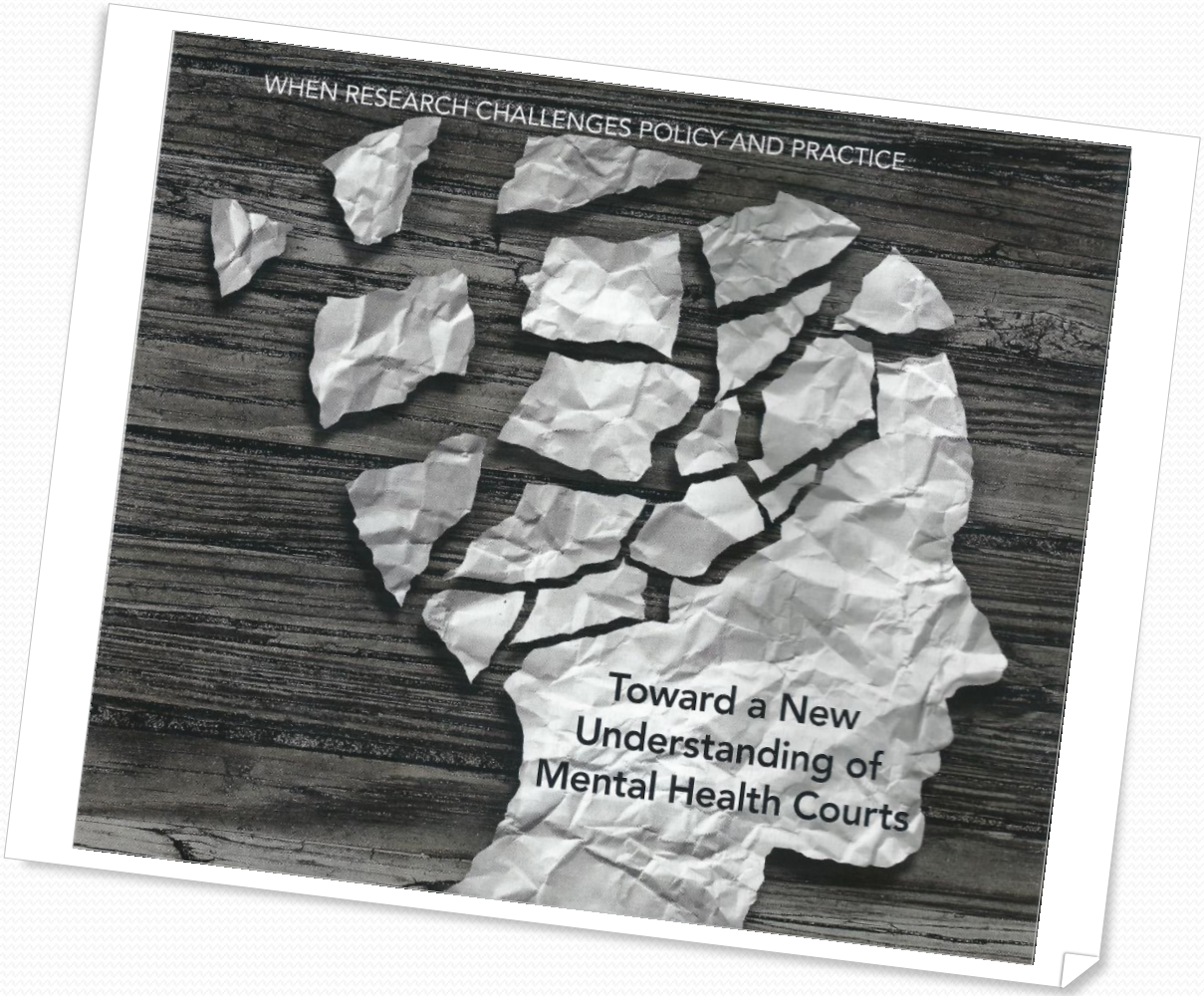
Mental Health Courts – Finding Institutional Resilience and Promoting Justice

