

Canadian Institute for the Administration of Justice

“Ambiguous Crossroads”: Persons with Mental Health Problems and the Criminal Justice System

An Overview of the Challenges

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H. Archibald Kaiser, Professor
Schulich School of Law and
Department of Psychiatry, Dalhousie University

Outline of Presentation

- Glimpses of **History**
- **Criminalization** of Persons with Mental Health Problems
 - Factors That Lead to Criminalization
 - Justice System Dysfunctions
 - The Statistics
- Reducing Criminalization: **Investing in Supports and Services**
 - A Sample of Benchmarks and Aspirations
 - *The Convention on the Rights of Persons with Disabilities*
 - The Mental Health Strategy for Canada
 - The Canadian Alliance on Mental Illness and Mental Health
 - The Criminal Justice / Mental Health Consensus Project
- Strategies for **Improving the Justice System As Well**
 - Diversion
 - Services and Supports
 - Upgrading Police Responses

Strategies for Improving the Justice System As Well (continued)

- Addressing Pretrial Issues
- Improving the Character of Intrusions on Liberty
- **Threats to Human Rights: Reinvigorating Criminalization**
- Erosion of the Social Safety Net
- More Punitive Approaches to Criminal Justice Policy
- Alternatives to Current Criminal Justice Policy
- **Conclusion**

Glimpses of History: Ancient Times

- Mental illness was often attributed to **demonic possession** or as punishment for **sin**, sometimes treated by priest-physicians
- There were **harsh methods** of dealing with people thought to have angered the gods
- Mental health problems were also seen as **forms of witchcraft** requiring persecution
 - **witchhunts to**, sometimes triggered by deviant behaviour and belief that insanity was due to devil possession
- widespread tendencies to **treat people brutally**



<http://www.bowdoin.edu/history/student-research/images/hannah-deblois-woodcut.jpg>



<http://www.oflikeminds.com/Images/Asylum.jpg>

1600-1800

- tendency to house **unwanted people together in poor houses**
 - People with mental illness or disabilities; vagrants; delinquents; poor
- early 1700's saw **beginnings of separate facilities** for people with mental health problems



<http://static.guim.co.uk/sys-images/Guardian/Pix/pictures/2011/2/23/1298478383759/A-Victorian-slum-in-White-007.jpg>



*Madness Shows Signs of Reason, That will be plain, yet not plain
 The signs of Reason, are not plain
 The signs of Reason, are not plain
 The signs of Reason, are not plain*

http://farm4.static.flickr.com/3132/2761285535_5a29408ee6.jpg

1800's

- some reformist trends
 - Pussin and Pinel in France: study and medical care; peer counselling;
 - Tuke in England: benevolence, comfort and sympathy; “moral treatment” (York Retreat)
 - Dorothea Dix (Massachusetts): publicized cruel treatment and lobbied for state hospitals

- **But** the limited success of the bucolic asylums bred their own demise
- **expansion of asylums**, concurrent with upsurge in poverty associated with economic dislocation
 - waves of asylum building in early and late 1800's
 - population of asylums rose quickly
 - comprising people with mental health problems and intellectual disabilities
 - fading of hope: therapeutic pessimism by late 1800's



<http://www.uvm.edu/~lkaelber/eugenics/UT/UT2.png>



<http://www.elderweb.com/sites/elderweb/files/albums/history/145473pr.jpg>

The Twentieth Century

- many instances of **extreme abuse or neglect**
 - Nazi extermination of people with disabilities
 - Soviet use of psychiatry to suppress political dissidence
 - Involuntary sterilization laws and programs in Alberta
 - Montreal depatterning experiments
 - Duplessis Orphans in Quebec
 - Over-utilization of institutions
 - “Treatment” modalities later recognized as human rights abuses, such as the lobotomy



<http://www.robert-priseman.com/wordpress/wp-content/uploads/2009/07/hadamar-01.jpg>

