Mental Health in the Context of Canada’s Youth Justice System

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The high prevalence rate of mental health difficulties in youth involved in the justice system raises concerns as well as numerous questions for research, policy, and practice. In this article we examine several aspects of the intersection between mental health and Canadian youth justice policy and practice, with a particular focus on describing models of the relationship between mental health problems and justice system involvement and considering the implications of these models for the effective assessment and treatment of justice-involved youth. Our review highlights that research examining this relationship has suffered because of lack of communication between clinical and correctional researchers, and that the assumption regarding the causal role of mental health issues in offending behaviour needs much more attention. Recommendations following this review include widespread mental health screening for justice-involved youth, greater uptake on the available sections of the Youth Criminal Justice Act that allow for specialized assessments and sentencing for youth with mental health concerns, and a research agenda that focuses on the relationship between mental health concerns and criminal behaviour in both boys and girls.

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Le taux élevé de problèmes de santé mentale parmi les jeunes contrevenants est source d’inquiétude et soulève de nombreuses questions en matière de recherche, de politique et de pratique. Dans cet article, les auteurs examinent plusieurs aspects communs entre la santé mentale et la politique de même que la pratique en matière de justice pour les adolescents au Canada, en tenant tout particulièrement de décrire des modèles de corrélation entre les problèmes de santé mentale et l’intervention du système de justice et de déterminer la manière dont ces modèles peuvent servir à améliorer l’efficacité de l’évaluation et de l’encadrement d’adolescents pris en charge par le système de justice. Cet examen nous permet de constater que la recherche portant sur cette corrélation est difficile à faire en raison du manque de communication entre les chercheurs issus du milieu clinique et ceux du milieu carcéral et que la question concernant le lien de causalité entre les problèmes de santé mentale et la délinquance mérite d’être approfondie. Au terme de cet examen, les auteures suggèrent, entre autres choses, un dépistage à grande échelle au sein de la population adolescente prise en charge par le système de justice, un plus grand recours aux dispositions de la Loi sur le système de justice pénale pour les adolescents permettant une évaluation plus fine des adolescents ayant des problèmes de santé mentale et une détermination de la peine individualisée et un plan de recherche se concentrant sur la corrélation entre les problèmes de santé mentale et la délinquance chez les garçons de même que chez les filles.

1. INTRODUCTION AND GOALS OF THIS ARTICLE

Over the last two decades, there has been increasing concern regarding the prevalence and impact of mental health issues for youth involved in the justice system. There is consistent evidence that rates of mental health concerns are much higher among young people involved in the criminal justice system than in the general population.1 More than 90% of justice-involved youth meet minimal diagnostic criteria for at least one mental health disorder2 and rates of serious mental disorder — defined as those severe enough to require significant and immediate treatment — have been estimated in 25% of this population.3 Viewed from the other direction, research similarly indicates that youth with mental health problems have...
significantly greater rates of justice system involvement than those who do not have mental health problems.\footnote{Elizabeth Cauffman et al, “Predicting first time involvement in the juvenile justice system among emotionally disturbed youths receiving mental health services” (2005) 2 Psychol. Serv. 28–38.}

From an ecological perspective, the intersection of mental health and youth justice issues raises concerns at a number of levels. At the broader societal level, the degree of overlap between populations of young people with mental health problems and justice system involvement begs several important questions, including questions concerning the nature of the relationship between these factors. For example, does having a mental health problem increase the likelihood of justice-system involvement and, if yes, is it because the system criminalizes behaviours associated with mental illness? Alternatively, sociologists, criminologists, and legal scholars have questioned whether youth with justice-system involvement and mental health issues share other risk factors (e.g., socioeconomic disadvantage, school problems, and discrimination) that account for their overrepresentation in both the justice and mental health systems. Involvement in the justice system may also exacerbate or even create mental health difficulties. Understanding the nature of the relationship between justice involvement and mental health at this “macro” systems level has significant implications for policy and for fundamental fairness and justice for young people.