By Justice Heather Perkins-McVey

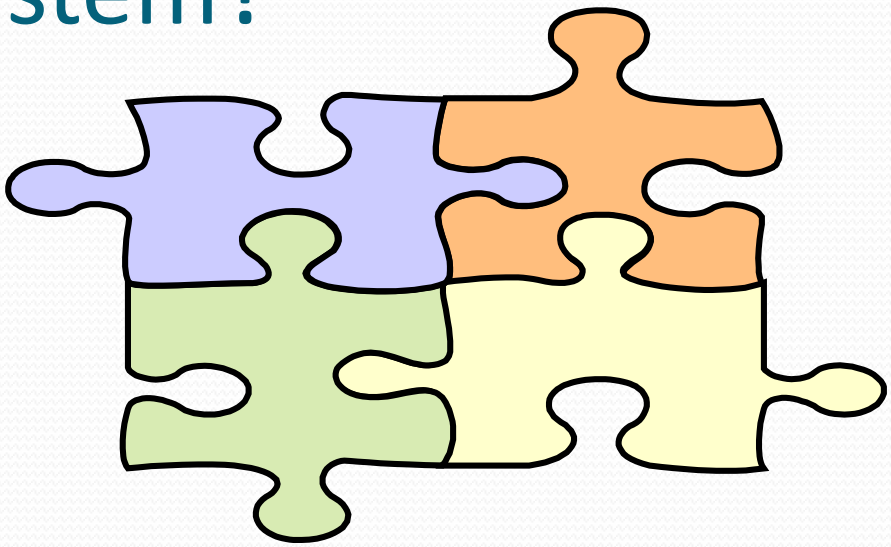
November, 2015



1. The definition of resilience is "*the capacity to recover quickly from difficulties*". For an institution, the meaning is "*the ability to build and increase the capacity for learning and adaptation*".

2. Institutions Matter: they affect individual action, influence co-operation, and can be crucial in making the difference to notions of justice and liberty. The danger lies when institutions become stagnant.

3. What do we do when the evidence challenges our practices and policies? How should we re-shape the direction and place mental health courts have in our social justice system?



4. The criminal justice system has become not just a system that mets out justice and holds persons accountable; it has now taken on the mantle as the purveyor of social justice – and it is just not designed to be that vehicle.

5. In Ontario alone, since the Toronto Mental Health court opened its doors in May 1998, more than 38 mental health courts have been created – in addition, there are now 11 drug treatment courts. I am told, in fact, there are 52 services across Ontario that offer diversion and court support for persons with mental illness.

6. Mental Health Courts were created largely based on a motherhood belief that assumed that:

1) untreated or inadequately treated, mental illness contributes to criminal behaviour

2) criminal justice involvement can serve as an opportunity to connect people to treatment

3) Appropriate treatment can improve the symptoms of mental illnesses and reduce the problematic behaviour that led to police involvement

4) That by doing all of the above there will be a reduction in recidivism and improved public safety.

7.

a) What does the evidence say is the best model for a mental health court?

b) What are the key elements or frameworks that each court should have?

c) What is the key to improving access to service, mobilizing our community partners, and reducing recidivism?

"Does the answer lie in mental health courts at all?"

8. There was a very thorough evaluation done of the Youth Court at 311 Jarvis prepared March, 2014, by Krista Davis, Tracey Skilling, and Michele Peterson-Badali called "*A Process Evaluation of the Community Youth Court*."

9. There is, though, a significant body of research into MHC outcomes that comes from the United States and Australia. These studies aimed to evaluate whether these courts were effective in reducing:

a) recidivism

b) psychological and legal stress on the accused, and

c) the severity of new arrests and increasing the time gap between committing new offences

10. The common elements of the Mental Health Court's that proved to reduce recidivism are:

(1) status hearings (often monthly)

(2) voluntary court docket

(3) access to mental health services designed to reduce offending and improve health and psychological functioning, and

(4) a multi-disciplinary team that determines the most appropriate interventions for he offender and reports back to the court. [1]

[1] Edgely, 2014. See also: Bradly, 2014; Hiday, & Ray, 2010; Hiday Wales, & Ray, 2013

11. One study supports the theory that structured MHCs with regular status hearings and interactions with the judge are more likely to reduce recidivism than MHCs without these factors.