The Fading of the Star of Large Institutions

- by the late 1950's and early 1960's, large institutions were becoming unpopular, with **populations being substantially reduced**
 - recognized as **unhealthy** environments, physically and mentally
 - extreme **overcrowding**
 - **abuse** of patients
 - **denial of patient rights**
 - recognition of **common elements with other civil rights** struggles
 - **new medications** provided relief from symptoms, enabling patients to be treated in the community



http://farm1.static.flickr.com/83/239797239_a9b5da2877.jpg

The End of Large Institutions and the Beginning of New Forms of Neglect

- **depopulation of institutions (decarceration or deinstitutionalization)**
 - was **not** accompanied by **offsetting investments** in community-based services
 - **underinvestment in housing** and other services for many seriously mentally ill people resulted in **homelessness**
 - some argument that “**transcarceration**” or “**transinstitutionalization**” has occurred, owing to the criminalization of people with mental health problems
 - prisons becoming the new asylums



<http://cobbersonthebrain.areavoices.com/files/2011/11/homelessness.jpg>

The Supreme Court of Canada's Historical Conclusions

- “The mentally ill have historically been the subjects of **abuse, neglect, and discrimination** in our society.”
 - approving also the intervenor’s description:
 - “persons with a mental disability have been **systematically isolated, segregated from the mainstream of society, devalued, ridiculed, and excluded** from participation in ordinary social and political processes.” (*R. v. Swain*)
- “the history of disabled persons in Canada is largely one of **exclusion and marginalization** ...
 - excluded from the labour force, denied access to opportunities for social interaction and advancement, subject to invidious stereotyping and relegated to institutions” (*Eldridge*)

Criminalization of Persons with Mental Health Problems

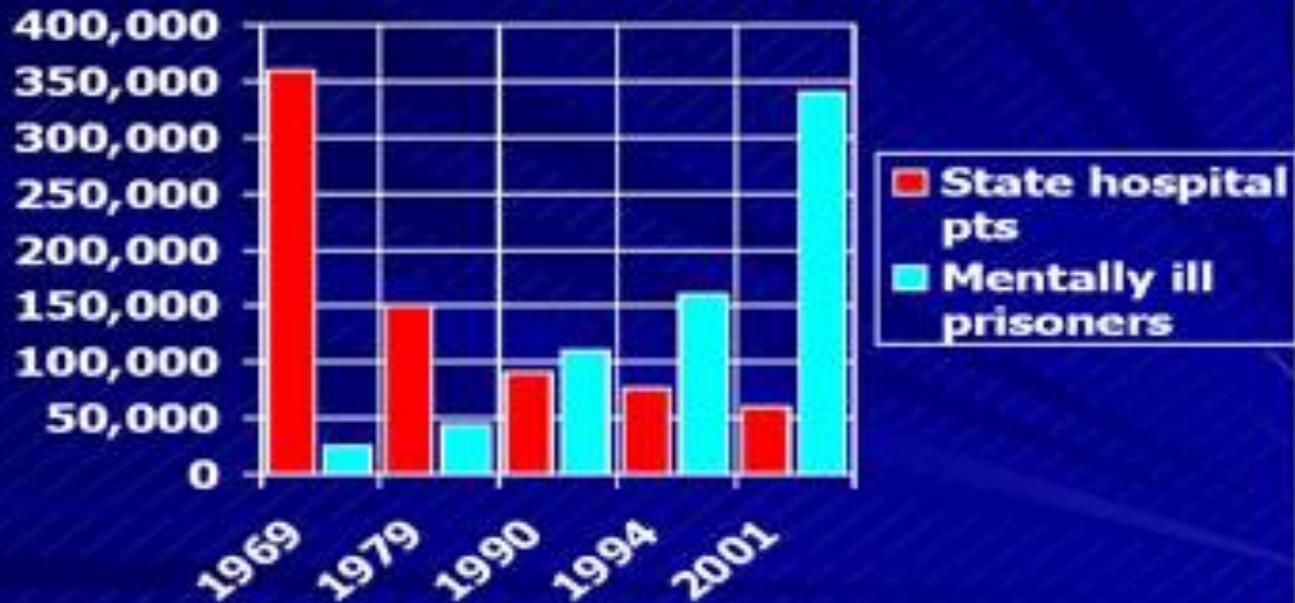
- “where a **criminal, legal response overtakes** a medical [or social services] response to behaviour related to mental illness” (C.M.H.A., B.C.)
- “implies that people are being **inappropriately processed** through the criminal justice system rather than through the mental health system” (The Sentencing Project)

