research remained sensitive to differences in the needs, realities, and circumstances for each of the MHCC's priority populations from key communities, including lesbian, gay, bisexual, transgender, queer, and two-spirit (LGBTQ2+); linguistic minority; immigrant, refugee, ethnocultural, and racialized (IRER); and First Nations, Inuit, and Métis (FNIM).

Scoping review
The scoping review assessed the last 10 years (2009-2019) of evidence (screened for relevance) from the academic and grey literature. A total of 391 papers and documents were reviewed and summarized.

Key informant interviews
Seventeen key informant interviews were conducted using a semi-structured interview guide. We used a snowball sampling strategy[†] to identify and engage with key stakeholders from the following sectors: forensic psychiatry, forensic psychology, the federal criminal justice system, the provincial/territorial criminal justice systems, research and academia, advocacy groups, service providers, people with lived experience, and organizations representing FNIM communities.

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[*] Published in French and English.

[†] A process in which key informants already recruited are asked to suggest other eligible participants.

Survey

A national survey was sent to a large electronic mailing list of MHCC contacts that had interests or expertise in mental health and the law. The survey included a mix of closed and open-ended questions modelled on the key informant interview guide. A total of 584 stakeholders completed the online survey.

Key themes

The main areas that emerged from these three sources of evidence were then compared, consolidated, and combined into final key themes. The results in the following section outline the most prevalent themes from all the evidence.

What we heard

Guiding principles

Throughout the review, interview, and survey processes, several repeated themes (categorized as values and principles) occurred that must guide the work to support the mental health of justice-involved people.

HUMAN RIGHTS, SOCIAL JUSTICE, AND HEALTH EQUITY FRAMEWORKS

Many key informants and survey respondents thought that human rights, social justice, and health equity values are needed to guide reform efforts in the mental health of justice-involved individuals. For meaningful change to occur, this initiative must ultimately acknowledge and work to mitigate the impacts of colonialism, intergenerational trauma, gender-based violence, racism, and other forms of oppression as they relate to mental health and the criminal justice system.

RECOVERY-ORIENTED PRINCIPLES

The concept of recovery refers to living a satisfying, hopeful, and meaningful life, even when a person experiences ongoing limitations from mental health problems and illnesses. It is a process in which people in this group are empowered and supported to be actively engaged in their own journey of well-being.[10]

The scoping review found five principles in the literature that underpin recovery-oriented mental health supports:

- "Sense of connectedness to supportive networks
- Belief in hope and trust in the essence of a recovery process
- Trust in oneself to overcome stigma
- Sense of purpose and meaning in life
- Sense of control over one's life"[11] (p. 11)

For many key informants and survey respondents, efforts to advance mental health in the criminal justice system must be grounded in the principles of recovery. In keeping with this aim, there was a high degree of consensus on the need to restrict and limit the use of segregation, seclusion, and restraint, which can be at odds with recovery principles.

HEALTH-CARE PARITY

Key informants and survey respondents also spoke about the need to ensure health-care parity. In the scoping review, parity of care was discussed in the context of mental health care in the criminal justice system, where it has two important elements:

- ensuring that a quality health-care standard is equivalent to what exists in the community
- ensuring that "medical decisions with respect to mental health are taken independently of decisions regarding corrections and the administration of justice"[12] (p. 78)

Thus, parity of care means that mental health recovery is recognized as a distinct human right, independent of rehabilitation planning.[13]

Major challenges and opportunities

For the key informant interviews and the survey, we asked what people saw as the main challenges and opportunities in seeking to improve mental health for justice-involved persons. Because many responses overlapped, we combined them under the following key themes:

ACCESS TO EARLY INTERVENTION AND PREVENTION

> Many of the individuals encountering the criminal justice system who are also struggling with mental illness have been failed by other community supports (no housing, no employment opportunities, no readily accessible treatment providers), and then they are thrown into a system that is ill-equipped to handle their needs.
>
> — survey respondent

The key informants and survey respondents spoke of the need to improve access to early intervention services and supports for justice-involved persons. These services and supports included housing, education, employment, among others, as well as timely access to mental health treatments. Many described this issue as both a major challenge and a major opportunity.