Edgely 2014 see also B radley 2014; Hiday & Ray 2010, Hiday Wales 2013.

12. Graduates from the MHC had a significantly fewer arrests, and a longer time to re-arrest than non-completers of the Specialized Supervision control group. [3]

[3] Hiday, Wales & Ray, 2013.

13. The study found that defendants who completed MHC were significantly less likely to be arrested (39.6% vs. 74.8%) than participants who did not complete the program and went back to the regular court system, and, went longer before re-offending (17.5 months vs. 12.27 months) after having their matter disposed of – this was measured from the date when a person was released from custody.

14. It is worth noting that when describing the limitations of his one-court study, Ray drew significant attention to the structure of the court. Ray expressed concerns that these recidivism statistics would not necessarily transfer to MHC that are less rigidly structured.

15. Finally, there are a number of studies that have focused their examination of MHC on the effect judges have on recidivism, supporting the need for regular judicially supervised status hearings. [5]

5 Edgerly, 2014; Gottfried, Carbonell, & Miller, 2014; Frailing, 2010; Kopelovich, et. al., 2013, Wales, Hiday, & Ray, 2010

16. The role of the judge in MHCs is a significant contributory cause of the observed reductions in recidivism.

17. Specifically, there were ***three*** aspects of the judge's role in the structured MHC that appeared to make a difference.

18.

1) The judge provides a quality of interpersonal treatment that accords the participant's dignity, respect ,and voice, builds trust by showing a concern for their best interests, and repeatedly emphasized their control over their choice to participate;

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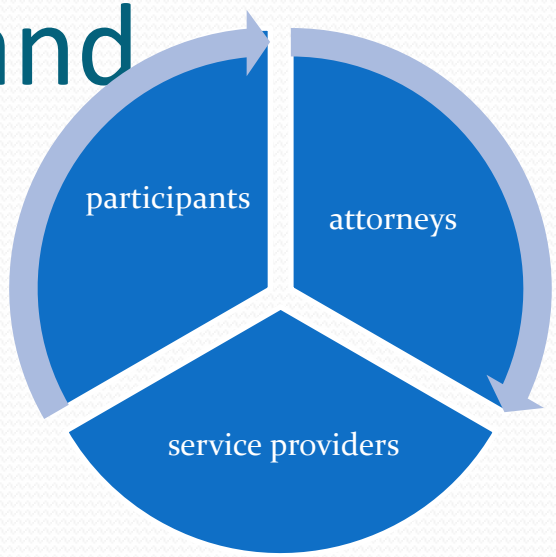
2) The judge holds participants, attorneys and service providers alike accountable for their respective roles in participants' rehabilitation and resolution of their legal problems; and



20.

3) The judge provides transparency; carefully explaining the reasons for all decisions. [6]

6 Hiday, & Ray, 2010

21. Judge Matthew D'Emic of the Brooklyn Mental Health Court said:

"Engagement with the Judge is one of the reasons for our participants' success"

"It's the same with other relationships. If I engage with someone, and that person engages with me, we don't want to disappoint each other."

22. The study of the Youth Mental Health Court at 311 Jarvis also confirms the importance of these types of positive relationships, and the important role the judge can play in achieving positive outcomes.

- One youth reported:

  "They look at who you are, not just what you did"

- Another parent reported:

  "someone finally cared about us as people and recognized the time and effort my son puts out."