- “falling **outside the country’s social safety net**”, itself shrinking, “and simply ‘landing in the criminal justice system at an alarming rate’” (Luragio, “People with Serious Mental Illness ...”)
- **Neglect of the needs of persons mental health problems**
 - The “orphan” or “poor second cousin” of physical health problems



<http://www.psmag.com/wp-content/uploads/2010/03/MentalHealth2.jpg>

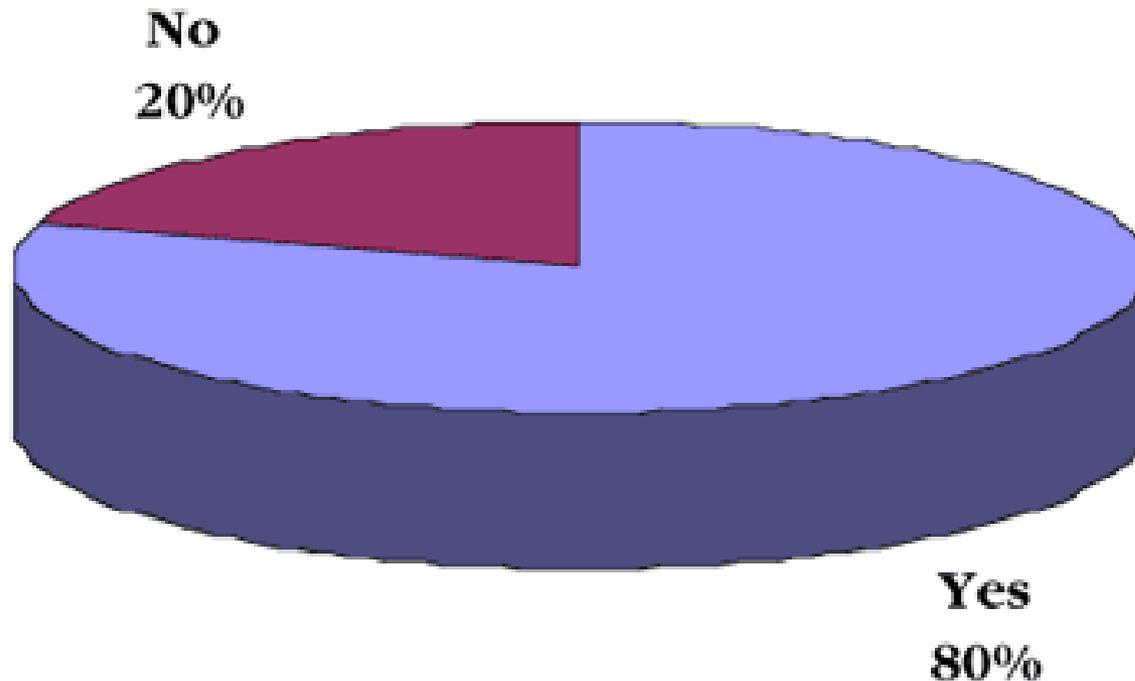
"Trans-Institutionalization" (Criminalization of the Mentally Ill)



Source: US Dept. of Health Human Services & Dept of Justice statistics

http://3.bp.blogspot.com/-_egxFaVMcKg/Tgu1vAfaqAI/AAAAAAAAAB6o/PaiZNzy5UPk/s1600/resources-mentalhealthcourt.jpg

Have You Ever Been Arrested or Detained by the Police?