We also heard about several factors that prevent or delay access to early intervention services and supports. These include:

- The general shortage of mental health professionals (contributes to long wait times), which includes insufficient incentives and supports to hire and retain qualified staff.
- The stigma associated with mental health problems and illnesses, which may be compounded by the stigma around criminal justice involvement.
- A relative shortage of safe-bed programs, transitional housing, safe consumption sites, and other community supports.

The scoping review reinforced the need to improve early intervention services and supports:

> Recent research into the health status of people involved in the justice system in Canada, which has included the status of those with mental illnesses, suggests that adverse events in childhood (abuse, neglect and trauma), lack of housing, low educational achievement and low income and unemployment or underemployment are all factors that contribute to justice involvement. Other risky associations stem from histories of recidivism, homelessness, and physical health problems and stigma.[14] (p. 41)

ACCESS TO MENTAL HEALTH COURTS AND PRE-INCARCERATION DIVERSION PROGRAMS

> Diversion, diversion, diversion!
>
> — survey respondent

Another major theme from our listening phase was the need to improve access to mental health courts and diversion programs. Many key informants and survey respondents mentioned that providing more justice-involved persons an alternative path to incarceration was an opportunity for better recovery and reduced recidivism rates.

> **Mental health courts.** Specific criminal law courts for persons with lived and living experience of mental health problems and illnesses or other related issues.
>
> **Diversion programs.** Programs for people with lived and living experience who have been charged with a minor offence (used to "divert" people from the criminal justice system and link them with mental health services).
>
> **Recidivism.** The tendency for persons who have been previously justice-involved to be re-exposed to the criminal justice system.

Similarly, the scoping review found that

> diversion programs are seen as important facilitators of access to care for justice-involved people, though this is itself an outcome partly of care scarcity. Those appearing before mental health courts, or before ordinary courts with mental health-related support services, have high levels of unmet needs and a lack of connection to supports before coming into contact with the justice system.[15] (p. 56)

IMPROVEMENT TO THE CONTINUITY OF CARE

All three sources of evidence showed the need to improve the continuity of care for people living with mental health problems and illnesses who interact with the criminal justice system. Different authorities govern health and mental health services within and across different Canadian jurisdictions. So there was widespread agreement that these circumstances lead to disruptions in services as people transition from the community to corrections or from provincial/territorial corrections to federal corrections and vice versa.

It was also noted that disruptions in care may hinder a person's ability to recover or improve their quality of life and manage their symptoms. In addition, they can often interfere with a person's access to medications owing to the lack of information sharing (i.e., access to patient records). Such interruptions can lead to delays in a person's access to necessary medications, repetitions of medications in a course of treatment, and in forcing people to switch medications, depending on whether or not they are allowed to in a given jurisdiction.

The factors contributing to discontinuity of care included

- a general lack of coordination between health, mental health, social services, and corrections
- the need for better coordination between provincial/territorial and federal correction systems
- the need for a more collaborative approach across different disciplines and systems.

As the scoping review found, a major health need for people who are justice-involved is

> to have a *continuity of care* maintained at all transition points into and out of the supervision of the justice system, access to consistent care providers and with no gaps in medication or treatment that has been determined by a clinician to be necessary.[16] (p. 45)

QUALITY OF MENTAL HEALTH SERVICES AND SUPPORTS IN CORRECTIONS

The quality of mental health services and supports in corrections was seen as a major impediment to improving mental health among persons who are justice-involved. Many key informants and survey respondents described the quality of mental health care as poor, lacking consistency across jurisdictions, and limited because of its punitive nature (e.g., a focus on curbing public safety concerns rather than supporting rehabilitation, as in recovery-oriented care).

A few suggestions were put forward on how to improve the quality of mental health services and supports in corrections:

- training in mental health literacy and crisis de-escalation for justice system professionals, specifically, corrections officers
- training in peer-to-peer mental health support for people who are incarcerated
- having recovery-oriented principles encompass how mental health services are delivered in conjunction with the need to limit the use of coercion, seclusion, and restraint

Regarding this last point, the scoping review found that justice-involved people need to "receive mental health care in the least-restrictive environment consistent with principles of justice and public safety, and according to *standards of custody* that do not compromise their mental health" (p. 45).[17]

ACCESS TO MENTAL HEALTH SERVICES AND SUPPORTS IN CORRECTIONS

Accessing mental health services and supports in a correctional environment was another major theme from our listening phase. While services may be available, many barriers to access exist. These include:

- general issues with trust and the lack of privacy[*]
- an overall shortage of mental health professionals in corrections
- stigma associated with mental health issues

A major need identified in the scoping review is to "have internal barriers to accessing available services addressed through *in-reach* . . . that addresses stigma, shame and concerns about care quality" (p. 45).[18]

ACCESS TO REINTEGRATION SUPPORTS WHEN TRANSITIONING INTO THE COMMUNITY

> With overcrowding in the correctional systems, it is more and more challenging to address mental health issues within the institution itself; however, having better access to resources such as housing opportunities or transitional units for discharge planning will assist and link these individuals to a more stable reintegration without feeling that they have nothing when they come back into the community.
>
> — survey respondent

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[*] Mental health professionals in correctional settings must report a patient's health outcomes on records eventually used for parole hearings.

Several key informants and survey respondents cited discharge planning and reintegration into the community as major challenges to the mental health of people who are justice-involved.

People in both groups felt that the quality of discharge planning varied greatly across systems and jurisdictions, creating inequities for those who need to access mental health services and supports in the community. In many jurisdictions, people who are incarcerated can be left with little or no resources and no knowledge of where to access services after they are discharged.

The considerations for community reintegration and supports that were specifically mentioned include

- access to general supports for those reintegrating back into the community (e.g., access to housing, education supports, employment services)
- access to substance use and addiction support (owing to the high risk of relapse with certain substances and the risks associated with overdose immediately following release)
- stigma around justice-involvement (a barrier to accessing mental health services and supports in the community).

Another major mental health need identified in the scoping review was for people to "have access to the social determinants of good mental health, first and foremost, to *safe and adequate housing*, especially when being released from custody" (p. 45).[19]

Needs of priority populations

Our three sources of evidence mainly discussed the specific and unique mental health needs of two priority populations in the criminal justice system: FNIM and women. The scoping review found that the prevalence rates of any mental illness diagnosis for both priority populations are higher when compared to the rest of the incarcerated population.[20]

Prevalence rates of select priority populations:

- 83% of federally incarcerated FNIM men met the criteria for one or more current[*] mental disorders.[21]
- 79% of federally incarcerated women met the criteria for a current mental disorder.[22]
- 95% of federally incarcerated FNIM women met the criteria for a current mental disorder.[23]

While discussing priority populations as separate groups, we recognize that each individual has multiple factors that make them unique (sometimes referred to as intersecting identities). These different identities and experiences also contribute to overlapping mental health needs among people who identify with numerous priority populations.

FIRST NATIONS, INUIT, AND MÉTIS

All three sources of evidence discussed the needs of FNIM persons in the criminal justice system, given their continued overrepresentation and disproportionate rates of incarceration. While representing about five per cent of Canada's population, FNIM persons account for more than 30 per cent of all

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[*] Defined as prevalent at the time of the study.

federally incarcerated adults. Among women, FNIM persons now make up 42 per cent of the inmate population.[24]

Many key informants and survey respondents discussed how the mental health needs of FNIM persons involved with the justice system are generally similar to those of non-Indigenous people; for example the importance of addressing issues around housing, employment, and substance use. However, doing so for FNIM persons must come from a perspective of cultural safety: understanding the long-standing legacy and impacts of colonialism and intergenerational trauma.

As the scoping review found, "Culturally-safe and responsive mental health programming, which is informed by an understanding of the experiences and barriers faced by priority populations and aims to address stigma and improve perceived and actual care quality, can increase the uptake of mental health care in correctional facilities" (p. 11).[25]

WOMEN

Key informants and survey respondents also spoke about the unique needs of women involved in the criminal justice system. While women make up a smaller portion of the prison population, programs and policies sometimes overlook their specific needs and realities. Consequently, some key informants spoke about the need to embed sex- and gender-based analysis into mental health strategies and have more gender-responsive approaches to mental health services and supports for justice-involved women. Others spoke about the need to consider gender-based violence when providing services and supports, something that may be overlooked by those working in the criminal justice system.