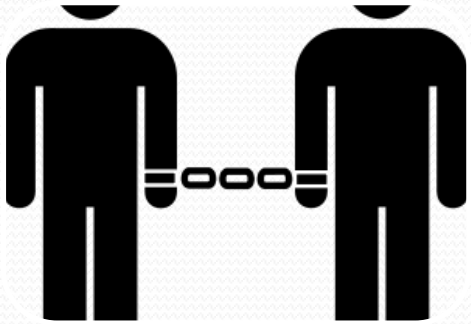
23. The Youth Court at 311 Jarvis sits twice per month; a single judge staffed aprox. 40% of the court days, with the remaining days staffed by a pool of five judges. All of the other team members, Crown, the Youth Mental Health Worker, and Duty Counsel, were specifically dedicated. Their court model requires case monitoring and the Youth Mental Health Court Worker provides regular updates to the Crown and Duty Counsel.

24. So research is crucial to helping understand “what works” in bringing about desired goals for individuals and to help decide how to allocate scarce resources to the most effective interventions.

25. What are the questions a court team should ask in trying to design a court that works?

26. Intriguing results, however, have come from studies that have asked not only "**are mental health courts effective?"** but **"for whom and under what circumstances?"**

27. Across multiple mental health courts, the factors most predicative of re-arrest were:



1) A higher number of prior arrests

2) A greater number of days spent in jail prior to entering MHC

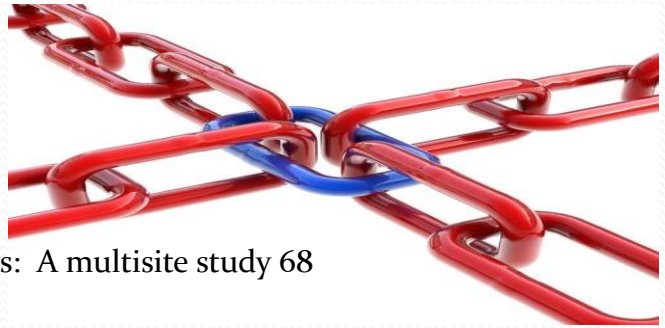
3)Having a concurring substance abuse disorder

4) Younger age

28. The seriousness of charges, or of the most serious prior offence or criminal record, was **NOT** associated with higher rates of re-offending.

One court showed **no** significant difference between violent and non-violent offenders on any recidivism outcome, and two courts showed lower re-arrest rates among participants charged with violent indictable offences than those charged with drug and property crimes.

29. More interesting still are the results related to mental illness and treatment engagement. A 2011 multi-site study, Impact on Mental Health Courts on Arrests and Jail Days,[9] found a few links between clinical factors and criminal justice outcomes.



9 J. Steadman et al., Impact of Mental Health Courts on Arrests and Jail Days: A multisite study 68 Archives Gen Psychiatry 167 (2011)

30.

1) History of psychiatric hospitalization
2) Symptom severity at time of enrollment in MHC
3) Insight into their mental illness
4) The type of treatment and self-reported treatment engagement and adherence to the medication regime

So what does this mean -

31. Researches summed it up bluntly:

"We found no relationship between the type of treatment intervention received (or not) and whether the MHC enrollees were arrested or in jail following MHC enrollment."

32. What does this mean? Does this mean treatment is irrelevant?

33.

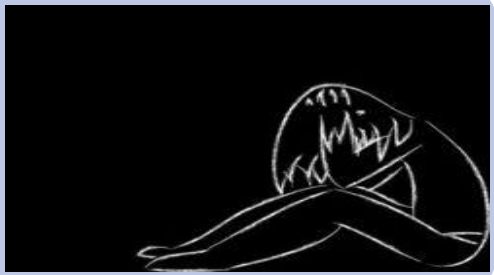
34. -How can we make this full array of services available to MHC participants?

-So what explains the good results in MHC?

-What aspects of current mental health court operations should be emphasized?

-What type of new programs should be introduced in light of these research findings?

35. The Risk Needs Responsibility Model



1) Risk Principle: who to target

2) Need principle – what to target

3) Responsibility Principle – how to address criminogenic needs.

36. From an RNR perspective, which recognizes the prevalence of criminogenic risk factors among justice involved people with mental illness, **it appears that these individuals have more in common with other people in the criminal justice system than they do with non-justice-involved mentally ill individuals**.