<http://www.nami.org/Images//criminalizationpiechart.gif>

Factors That Lead to Criminalization

- the person's *mental health problem is directly related to his or her involvement with the criminal justice system*
 - the problem causes the interaction with the justice system, or,
 - once involved, the person's difficulties are exacerbated by the contact with the justice system
- the individual's *problems have not been previously remedied* or ameliorated by the mental health care and support
- the *justice system often provides the societal response* to persons with mental health problems
 - owing to the *inadequacy or unavailability of support systems*

Justice System Dysfunctions

- any *contact with the justice system will often cause harm* to the vulnerable person
 - symptoms may be exacerbated
 - social functioning may be diminished
- the purposes and services of the *justice system*
 - *do not fit well* with the needs of mental health consumers
- *recidivism becomes more likely*
 - owing to underfunded community supports and an unresponsive justice system
- there is an *overrepresentation of people with mental health problems* in the justice system

Department of Justice Canada Just Facts: “Prevalence of Mental Illness in the Criminal Justice System” (2013)

- “no national statistics”
- “Prevalence rates vary depending on how mental illness is assessed”
 - Symptoms v. diagnosis
 - Substance use disorders escalate rates

● **Police Data**

- Vancouver: 31% of calls related to poor mental health
- London: doubling of police hours between 1998 and 2001

● **Corrections:**

● **Provincial:**

- B.C.: “more than half of offenders had a diagnosed mental illness”
- Quebec: “61% had at least one diagnosis”

- **Federal**

- Doubling of rates of inmates with mental health problems in last decade
- 36% have problems requiring follow-up

- **Gender**

- Women are more likely to have a mental illness
 - Some diagnoses more prevalent: depression, anxiety, and PTSD

- **Comorbidity/concurrent Disorders**

- Very likely (substance abuse)

- **The Canadian Mental Health Association, Recovery Rediscovered: Implications for Mental Health Policy in Canada (16-17)**

“The mentally ill are being *jailed rather than helped* due to the lack of community mental health services ... the trigger for police involvement is usually a *nuisance offence* ... an 81% chance they will be *apprehended again* ... because they still have *not accessed adequate services* ... *over-represented in the jail system* ... jails are unfunded and ill-equipped to provide treatment.”

The Bedrock of the Reduction of Criminalization: Improving Supports and Services for Mental Health Consumers

Key Components: A Sample of Benchmarks and Aspirations

The United Nations: *Convention on the Rights of Persons with Disabilities*

- **“Nothing about us, without us!”**
- First human rights treaty of the 21st century
- 155 signatories as of January, 2013; 90 to the Optional Protocol
- A paradigm shift:
 - “Persons with disabilities are not viewed as ‘objects of charity’, medical treatment and social protection”
 - “subjects with rights ... capable of claiming those rights and making decisions ... as well as being active members of society” (UNEnable)

General Principles

- **Non-discrimination; protection against direct and indirect discrimination**
- **Accessibility, Broadly Conceived**
 - Justice (Art. 13)
 - Living independently and being included in the community (Art. 19)
 - Education (Art. 24)
 - Health (Art. 25)
 - Rehabilitation (Art. 26)
 - Work and Employment (Art. 27)
 - Adequate standard of living (Art. 28)
 - Participation in social and political life (Art. 29)
 - Participation in cultural life, recreation, leisure and sport (Art. 30)

Justice System References in the *CRPD*

- Measures to raise **awareness and combat stereotypes** (Art. 8)
- **Equal recognition** as persons before the law, enjoying legal capacity on an equal basis (Art. 12)
- Effective **access to justice**, “in order to facilitate their effective role”, “including at investigative and other preliminary stages” (Art. 13)

- Promotion of appropriate training for those working in the field of administration of justice, including police and prison staff”
- No **arbitrary deprivation of liberty** (Art. 14)
 - “existence of a **disability shall in no case justify a deprivation of liberty**” (Art. 14(1)(6))
- **Freedom from exploitation, violence and abuse** (Art. 25)



CHANGING DIRECTIONS CHANGING LIVES

The Mental Health Strategy for Canada



<http://www.northernpublicaffairs.ca/index/wp-content/uploads/2012/05/Strategy-Cover.jpg>

Mental Health Commission of Canada

Changing Directions, Changing Lives: The Mental Health Strategy for Canada (2012)

- **“efforts to reduce this over-representation should focus on preventing mental health problems and illnesses and providing timely access to services, treatments and supports in the community”**

- “**Diversion programs** ... are the next line of defence”
 - “do not work, however, unless there are services in the community” (46)
- In the **justice system**
 - “a right to **reasonable access to mental health** services consistent with professionally accepted standards”
- Possible “transfer of the responsibility for mental health service delivery” to the civil system (47)