Concerns within the youth justice system are related to, but not synonymous with, these broader questions. In terms of creating and implementing legislation, it is important to consider the implications of how the relationship between mental health and offending is modeled for questions with respect to findings of guilt (e.g., ability to form criminal intent, culpability) as well as for sentencing (e.g., assessment of risk, proportionality). In terms of correctional and community practice — particularly when the goal is “rehabilitation” — it is important to understand how mental health issues relate to risk of future offending in order to promote effective assessment and intervention practices (i.e., those associated with reduced offending). A growing body of research — largely within the discipline of psychology — has addressed this latter issue.

The goal of this article is to examine several aspects of the intersection between mental health and youth justice in Canadian youth justice policy and practice from a psychological perspective. We begin our discussion by describing how mental health has been considered in youth justice legislation and associated policy. We next review perspectives on the relationship between mental health problems and justice system involvement — and, in particular, whether mental health is a “risk factor” for offending — and provide a theoretical context through which to define this inquiry. The implications of these perspectives for effective assessment and treatment of justice-involved youth is illustrated through findings from our ongoing research program.
2. MENTAL ILLNESS AND YOUTH JUSTICE LEGISLATION

Within Canada’s youth justice legislation, the Youth Criminal Justice Act, references to mental health issues appear in connection with assessment, detention, and sentencing, and within Canada’s Criminal Code there are sections related to criminal responsibility and mental disorder, as well as fitness to stand trial, which are also relevant to youth. Provisions of the Criminal Code that relate to a defence of mental disorder apply to young people unless they are inconsistent with, or excluded by, the Act. Similarly, if there are concerns about a young person’s fitness to stand trial due to intellectual disability or mental disorder, the Criminal Code definition and provisions regarding assessment are applied. However, findings of not criminally responsible (NCR) and unfit to stand trial are quite rare in the youth justice system. Although statistics specific to NCR and fitness decisions related to youth could not be obtained, federal reporting of youth cases completed in court in 2010/11 and 2011/12 indicate that only 1% of cases fell into a category that included NCR, unfit, case transferred outside the province or territory, cases where the court accepted a special plea, and cases involving Charter arguments.

Mental health issues receive more attention in the YCJA in relation to detention, dispositions, and assessments. In the YCJA, mental health appears to be considered in several different ways that reflect the attempt to balance a community focus (community safety, public protection — and accompanying connotations of risk) with a youth focus that includes the protection of young people’s rights and an emphasis on rehabilitation and reintegration as key approaches for addressing offending behaviour. For example, from a public protection perspective, mental illness as a condition that poses risk to community safety is reflected in the YCJA section on applications for continuing custody for youth whose mental disorder renders it likely that the young person will commit a serious violent offence prior to the expiry of his/her youth sentence. From a youth rights perspective, the impetus to reduce the overreliance on punitive and intrusive measures against young people and incarceration in particular, which was recognized as increasingly problematic under the previous youth justice regime, is reflected in the statements that pre-trial detention and custody are not to be used “as a substitute for appropriate child protection, mental health or other social measures”. Protection of young peo-
ple from undue interference with their rights is also reflected in the statement that none of the sentencing provisions outlined in section 42 of the Act diminishes youths’ rights with respect to consent to physical or mental health treatment or care.15

Specialized sentencing options under the YCJA highlight the intersection of the focus on community safety and the concern for youth mental health. For instance, the Intensive Rehabilitative Custody and Supervision (IRCS);16 is a “therapeutic sentencing option . . . for youth suffering from a mental illness or disorder, psychological disorder or an emotional disturbance”17 who have been convicted of serious violent offences and for whom the plan of treatment is likely to reduce the risk of committing a serious violent offence. Similarly, as an alternative to custody, Intensive Support and Supervision Programs (ISSP)18 may be ordered so that youth with mental health needs can receive necessary supports and supervision as part of a community sentence. Moloughney19 reported that since the ISSP sentence became an option in Ontario in 2005, an average of 117 young people per year received an ISSP sentence as part of their community based sentence. In addition to these specialized mental health sentencing options, judges may also attach conditions involving mental health treatment to community dispositions such as probation.20