37. Treatment for mental illness remains crucial for mental health court participants, it is **not** because improvements in symptoms or functioning will have a **direct** impact on criminal behaviour, but because treatment will improve their ability to **respond** to programs which address other criminogenic risk factors.

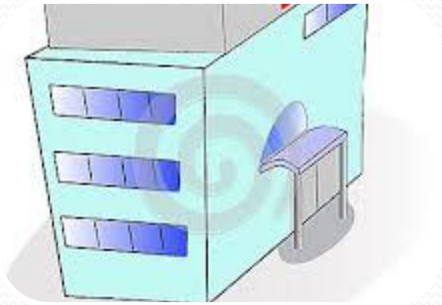
38. The RNR framework suggest several new guidelines for mental health courts:

1) Courts should set their eligibility criteria to focus on accused at the highest risk of re-offending

2) Courts need to incorporate programs to address criminogenic needs in the array of services offered

3) Courts need to address an accuseds' individual responsivity factors to facilitate engagement to criminogenic needs – housing, employment, leisure activities, etc.

39. Mental Health Court Programs in the U.S. with the highest success rates do typically require participants to engage in activities such as:



Treatment

Education

Vocational & Employment Programs

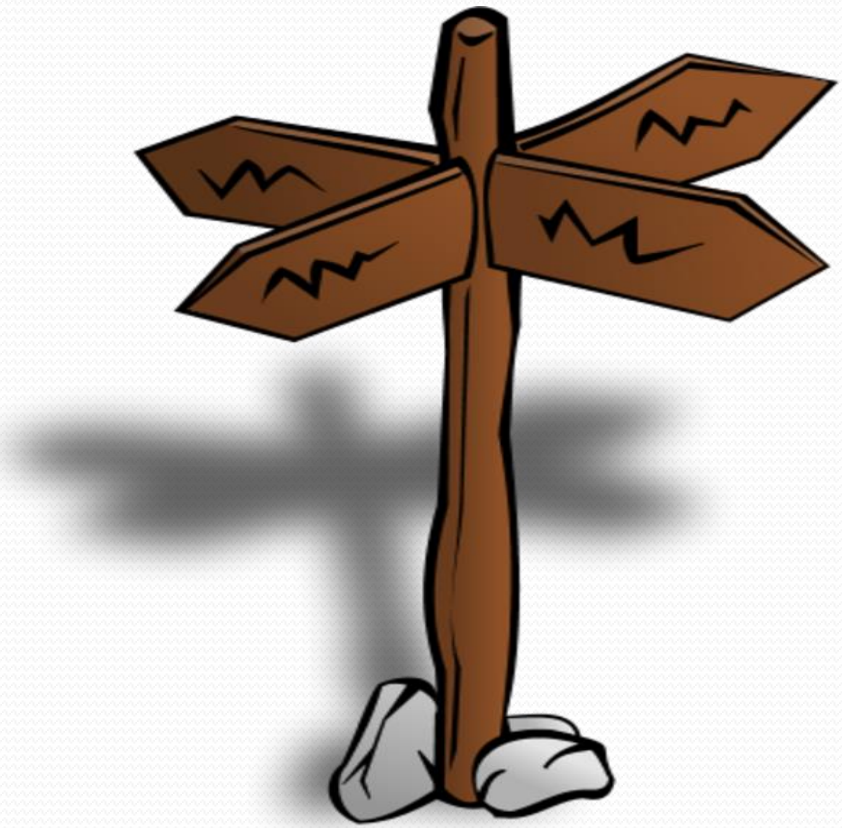
Substance Abuse Treatment

(where applicable)

40. Does Your Local Mental Health Court require those things?

41. In the U.S., mental health court policy and services have changed as a result of these evaluations from a **medical orientation** to a recovery approach that emphasizes the importance of individuals leading a self-directed life trying to reach goals in all aspects of life.

42. So where do we go from here?



43. It is interesting that the conclusions of the comprehensive evaluation of the 311 Jarvis Youth Court is entirely consistent with these U.S. studies.