Canadian Alliance on Mental Illness and Mental Health (CAMIMH)

- “an **equal right to access** and continuity of quality health care, social supports [family, friends and self-help groups] and the **elements of citizenship** [including work, housing, education and income]”(8)
- “the **social determinants of health are essential** for mental health”(9)

The Criminal Justice/Mental Health Consensus Project

- **“Elements of an Effective Mental Health System”**
 - “Evidence Based Practices...[promoting their use]
 - Integration of Services...[ensuring ongoing partnership]
 - Co-Occurring Disorders...[recognition of the need for service integration]
 - Housing...[enhancing housing resources]
 - Consumer and Family Member Involvements...[in planning and service delivery]
 - Cultural Competency...[delivering appropriate services]
 - Workforce...[guarantying the adequacy of the workforce]
 - Accountability...[using performance measures]
 - Advocacy...[building awareness of needs and stigma]”(12)



Pointing the Direction
Forward: Strategies for
Improving Justice System
Responses As Well

The Major Concepts: Diversion and Provision of Supports on an Anti-Discriminatory Basis

Diversion:

- **Redirect** people with mental health problems
 - **from** the criminal justice system
 - **to** community-based mental health and social services and supports

Services and Supports for People Involved in the Justice System:

- **Ensure the provision of appropriate supports and services on a comprehensive basis**
 - to persons with mental health problems
 - who are involved with the justice system
 - and who either may not be suitable for diversion or whose diversion may be delayed

Upgrading Police Responses

- provide additional **training**, at entry and on an ongoing basis
- **build relationships** with individuals with mental health problems, shelters, health care facilities and advocacy groups
- **centralize contact persons** for mental health related issues
- set up **liaison and monitoring committees** among police, other justice entities, health and social service agencies
- establish special **mobile crisis units**

- develop sensitive and **respectful policies and protocols** for everyone from dispatchers to on-scene officers to holding facility administrators
- equip police with suitable **diversion policies**
- **collect relevant data** to enhance policy development
- **points of concern:**
 - Mental illness prejudice is pervasive
 - any programs and policies must address the attitudinal dimension
 - The control reflex must be countered in some interactions
 - Programs with consumer participation are preferred; policy development should have a similar level of consumer involvement



<http://www.rooseveltcampusnetwork.org/sites/all/files/imagecache/Big/HomelessManAndCop.jpg>

Addressing Pretrial Issues

- **improve awareness and capabilities** of all justice system personnel, including court staff, lawyers and judges
- devise and **maximize pretrial diversion** policies
- develop **support services for persons with justice system involvements** to ensure successful referrals and a higher likelihood of compliance with any order or direction or diversion scheme.

- develop capacity for **expedited out-patient assessments** of related mental health issues
- similar areas for caution:
 - suppression of prejudice
 - relaxation of some conventional stances: e.g. regarding contempt of court and assumed ease of following conditions
 - need for consumer participation

- **mental health courts are helpful, but there are perils in overinvestment in any particular initiative:**
 - **oversimplification** of the problems
 - potential **stigmatizing** effects
 - **diversion away** from other options
 - **over-concentration on use of medications**, in de facto coercive ways
 - **possible encouragement of criminal charges**
 - unnecessary and **overlong burdens** for accused
 - **limits on courts' jurisdiction**

Improving the Character of Intrusions on Liberty

- ensure any **transition** (eg from jail to outpatient clinic) is as **smooth and effective** as possible
- consider attitudinal dimensions of **personnel** in hospitals, probation and jail: **combat the double stigma** of mental illness and criminality
- where in-patient **forensic assessment** is required, invest in programs which will **decrease the time** required for completion

- **refine screening practices for new inmates** to ensure early detection of and response to mental health problems
- provide supports for clients to **heighten the probability of compliance** with legal obligations
- **enhance the knowledge** of justice officials of community supports
- refine any **diversion options** which may be available for detainees or accused who may be subject to sentencing