Also at the nexus of community safety and mental health need, the YCJA contains provisions for assessment of youth where there are concerns about mental health (in addition to other issues such as physical health, intellectual functioning, and learning disabilities).21 Such assessments are typically carried out by psychologists or psychiatrists to assist courts with disposition planning, and may include an explicit focus on risk to reoffend in addition to an examination of mental health and intellectual functioning. However, there is a paucity of information available on why and how youth are referred for these assessments, which are conducted on a very small proportion of youth.22 Our review of referrals from a large provider of s. 34 assessments to Ontario youth courts revealed that, aside from a disproportionate

15 Youth Criminal Justice Act, SC 2002, c 1, s 42 (8c).
16 Ibid at (7).
18 Youth Criminal Justice Act, SC 2002, c 1, s 42(2) (l).
19 Trish Moloughney, “Ontario’s Community-Based Mental Health Responses for Youth in Conflict with the Law” (paper delivered at the Canadian Criminal Justice Association Pan-Canadian Congress, October 2011), [unpublished] [Moloughney].
21 Youth Criminal Justice Act, SC 2002, c 1, s 34(1) (i).
22 Lindsey A. Jack and James R. P. Ogloff, “Factors affecting the referral of young offenders for medical and psychological assessment under the Young Offenders Act” (1997) 39 Can J Criminol 247 at 273. See also Tracey A. Vieira, ’Matching court-ordered services with youths’ clinically-identified treatment needs: Predicting treat-
number of youth sex offenders, there was no discernible pattern with respect to the youths referred by judges (e.g., offence type, history of offending, offender age, etc.). This is consistent with reports from a qualitative study of Ontario youth court judges that their decisions to refer a youth for assessment are driven largely by the specific facts of the case, although judges suggested there needs to be some indication of a mental health concern to warrant a referral.23

It remains unclear, however, how young people’s mental health issues come to the attention of the court. In Ontario, at least, there is no systematic screening for mental health problems for youth before the courts, although some agencies that provide youth justice services incorporate such screening into their assessment protocols. Ontario does have a Youth Mental Health Court Worker program, which involves diversion of youth whose primary issues are related to mental health rather than criminal behaviour.24 While the role of the youth mental health court worker appears to differ depending on the particular setting or employment context, an environmental scan of various programs across Ontario suggests that these workers do not engage in systematic screening of youth before the courts; rather, youth with potential mental health concerns come to the attention of the worker through referrals by judges, legal counsel, parents, or youth self-referral.25

While the notion that youths’ mental health needs are being identified by many people other than those with specific mental health training may be troubling (particularly to those who do have such training), there are multiple and conflicting views regarding the advisability of widespread screening of youth who have not been found guilty of an offence. Such a program would provide a systematic means of identifying young people who require more in-depth assessment and mental health supports as well as selection into mental health diversion programs and mental health courts — see below. However, the adversarial nature of the youth justice system militates against this approach; although screening may not be considered overly intrusive, per se, in depth assessments may be viewed as highly intrusive and often not in a youth’s best interests, legally. For example, under the Young Offenders Act,26 Bala noted that some defence counsel were reluctant to refer clients for mental health assessments because “information about mental or emotionally troubled youth could result in a more intrusive sentence being imposed.”27 In addition, although universal youth mental health assessment is likely not feasible financially, screening is much less expensive and much less intrusive. Given the known rates of mental health issues in this population it has been argued


24 Moloughney, supra note 19.

25 Ibid.

26 Young Offenders Act, RSC 1985.

27 Bala, supra note 8 at 416.
that systematic screening should be considered crucial.28

A common thread in the above review is that many of the aspects of the YCJA that deal with mental health (e.g., IRCS or ISSP dispositions, s. 34 assessments, or NCR or unfit findings under the Criminal Code) arise quite infrequently in the day-to-day functioning of the youth justice system. Their rarity stands in contrast to the high prevalence of mental health problems in youth before the courts and suggests that the mental health issues of many young people may not be identified or reflected, at least in a formal way, in their interactions with the youth justice system. As noted at the beginning of this article, in order to analyze policy and practice with respect to mental health in the context of the youth justice system, it is critical to understand not only the scope of the concern but the nature of the relationship between mental health problems and youths’ justice system involvement. In the following section we discuss this issue.