44. The costs to the accused for being involved in the criminal justice system are great -

1) Persons with mental illness are more likely, once charged, to be held in detention and denied bail

2)Once released, they are more likely to breach conditions and thus return to jail.

3) Persons with mental illness are disproportionately impacted by loss of social housing

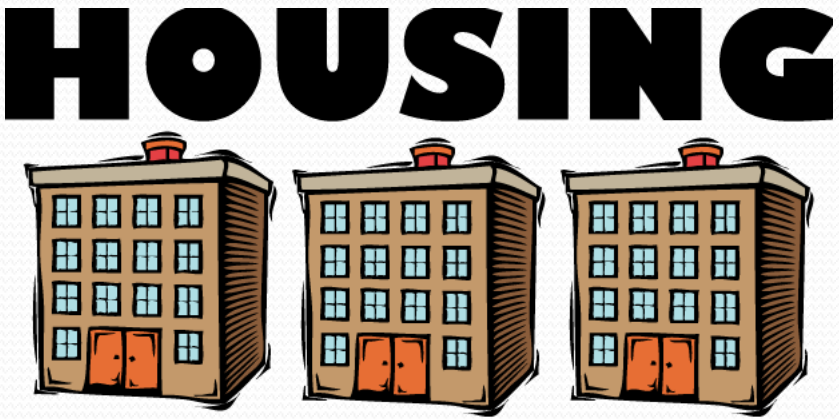
4) Persons with undiagnosed mental illness and developmental disabilities often self-medicate. Resulting in addictions which in turn increases potential conflict with the law.

5) The Criminal Justice system effectively stigmatizes persons with mental disorders, even though we have MHC.

45. Solutions: Preventing persons with mental health issues from being captured by the wide net of the criminal justice system and by addressing their treatment and criminogenic needs by:

46.

1) Increasing the number of supportive housing programs.



47.

2) Invest in prevention by creating a proactive and accessible mental health care.

48.

3) Recognizing community criminal justice organizations as fundamental mental health partners.

49. The Gardener Street Program is an example of such collaboration.

Questions?

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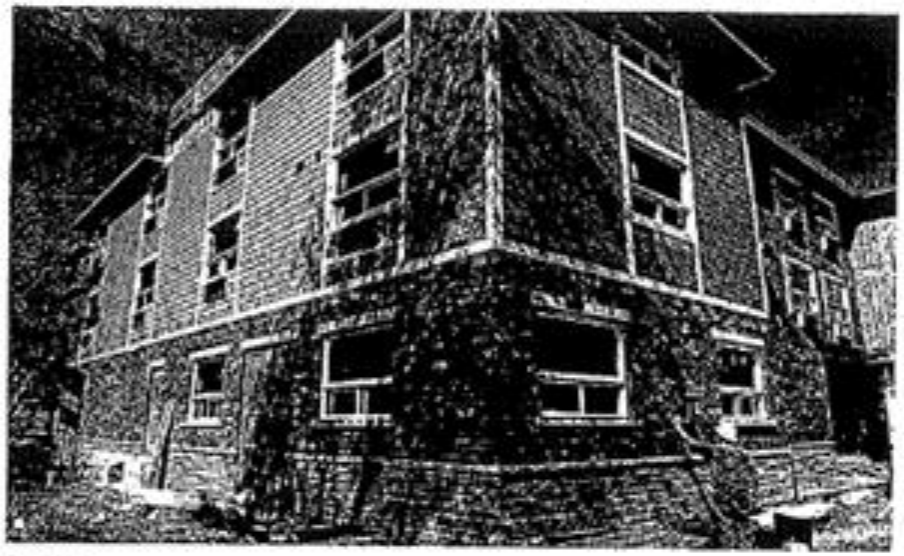