- establish **joint working groups** with service providers to ensure complementarity of services between corrections, monitoring other justice system branches and health and social services providers
- ensure that custodial, probation and parole officers have orientation and **regular training opportunities**
- assess and **upgrade mental health services for inmates**
- create additional **expertise in planning for release** from custody or probation for accused with mental health problems
- **areas for concern:**
 - again, stigma, discrimination and prejudice
 - the pervasiveness of the least onerous, least intrusive and least restrictive norm
 - need for consumer involvement

Threats to Human Rights: Reinvigorating Criminalization

Erosion of the Social Safety Net

- Reductions in **social service budgets**
- Reduced access to **employment insurance**
- Increasing **social inequality**
- Contraction of **addiction supports** and services
- Erosion of **affordable housing**
- Failure to address **underinvestment in mental health promotion, illness prevention and treatment services**

Direct Threats to Reducing Criminalization: More Punitive Approaches to Criminal Justice Policy

- Sentencing changes: *e.g. Truth in Sentencing Act*, Bill C-25, 2010
 - Limits the credit a judge “may allow for time spent in pre-sentencing custody”, “commonly called ‘credit for time served’” (Casavant and Valiquet, *Legislative Summary*)

- Sentencing and other changes: *e.g. Safe Streets and Communities Act*, Bill C-10, 2012
 - Increases or imposes **minimum mandatory penalties** for several *Criminal Code and Controlled Drugs and Substances Act* offences
 - Amends the *Corrections and Conditional Release Act*, to **eliminate the least restrictive reference** and does not commit the *CCRA* to human rights protections

- Amends the *Criminal Records Act* to **remove** pardons and make **“record suspensions” more elusive**
- Amends the *Youth Criminal Justice Act* to emphasize public protection, increase **likelihood of pre-trial detention, adult sentencing and longer custodial sentences**



<http://morallowground.com/wp-content/uploads/prison-overcrowding4-1024x679.jpg>

The Canadian Psychiatric Association

- Bill C-10 will **dramatically increase the number of incarcerated individuals in Canada**
 - “Just like current prison populations, these people will experience **mental illnesses at disproportionately high rates**”
 - Without “a robust mental health strategy with its aggressive stance on justice policy the **mental health crisis in our prisons will worsen**” (News Release, December 7, 2011)



<http://www.cbc.ca/gfx/images/news/topstories/2012/09/14/hi-ont-prison-cp-02526060.jpg>

Canadian Psychological Association

Treatment Versus Incarceration

- C-10 will put **“more people in jail for longer periods of time”**
 - **“incarceration does not reduce crime”; “treatment works”**
- Should instead **“concentrate on moderate and high risk offenders, target changeable risk factors ... incorporate proven, human services ... as part of offender rehabilitation”**
(CPA Submission to the Senate, January 30, 2012)

Alternatives to Current Criminal Justice Policy

- See *Fearmonger*, by Paula Mallea (Lorimer: Toronto, 2011)
 - **“Poverty is a risk factor”**
 - **Crime prevention programs are a key measure**
 - “community-building” (153)
 - “aimed at youth”;
 - “target local issues in sensitive and culturally appropriate ways”
 - “basic literacy, education and training”
 - “help parents”
 - “target substance abuse and other public health issues”
 - “reclaim cultures and languages”
 - “after school programs”
 - Safety programs for women and girls
 - Anger management programs for men and boys

Alternatives to Current Criminal Justice Policy (continued)

● **“Instead of Prison” (163)**

- “more sensible to provide **programs and treatment outside prison walls**”
 - While mindful of public safety
- **“costs a fraction of the price”**
 - **“much higher likelihood of success”**