3. PERSPECTIVES ON THE RELATIONSHIP BETWEEN MENTAL HEALTH ISSUES AND JUSTICE SYSTEM INVOLVEMENT

McCormick, Peterson-Badali, and Skilling29 provide a comprehensive analysis of psychology-based research on the relationship between mental health problems and youth justice system involvement. They note that much of this literature — which they group under the label “psychopathology perspective” — does not identify an explicit theoretical model of the relationship between mental health and justice system involvement. Studies share an interest in the prevalence of mental health problems in the youth justice system and advocate for treatment based on the assumption that mental health problems predict offending behaviour and should be treated in order to improve outcomes, including but not limited to reoffending. The Intensive Rehabilitative Custody and Supervision and Intensive Support and Supervision Program are examples of programs that reflect this model of the relationship of mental health problems to offending behaviour. Similarly, and discussed in greater detail below, specialized mental health courts for youth appear to share the same assumption regarding the causal role of mental health issues in offending behaviour.30 Following from this, the logic models underlying these initiatives share a focus on directly addressing mental health concerns in order to reduce the likelihood that young people will reoffend.31

In contrast, literature on the psychology of criminal conduct addresses the relationship between mental health and offending in a model whose explicit goal is to reduce reoffending. Exemplifying this approach, the Risk-Need-Responsivity (RNR) model is a theoretically-based framework for the assessment and treatment

31 Ibid. See also Moloughney, supra note 19.
of offenders that has been widely adopted in correctional and community settings within and beyond North America. Focused on proximate, individual-level risk factors for criminal behaviour,\(^{32}\) the framework outlines an evidence-based approach for evaluating an individual’s risk to reoffend and identifying the specific factors (criminogenic needs) that must be addressed to reduce risk, while paying heed to treatment modality (general responsivity) as well as individual characteristics such as cognitive ability, learning style, and motivation that may impact the effectiveness of interventions (specific responsivity). The RNR framework has itself expanded from a focus on risk prediction and offender classification to a more comprehensive approach that views assessment as the basis for the development of a case management plan.\(^{33}\)

Within the RNR framework, mental health problems are generally construed as weak predictors of offending and are therefore not considered criminogenic needs (i.e., risk factors) in assessment and treatment planning. The corollary is that mental health issues should not be the primary target of rehabilitative interventions; rather, interventions should focus on strong, direct predictors of recidivism such as antisocial attitudes, peers, and personality features. Mental health issues are captured under the construct of specific responsivity, however. Such factors are considered important to address in treatment because they have an impact on the success of interventions targeting criminogenic needs (i.e., they moderate the success with which criminogenic needs can be addressed). For example, while there is little empirical support for mood disorders such as depression or anxiety as direct contributors to criminal offending,\(^{34}\) treating an individual’s depression may enhance the likelihood that he or she will be able to attend and engage in interventions targeted at criminogenic needs (e.g., cognitive-behavioural treatment aimed at addressing antisocial attitudes and cognitions).

A close reading of the literature from these two frameworks further suggests a significant distinction in the way they have conceptualized mental health issues that may account for some of the differences in the way the relationship to offending has been modeled. That is, research within the psychopathological perspective considers a broad range of mental health diagnoses, typically including any disorder from the Diagnostic and Statistical Manual of Mental Disorders (DSM-5)\(^{35}\) while the analysis in the RNR framework is narrower and more granular, focusing on


\(^{33}\) Andrews and Bonta, ibid.


specific features associated with offending outcomes.\textsuperscript{36} For example, impulsivity — which is identified as a criminogenic need in the RNR framework\textsuperscript{37} — is one feature of the diagnosis of Attention Deficit-Hyperactivity Disorder.\textsuperscript{38} Similarly, stealing, threatening others, physical aggression, and defiance of rules and authority figures are captured together within the diagnosis of Conduct Disorder, but in the RNR framework these features are categorized as criminogenic needs. Thus, features that are strongly empirically associated with offending are described in mental health terms in the psychopathology literature but as criminogenic needs in the RNR literature. The corollary of the RNR conceptualization is that most features of most mental health disorders are \textit{not} criminogenic. Andrews and Bonta\textsuperscript{39} describe these as personal, emotional distress and/or psychopathology variables. Following from this conceptualization, disorders such as depression and anxiety that are not strongly related to offending are categorized as responsivity considerations — to be attended to \textit{alongside} primary criminogenic needs targets.

