

CCAMHR & Consumer/Survivor Legal Issues

Policy Issue: Should CCAMHR take a position and be involved in legal issues affecting those persons with mental disabilities who find themselves in the criminal law system?

Why is this an Issue? : Persons with mental disabilities do not have the physical or financial resources to function in a system that is foreign to them and that may result in incarceration for an indefinite period of time.

Components of the issue: The issues are complex having to do with special courts for those with mental incapacities, proper assessments, capping (an accused who is found not criminally responsible will not have to spend time in a facility longer than the maximum sentence that would have been imposed if there had been a finding of guilt), early intervention to prevent criminal involvement where the police use the courts as a dumping ground because of inadequate mental health treatment resources and public, judicial and prison education about mental illness.

Target of the Policy: The federal government which is responsible for the Canada Criminal Code, the provincial government which runs treatment facilities for those found not criminally responsible, the court system, the prison system, court workers and the general public.

Analysis: It is the position of CCAMHR that the answers to social issues should not be determined within the narrow scope and provisions of the *Criminal Code*. The treatment of “accused” persons who may or may not be “not criminally responsible” reflects society’s misunderstanding and paternalistic attitude to mental health concerns. There must be substantial changes in attitude by the provincial and federal governments to prevent more persons in need of mental health services being dumped into the criminal law system as a last resort when the front-line contact (the police) has no choice but to arrest persons who cannot be admitted to hospitals for immediate assessment and treatment.

Recommendations and Policies: CCAMHR advocates and pursues the following policies to address the issues of persons needing mental health treatment who come into contact with the criminal law system:

- The expansion in the number of Mental Health Courts developed on the model of Judge Ormston’s court at Old City Hall in Toronto, Ontario; and that these ‘courts’ or diversion systems will only work if sufficient, appropriate and are seamless in services by being: a) available b) accessible and c) deliverable
- Immediate (within 24 hours) assessment for persons charged with a criminal offence to determine “fitness to stand trial”

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- An independent assessment of an accused prior to an hearing by a Review Board to review an offender's disposition
- Capping of sentences to provide that mentally-disordered persons not be kept in custody longer than the maximum incarceration time under the offence for which he/she might be imprisoned if found guilty
- Early intervention and treatment for persons with mental illnesses or disabilities so as to avoid the criminal process altogether
- Education of all officials within the criminal justice system – judges, lawyers, crown attorneys, police, corrections staff, guards and others - with regards to the nature of mental illnesses and the need for appropriate treatment
- The harmonization of the provisions of the *Canada Health Act* with provincial mental health legislation
- The improvement of more appropriate physical settings, and more treatment and support services for those with a mental disability
- The development of a National Action Plan involving federal, provincial and territorial governments which would deal with issues such as the promotion of mental health and the understanding of the challenges the mental illnesses present to Canada in the 21st Century

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