May 2015

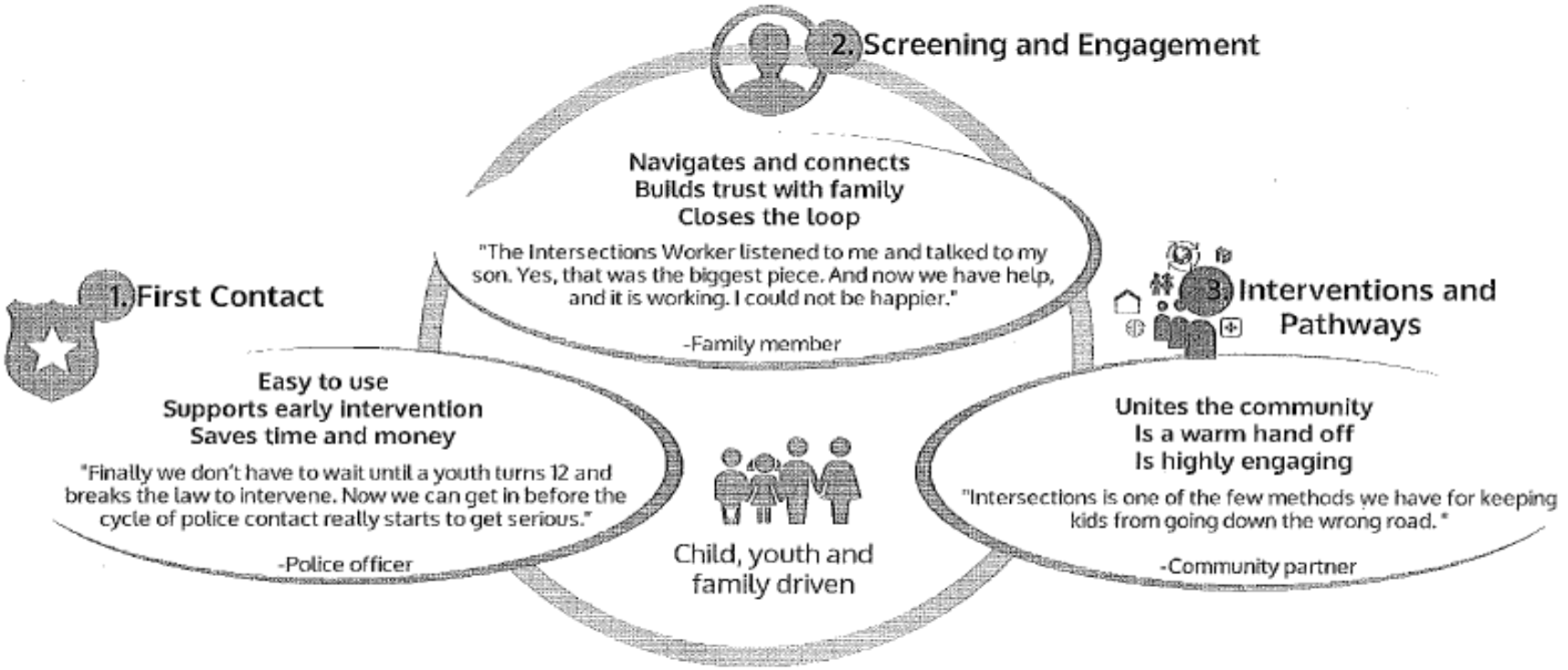
JohnHoward

50. The “Shed” program

51.

INTERSECTIONS: Right support, right provider, right time.

Champlain Youth Justice Service Collaborative



- The Intersections Worker is essential to an innovative service delivery approach as the bridge between police, the child or youth and family and the right service.
- 125 partners from multiple sectors across Champlain have come together in unprecedented collaboration to drive system improvement.
- Ongoing evaluation of Intersections contributes to continuous improvements in seamless service delivery for healthier children, youth and families.

"Intersections is the yellow brick road for our community and losing it would be a significant loss to the community."

52. There are an increasing number of mental health courts in Ontario, before we go further, let's look at what the research says and design programs that are responsive to the growing research available.


HELP
SUPPORT
ADVICE
GUIDANCE
ASSISTANCE