Why does this distinction matter for policy and practice? One important implication relates to the evidence basis for \textit{what} is assessed and subsequently targeted in rehabilitative services and case management. Within the psychopathology perspective, the focus on broad categories of mental health is consistent with an assessment approach that focuses on diagnosis in the traditional medical model vein. Again, this is reflected in the inclusion criteria for youth justice programs such as the IRCS and ISSP, as well as for processing through specialized youth mental health courts. Seen through a RNR lens (which is typical of the approach taken by youth probation services in many Canadian jurisdictions), it is critical to assess specific criminogenic needs and responsivity features \textit{regardless} of whether or not these features occur in the context of a diagnosable disorder.

4. EFFECTIVELY INCORPORATING MENTAL HEALTH INTO YOUTH JUSTICE INTERVENTIONS

(a) Mental Health as Responsivity

There is a substantial body of research supporting the predictive validity of RNR-based assessment tools as measures of risk for recidivism and — perhaps more importantly — supporting the efficacy (in terms of reduced reoffending) of directing service at young people’s identified criminogenic needs.\textsuperscript{40} In contrast, multiple meta-analyses\textsuperscript{41} have pointed to the ineffectiveness of interventions aimed at reducing recidivism that do \textit{not} address the criminogenic needs identified in the RNR framework, including studies of programs that aim to reduce individuals’ reoffending primarily by addressing their mental health needs. If the goal of a pro-

\begin{itemize}
  \item McCormick et al. \textit{supra} note 29.
  \item Andrews and Bonta, \textit{supra} note 32.
  \item APA, \textit{supra} note 35.
  \item Andrews and Bonta, \textit{supra} note 32.
  \item Andrews and Bonta, \textit{supra} note 32.
\end{itemize}
gram is to reduce young people’s recidivism, it is necessary to assess and target the variables that are causally related to their offending behaviour. Clearly identifying program goals and the evidence-based means to achieve those goals is also necessary.

As discussed above, while some features associated with mental health issues are defined as criminogenic needs in the RNR framework, mental health issues largely fall into the category of responsivity factors, which (in theory) are important to target in order to increase the likelihood that interventions designed to reduce offending will be successful. Unfortunately, there is a dearth of research examining mental health in terms of responsivity and more research is needed in this area. As McCormick et al. note, this research would expand the RNR literature and provide a platform for inclusion of psychopathology-informed research by clarifying the contribution of responsivity variables and demonstrating how mental health can be understood and integrated with criminally-focused interventions. Findings from one of our recent studies indicate that, in a group of youth who underwent s. 34 assessments, those who received mental health services in accordance with assessment recommendations were also more likely to receive services targeting their identified criminogenic needs. This effect was seen for certain criminogenic needs areas, namely family functioning, education, and personality/behaviour. Those youth who had more criminogenic needs addressed through intervention were, in turn, less likely to reoffend.

It is currently unclear why youth receiving mental health intervention also received more criminogenic needs intervention. One interpretation is that this is a “systems” effect in that youth with mental health needs are somehow flagged for more comprehensive services (whether wraparound services, or greater engagement and advocacy from their probation officer). Another interpretation — which is consistent with the RNR principle of specific responsivity — is that youth whose mental health needs are addressed are able to more successfully engage in services targeting their criminogenic needs. Unfortunately, in our research many youth had neither their identified mental health nor their criminogenic needs met through intervention services. Identifying causes of these service gaps is a pressing research and practice issue.

(b) Mental Health Factors in Girls (and Boys): Risk or Responsivity?