The scoping review reiterated the need for more gender-responsive programming. Trauma-informed practices are encouraged when developing care models, given that trauma (e.g., due to gender-based violence) is a risk factor for women becoming involved in the criminal justice system: "Overall, the literature indicates [that] integrating gender-specific and trauma-related considerations when developing assessment and treatment strategies for incarcerated individuals is likely to enhance the effectiveness of rehabilitation programs" (p. 84).[26]

OTHER PRIORITY POPULATIONS

Due to resource and time constraints, a major gap in our listening phase included connecting with people who could speak in depth to the needs of other priority populations, including IRER, LGBTQ2+, and linguistic minority communities.

Many key informants and survey respondents recognized that IRER and LGBTQ2+ communities have unique needs in terms of mental health services and supports, both within and beyond the criminal justice system.

They specifically mentioned the overincarceration of Black persons in Canada, who represent about eight per cent of the federal in-custody population[27] yet represent just 3.5 per cent of the total population in Canada.[28] Black persons who are justice-involved also face a greater discrimination while in custody, accounting for 37 per cent of complaints to the office of the correctional investigator between 2008 and 2018.[29]

The oversegregation of transgender people in the criminal justice system was also mentioned during our listening phase. Transgender individuals are often subjected to violence, bullying, harassment, and

sexual assault in correctional facilities,[30] experiences that shape their mental health needs while in the criminal justice system.

Despite these issues, the scoping review found a gap in the literature: that women and FNIM persons are studied much more than IRER or LGBTQ2+ populations.[31]

The MHCC's role

Key informants and survey respondents were asked, "What role do you see the MHCC playing in this area? Among all these issues, which should be the sole or major ones focused on from a national perspective?"

The top three responses to the MHCC's role in advancing mental health in the criminal justice system were as follows:

IDENTIFYING AND SHARING BEST PRACTICES

Participants recommended that the MHCC work to share the existing promising practices at all levels (local, provincial/territorial, national, international). A lot of the work already being done around mental health services and supports for justice-involved persons is not being shared. The MHCC could identify these best practices in policy and programs and link them to different communities and systems across the country.

This process should include best practices on a range of issues; for example, preventing entry into the criminal justice system, addressing mental health treatments in the criminal justice system, best guidelines and standards on providing mental health services and supports, and supporting reintegration back to the community.

ADVOCATING FOR JUSTICE-INVOLVED PERSONS AND REDUCING STIGMA

Key informants and survey respondents recommended that the MHCC act as an advocate for persons who are justice-involved. Even within the mental health system, stigma associated with this population adds barriers to the care they need in the community.

They also recommended that the MHCC advocate for better federal policies to strengthen mental health across the continuum of justice involvement. This advocacy includes reforms to existing legislation, greater funding and training, increased and more diversified access to mental-health-related services, and further support addressing the social determinants of health for people that are justice-involved (e.g., the right to housing, employment, and financial supports).

FACILITATING COLLABORATION BETWEEN STAKEHOLDERS

Participants recommended that the MHCC act as a convener to help people across sectors identify the biggest challenges and to bridge the gaps in research and policy. This role would include improving and strengthening collaboration between all stakeholders in the criminal justice system, the mental health system, and community-based organizations that provide social services.

Limitations

This listening exercise was conducted for the purpose of informing the MHCC's next steps in mental health and the criminal justice system. It was not undertaken as a formal research project and does not represent all the perspectives on this topic. The ideas presented in this report summarize "what we

heard" from external stakeholders and other sources and does not necessarily represent the views of the MHCC.

Next steps

Through the key informant interviews, survey, and scoping review, we gained a better understanding of the challenges and opportunities for supporting the mental health of persons who are justice-involved. We also learned more about where the MHCC could, in alignment, collaboration, and the guidance of key stakeholders, potentially support further action.

Our next steps include:

1. Sharing, discussing, and validating these results with experts in the sector.
2. Further refining where the MHCC is best suited to
   a. align the organization with activities and other stakeholders
   b. support others
   c. respond to service and system needs, gaps, and opportunities.
3. In accordance with steps 1 and 2, propose future MHCC projects to our funder, Health Canada, to improve mental health services and supports for people who are justice-involved.

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Mental Health Commission of Canada

Suite 1210, 350 Albert Street
Ottawa, ON K1R 1A4

Tel: 613.683.3755
Fax: 613.798.2989

mhccinfo@mentalhealthcommission.ca
www.mentalhealthcommission.ca

 @MHCC_   /theMHCC   /1MHCC   @theMHCC
/Mental Health Commission of Canada