● **More effective programs in Prison**

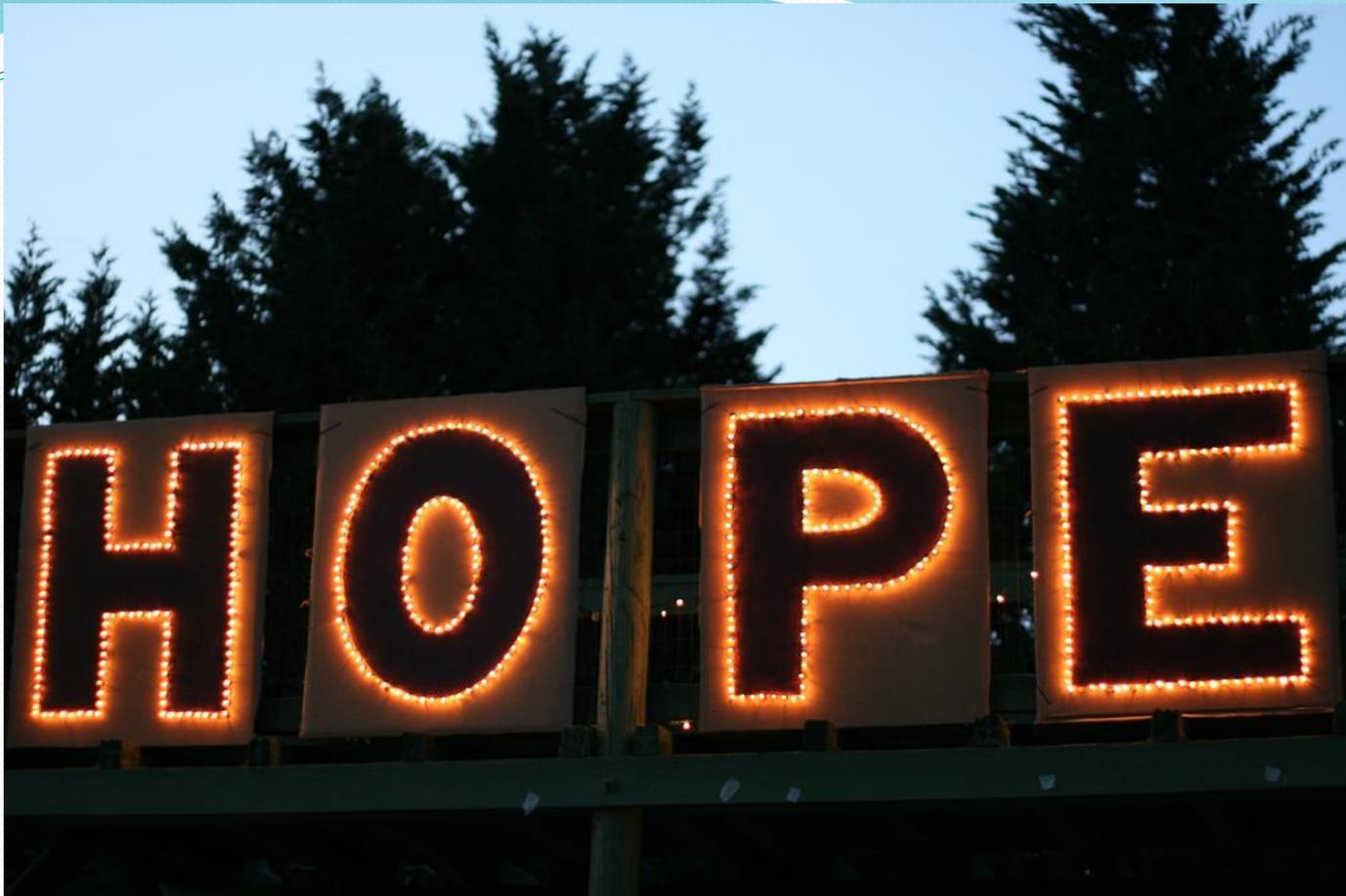
- “find the will and resources to provide appropriate supports and treatments” (175)
 - For prisoners with many special needs
- Restorative justice programs within prison
- Reverse the cancellation of effective programs (184)
 - Prison farms
- Reinvest in proven programs
 - Literacy training
 - Substance abuse harm reduction

Conclusion: Is There a Way Forward or Will Things Just Get Worse?

- Let's **not be overconfident**, given the lessons of history and the risks we are taking in 2013
- We **can make progress** in Canada on addressing criminalization
- We do see **examples of successful public policy and service delivery**
- **This conference should assist** all of us in moving things in the right direction



http://www.gambillonjustice.com/media/AA/AT/gambillingonjustice-com/downloads/237483/Criminalization_in_Denver.png



<http://www.annabelfitzsimmons.ca/wp-content/uploads/2012/12/Hope.jpg>