While the RNR framework has received substantial empirical support for its use in risk assessment and effective intervention to reduce youths’ reoffending, it is not without its vocal critics, who have challenged various aspects of the framework ranging from its narrow focus on offending at the expense of a broader view of offender well-being to its assertion that the risk factors identified in the model apply universally (e.g., irrespective of gender or ethnicity). Indeed, there is currently a spirited dialogue regarding whether mental health needs contribute to crim-

42 McCormick et al., supra note 29.
43 Ibid.
inal behaviour differentially for women and men. Work from scholars approaching the treatment of female justice-involved youth from a “gender-responsive” perspective point to several potential “gender-specific” factors — those deemed critical for females but not for males — and “gender-sensitive” factors — those identified as important factors for all but that are even more meaningful for females — that could have a substantial impact on outcomes for justice-involved female youth. Theory and research from this perspective identify factors such as mental health needs, relationship dysfunction, and abuse histories as particularly significant when dealing with justice-involved female youth.46 However, while these factors are doubtless relevant to the experiences of many girls and women, they have not generally been empirically established as criminogenic needs — i.e., as strong and direct predictors of criminal offending.

As discussed above, within the RNR framework, these gender-specific/sensitive mental health needs would be conceptualized as responsivity factors that should be taken into account when planning effective treatment and intervention delivery. However, the “what” and the “how” of incorporating these factors into practice with girls and women is not yet well articulated. Indeed, while the RNR framework has underpinned the creation of assessment tools that have proven to be robust predictors of risk to reoffend, support for its efficacy in reducing recidivism through treatment targeted to individually-assessed criminogenic needs has only recently begun to be explored. In one of the first studies to examine this issue, Vieira et al.47 reported a positive relationship between treatment matching (i.e., the extent to which youths’ assessed criminogenic needs were addressed through intervention services) and reduced reoffending in a sample of justice-involved youth.

A follow-up study comparing the effect of treatment matching on recidivism in male vs. female justice-involved youth found that while females and males were similar in the quality and quantity of their identified criminogenic needs, and while they had these needs met through probation services at a similar rate, the matching of services to criminogenic needs was significantly more effective in reducing recidivism for males than for females.48 One possible explanation for this finding is that, in addition to the gender-neutral criminogenic needs outlined in the RNR

45 Dana Jones Hubbard and Betsy Matthews, “Reconciling the differences between the “gender-responsive” and the “what works” literatures to improve services for girls” (2008) 54 Crime Delinqu 225 at 258.


47 Vieira et al, supra note 40.

48 Nina A. Vitopoulou, Michele Peterson-Badali, and Tracey A. Skilling, “The relationship between matching services to criminogenic need and recidivism in male and fe-
framework, there are gender specific criminogenic needs (e.g., mental health factors) that are currently going unaddressed in treatment, resulting in an intervention framework that is less effective for girls than for boys. Alternatively, as described above, gender-specific variables may function as responsivity factors in that they impact the effectiveness of interventions targeting criminogenic needs.

Trauma is an example of a mental health issue that can be examined in this way. It is highly prevalent in justice-involved populations, with estimates of diagnosed Post-Traumatic Stress Disorder as high as 38% in justice-involved female youth. Trauma-related factors also appear to be gender-specific in that psychopathology, family dysfunction, and maltreatment histories are reported at higher rates for female youth than for their male counterparts. As such, the role of previous traumatic experiences and symptoms of post-traumatic stress have frequently been posited by “gender-responsive” scholars as key needs of many female justice-involved youth that may put them at risk for contact with the justice system.

To examine whether traumatic stress represents an additional gender-specific criminogenic need or if it is better conceptualized as a responsivity factor, the relationship between post-traumatic stress symptomology, gender, and RNR criminogenic needs was explored in 410 male and female justice-involved youth who received s. 34 assessments at a mental health centre in a large Canadian city. Approximately 34% of females and 29% of males fell into a “high post-traumatic stress” category, with scores in the clinical range; there were no significant gender differences in group membership. In addition, the presence of high levels of post-traumatic stress symptoms was not found to be an independent predictor of recidivism over and above the standard gender-neutral measure of risk. However, compared to youth in the “low post-traumatic stress” group, both male and female youth belonging to the “high post-traumatic stress” group had significantly higher overall risk scores, significantly more identified “high” need criminogenic domains, and significantly higher mean criminogenic need scores in the areas of family, education, substance abuse, leisure, and personality.

