Viruses feed on exclusion: Psychiatric detention and the need for preventative deinstitutionalization

Moving people into community will protect health, free up valuable resources, and reduce overcrowding for those who remain inside institutions—all part of preventing the spread of COVID-19

The news of confirmed cases of COVID-19 at the Centre for Addiction and Mental Health (CAMH) in Toronto is unsurprising. Viruses spread quickly in the crowded, confined spaces that warehouse persons with mental health disabilities. There, physical distancing is impossible and access to healthcare is poor. Continuing to detain during the pandemic — or worse, using detention as a substitute for accepted prevention measures — magnifies pre-existing concerns regarding the institutionalization of persons with mental health disabilities. Without urgent action like preventative deinstitutionalization, institutions like CAMH will become infectious hotspots.

Others have written about the urgent need for a plan to reduce the number of persons detained in prisons, especially if they are over 50, pregnant, have respiratory conditions or are immunocompromised. Prisoners with mental health disabilities should receive priority for preventative release. They are likely to have underlying health conditions, and are disproportionately susceptible to the profound and potentially permanent effects of solitary confinement — a predictable response of correctional (and other) institutions in the face of COVID-19.

COVID-19 will also have a disproportionate impact on persons with mental health disabilities detained in

Some persons

other custodial sites, including the civil psychiatric system, forensic hospitals, and other unchosen congregate residential environments. These settings purport to be therapeutic, yet they restrict liberties and may be experienced as punitive and intrusive on bodily and psychological integrity. Continuing to detain persons with disabilities in institutional settings inconsistent with physical distancing during a pandemic cannot be defended as therapeutic, given high rates of contamination and risk of serious illness and death.

continue to be detained in forensic or civil psychiatric facilities despite having been granted permission to live in community, simply because government has failed to fund suitable community placements.

Prisoners and psychiatric detainees share the experience of exclusion and severe restrictions on their liberties through their placement in highly restrictive institutions. Beyond the increased risks of virus transmission generally associated with communal living environments, detention in psychiatric units within general hospitals that treat COVID-19 patients carries additional risk. Moreover, psychiatric patients may be prescribed medications associated with an increased likelihood of developing conditions such as diabetes, in turn a high risk factor for complications from COVID-19.

Long-term care facilities have been the epicentre of COVID-19 outbreaks globally, where physical distancing is impossible and cleaning may not meet public health standards. Some long-term care and other disability institutions have banned visitors, impeding access to lawyers and families. This, in addition to general policies preventing communications with those outside, can make life in psychiatric detention or other institutional environments all the more isolating and unbearable, while increasing residents' vulnerability to abuse and neglect.

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Ontario's *Mental Health Act*, like the psychiatric detention laws of many other provinces, permits involuntary hospitalization in certain circumstances, including where one is deemed "likely to suffer substantial mental or physical deterioration or serious physical impairment." In the context of COVID-19, the harms of detention will in many or most cases significantly outweigh those of community residency, particularly if efforts are made to identify appropriate community supports. A person may apply to the Consent and Capacity Board to review their involuntary detention. Even if the criteria for detention are met, the board has discretion to revoke the person's involuntary status — including on the basis of the risks related to COVID-19 remaining in the institution. The board can also order leaves of absence in certain circumstances. These are powers that should be used while there is still time.

Frustratingly, some persons continue to be detained in forensic or civil psychiatric facilities despite having been granted permission to live in community, simply because government has failed to fund suitable community placements. Some have been detained in this situation for years. This ongoing insult to liberty rights is now additionally a failure on government's part to protect those detained from contracting and becoming unwilling vectors of COVID-19.

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Beyond the need for community supports, there is also a need for responsive decision-making on the part of a range of legal authorities. In Ontario, the

institutions, staff may be tempted to use heavy-handed, dangerous, and even lethal correctional responses, including indefinite lockdowns, solitary confinement, and seclusion.

Ontario Review Board is responsible for supervising the community reintegration of persons found "not criminally responsible on account of mental disorder" (NCR) in that province. The board holds periodic hearings and can make a variety of dispositions, including permission to live in the community, based on factors that may include the dangers posed by a forensic setting with increased exposure to COVID-19. However, the board adjourned all hearings for a three-week period starting March 16. That decision was arguably indefensible given its impact on access to justice for the patients who remained inside, vulnerable to contracting the deadly virus.

As the COVID-19 outbreak continues to spread, there are concerns that persons with disabilities, including consumers or survivors of the psychiatric system, will be excluded from public planning. This is all the more isolating. Once the virus is inside the institutions, staff may be tempted to use heavy-handed, dangerous, and even lethal correctional responses, including indefinite lockdowns, solitary confinement, and seclusion. Such an approach appears to have been taken by the United Kingdom, where proposed amendments to the *Mental Health Act* will extend the length of time for temporary detention during the pandemic.

COVID-19 confirms the urgent need to close the institutions that warehouse persons with disabilities. Preventative deinstitutionalization protects health, frees up valuable resources, and reduces overcrowding for those who remain inside. However, institutional release may raise other problems for detainees unable to return to safe homes. Emergency funding must therefore be directed to sustainable, supportive housing, in addition to measures under existing or emergency legislation to permit repurposing of

hotels, university residences, and other residential spaces supportive of physical distancing and social isolation for the duration of the crisis.

In a profoundly unequal society, a pandemic like COVID-19 may be expected to have profoundly unequal effects. It is our responsibility to resist and mitigate that inequality. For persons with disabilities detained in institutional settings, that means taking a public health response to the COVID-19 crisis rather than a correctional or security-driven approach.

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