This pattern of results suggests that the presence of elevated trauma symptomology seems to be a characteristic belonging to an overall higher-need group of justice-involved youth, irrespective of gender, and the conceptualization of trauma as a gender-neutral responsivity factor. Furthermore, the link between elevated trauma symptomology and higher intensity needs across multiple crimi-
nogenic domains may point to the use of trauma treatment as a means to reduce risk and need in those domains. Given advancements in clinical understanding and methods of treating traumatic stress, the explicit inclusion of trauma-focused assessment and treatment plans for justice-involved youth may be an important next step in community and corrections rehabilitative practice.

(c) Research on Current Approaches to Mental Health in Youth Court and Youth Dispositions

In addition to understanding the theoretical and clinical applications of research, it is also important to understand how mental health needs are conceptualized and addressed within the justice system itself and how such evidence can inform rehabilitation. Two recent studies focused at the front lines of youth justice practice shed light on this issue.

(i) A Process Evaluation of Toronto’s First Youth Mental Health Court

As noted earlier in this article, concerns regarding the prevalence of mental health needs amongst justice-involved youth have led to the development of specialized programs within the criminal justice system. One of the more recent developments has been the adaptation of adult mental health court programs for young people. Mental health courts were first introduced in the United States with the goal to divert adult offenders with mental illness out of the criminal justice system and into community treatment as a way of holding them accountable for their crime and protecting public safety.53 The first adult mental health court was introduced in Canada in 1998.54 Generally, mental health courts for adults have been shown to improve access to treatment services55 and are moderately effective in reducing re-arrest amongst defendants.56

The first youth mental health court in Canada was established in 2008; since then, programs have been implemented in several communities in Ontario. Despite their popularity, these programs suffer from a dearth of research evidence to guide their structures and processes. For instance, one of the few empirical studies available is a published dissertation reporting on an evaluation of a mental health court in the United States. The evaluation revealed that youth mental health court defendants showed a significant reduction in the average number of criminal offences incurred prior to their court involvement and at follow up. Such findings were attributed to the treatment services that youth received, as well as the close monitoring

and individualized attention provided by the court. While these results are promising, more research is needed to understand the mechanism of change underlying these outcomes.

To address these research questions, Davis, Peterson-Badali, and Skilling conducted a process evaluation of a youth mental health court in Toronto, Ontario, which explored the program’s logic model and adherence to evidence-based practice for treating mental health needs of justice-involved youth. In terms of areas of strength, the court was found to promote an atmosphere of youth and family engagement as well as of respect for youth. The collaboration within the mental health court team (i.e., judge, defence counsel, crown attorney, and youth mental health court worker) and their dedication to supporting youth and their mental health needs was also noted. Such strengths are important for promoting a less adversarial environment as well as greater program engagement amongst youth.

A review of the court’s program model revealed that the goal of reducing recidivism was based entirely on the treatment of mental health needs. As noted above, treatment of mental health needs in isolation may not be sufficient for reducing reoffending for the majority of youth. Indeed, just over two thirds of youth in the mental health court sample had charges that were not directly related to their mental health needs, suggesting that there were additional factors to be considered to understand their offending behaviour. For those whose criminal behaviours are not directly linked to mental health functioning, the adult literature recommends the treatment of both criminogenic and mental health needs in order to reduce recidivism. At the time of the evaluation the court did not have the resources to formally assess or address criminogenic needs and only half of the sample was found to have had broad areas of criminogenic needs addressed in treatment. Recommendations were made for system-wide screening to improve identification of youth with mental health needs within the system, as legal professionals, untrained in this area, were largely responsible for referring youth; this screening recommendation is an echo of the one above in relation to screening for mental health issues more generally in the justice system. Recommendations were also made for comprehensive assessments amongst the youth mental health court population that consider mental health, criminogenic, trauma, and family functioning needs. This information could then be incorporated into a treatment program that is shared with treatment providers. These findings provide important guidelines for implementing evidence-based practice; however, more research is needed to evaluate the outcomes of mental health court programs and impacts of such treatment on future criminal behaviour.


58 Davis et al, supra note 30.

(ii) Consideration of Mental Health Issues in Community Dispositions — Probation Officers’ Perspectives

Given the prevalence of mental health needs amongst justice-involved youth, it is also important to explore the perspectives of front-line staff on how mental health issues might pose challenges to addressing youths’ offending behaviour in the context of community sentences such as probation. In a recent qualitative study of probation officers’ experiences working with community-sentenced youth, mental health issues were frequently raised as a challenge to effective work with youth.60 Probation officers generally viewed mental health issues as impacting youths’ ability to engage with programs and services rather than being directly related to reoffending. For example, several respondents described youth struggling with mental health issues as having significant difficulty attending programming, following through with obligations at school and/or work, and self-medicating with substances, as well as experiencing conflict at home and engaging in limited prosocial leisure activities. Thus, mental health problems were conceptualized by probation officers as responsivity factors that impeded efforts to support young people in reducing their risk of reoffending.

Many probation officers also discussed the need for more work in the area of screening, service availability, and service delivery to justice-involved youth with mental health issues. These issues are particularly important given that youth may show signs of emergent mental illnesses that are not yet clear in terms of etiology and that present quite differently from adults. Practical issues discussed among respondents were their own lack of training in mental health related issues, blocked access to mental health treatment because youth do not meet certain diagnostic criteria, multiple assessments without any intervention taking place, and long waitlists for appropriate services. There also appeared to be a lack of clear guidelines and training provided to frontline workers about exactly how responsivity variables (especially mental illness) ought to be taken into account in case management and service provision.

Finally, probation officers highlighted that there were some features of criminogenic risk factors (e.g., short attention span, low frustration tolerance, impulsivity) that were more challenging to work with when they were present in the context of a mental health disorder (e.g., ADHD or Fetal Alcohol Spectrum Disorder) than when they occurred independently of mental health conditions. For example, while particular features of substance use disorders are considered criminogenic needs, probation officers identified youth with serious addictions as much more challenging to work with than those without substance abuse. Youths’ addictions often had to be prioritized in terms of service provision due to concerns about safety and because substance use also influenced risk in other criminogenic need domains. In addition, many programs refused to work with youth until they received treatment for their substance abuse.

Taken together, the findings from this study are consistent with theory and emerging research on the role of mental health problems in offending as responsiv-

ity factors. They also suggest that front line workers would benefit from additional training on when and how to address mental health issues in their work with their clients, including how to work with mental health needs alongside young people’s criminogenic needs.

5. CONCLUDING THOUGHTS

Mental health issues are highly prevalent in the youth justice system. Understanding the impact of these issues on youth is still in its infancy. Psychological approaches to understanding the relationship between mental health issues and offending and youth justice system involvement have differed across research disciplines, leading to confusion regarding the causal role of mental health concerns in youth criminal behaviour. Some aspects of certain mental health issues are directly related to risk for criminal behaviour — criminogenic needs such as anger, learning issues, or substance abuse — while others may have an indirect influence — responsivity factors such as mood concerns or cognitive functioning. While it is essential to gain clarity on the relationship between these concerns, it is also clear that regardless of whether the role is indirect or direct, mental health functioning is highly salient to the youth justice system.

Mental health issues are considered in a number of contexts in the YCJA (e.g., IRCS or ISSP dispositions, and s. 34 assessments) but the use of these sections of the Act actually arise quite infrequently in the day-to-day functioning of the youth justice system. In part, this lack of use appears to be related to a lack of systematic screening for mental health concerns by trained personnel. Recommendations following this review include widespread mental health screening for justice-involved youth as well as greater uptake on the available sections of the YCJA that allow for specialized assessment and sentencing for youth with mental health issues. In addition, the role and impact of youth mental health courts, and understanding and addressing mental health needs during community sentences, remain areas that require much further examination. A research agenda that focuses on the role mental health plays in the initiation of criminal behaviour, and on the persistence/desistance of this behaviour in both boys and girls is needed, as is more research on the impact of treating mental health on juvenile justice outcomes.

Effectively assessing and treating mental health concerns will undoubtedly lead to better outcomes for youth, in addition to increasing public safety. Increased funding and attention from policymakers and researchers alike is crucial.