

***MENTAL HEALTH, THE JUSTICE SYSTEM, AND
YOU***

UNDERSTANDING THE PROCESS AND THE
PEOPLE WHO CAN HELP

An Oxford County Human Services and Justice
Coordinating Committee Publication

The term “You” in this book refers to the individual with mental health needs who comes into contact with the justice system.

The contents of this booklet are for general information purposes only and do not constitute legal advice from a qualified lawyer.

The Criminal Code and our Justice System in Ontario recognize “Mental Health Offences” which include mental health, developmental/intellectual disability, and also Aged 12-17 (A.B.I.).

This book is intended to be a resource for adults (aged 18 and over at the time of the offence) and while there may be some relevance, it is not intended as a resource for those facing Youth Criminal Justice Act offences (Aged 12-17 at the time of the offence).

The Youth Justice Division of the Ministry of Children and Youth Services recognizes that some youth in trouble with the law have mental health needs. Ontario police and courts include collaboration with health professionals who have been working with youth.

Oxford County has a dedicated Youth Court which operates under the Youth Criminal Justice Act (YCJA). For information specific to individuals dealing with Youth Criminal Justice Act offences, please contact the Youth Justice Services Division of the Ministry of Children and Youth Services West Region: Youth Probation 519-539-6100.

<http://www.children.gov.on.ca/htdocs/English/youthandthelaw/>

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Section 1: INTERACTION WITH THE POLICE

Many Police Officers in Oxford County have training in mental health issues and are often the first service called to assist. If the police believe that you have committed a crime, but suspect that you may be experiencing a serious mental health problem, they may decide an alternative course of action rather than laying charges. Police discretion will be influenced by many things, including:

- The seriousness of the crime;
- The actual violence or risk of future violence;
- The danger to the members of the public including you;
- Your prior police occurrences/prior criminal record;
- Whether a weapon was used;
- Available Supports, example: family, friends, crisis workers, etc.
- Available Alternatives, example family doctor appointment, hospitalization
- Type of Crime: The police have very limited discretion for some crimes, such as domestic violence offences and firearm offences.

If you have no prior criminal record and you are not a danger to yourself or others, the officer may release you at the scene with a warning. The police may also call CMHA's mobile crisis team for assistance.

Frequently Asked Questions

Q: When can a police officer stop me on the street?

A: Although a police officer can attempt to speak to you at any time, a police officer can typically only stop you for three reasons:

1. The officer believes you have committed a crime;
2. The officer sees you committing a crime;
3. For a lawful detention.

Q: Does the police officer have to tell me why they stopped me on the street?

A: Yes. If the officer is in plain clothes and you doubt he/she is a police officer, you can ask for identification.

Q: Do I have to answer a police officer's questions or tell him/her my name?

A: You do not have to answer any questions that a police officer asks unless you want to or if you are required by law. If the police believe you have committed a crime and you do not tell them your name, they can arrest you and take you to the police station until they find out who you are. There are times when you are required to tell the police your name such as when you are operating a motor vehicle or bicycle or under the Trespass to Property Act.

Q: Can a police officer search me?

A: Typically, a police officer can only search you and your immediate surroundings if you have been arrested or are lawfully detained. Generally speaking, they cannot open any closed container (backpack, purse, drawer, closet, closed door etc.) without a warrant. If you believe the police have improperly searched you, speak with a lawyer. If you are detained temporarily, the police can frisk you to make sure you do not have a weapon.

Q: What if the police are speaking to someone who does not understand English?

A: If someone does not understand what a police officer is saying, a family member or friend can help the person speak to the police. If there is nobody around, the police officer has a list of interpreters who they can ask for help. Never sign anything unless you fully understand what it means. If you do sign anything, make sure your lawyer is in the room.

You do not have to talk to the police without your lawyer unless you want to
Anything that you say could be used against you in court

Arrest or Apprehension under Ontario's Mental Health Act

When a criminal offence is reported and police believe they have grounds to apprehend you under the Mental Health Act, they must apprehend you and may still decide to proceed with criminal charges.

Police are most likely to arrest you when the risk to public safety is high and the offence is serious; however, the police may release you if they can address public safety concerns at the scene. If the police arrest you, they will either release you at the police station or keep you in their custody until you can appear in bail court. Once the police arrest you, they must tell you the reason and allow you to contact a lawyer of your choice. Your lawyer works with you to make decisions about your case. It is important for you to tell your lawyer everything so that he or she can defend you properly. Your lawyer cannot tell anyone what you say unless you say that you are going to commit another crime in the future. The police should not question you until you have spoken with a lawyer or waived your right to do so. An alternative is to contact duty counsel.

According to Ontario's Mental Health Act, the Police can take you to the closest psychiatric facility if the following criteria are met.

Section 17 of Ontario's Mental Health Act reads:

17. Where a police officer has reasonable and probable grounds to believe that a person is acting or has acted in a disorderly manner and has reasonable cause to believe that the person,

(a). has threatened or attempted or is threatening to cause bodily harm to himself or herself;

(b). has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or

(c) has shown or is showing lack of competence to care for himself or herself, and in addition the police officer is of the opinion that the person is apparently suffering from a mental disorder of a nature or quality that likely will result in;

(d). serious bodily harm to the person;

(e). serious bodily harm to another person;

(f). serious physical impairment of the person,

And that it would be dangerous to proceed under section 16, the police officer may take the person in custody to an appropriate place for examination by a physician.

If you are arrested and do not have a lawyer, you can contact Legal Aid Duty Counsel. To find out if you are eligible for further services through legal aid, you can contact them at 1-800-668-8258 or www.legalaid.on.ca. It is important to inform legal aid of your mental health or developmental delay as this may impact your eligibility for services.

NOTE: You can choose to represent yourself in court. The Ministry of Justice has published a guide for self-represented accused to assist individuals who wish to represent themselves. This is available at the court house or online at <http://www.ontariocourts.ca/ocj/self-represented-parties/guide-for-accused/cases/guide/>

SECTION 2: RELEASE FROM CUSTODY

The police may release you by one of the following: summons, appearance notice, and officer in charge undertaking/promise to appear.

Summons: For minor, non-violent offenses. A summons is served at a later date, and must include the charge(s), along with the date, time, court house address and court room number for the first appearance. Usually in Oxford County, your first appearance following release will be on a Tuesday in court room 4 at 10 am. The summons may also be used to correct charge(s), where the police officer may decide to lay more charges or different charges, a “corrective” summons may be used to inform you of the charges and of the new court date. There are no conditions to obey. The summons may also contain a separate date and time for you to attend at a police location to have your photograph and fingerprints taken for identification purposes. It is a criminal offence for you to not attend the court date or your fingerprint date.

Appearance Notice: For minor offenses. After being released at the scene, the police will give an appearance notice which looks similar to a traffic ticket. The appearance notice will have a date and time for the first court appearance, as well as

the courtroom number and courthouse location. The notice will contain a separate date and time for you to attend at a police location for photographing and fingerprinting to be taken for identification purposes. It is a criminal offence if you do not attend the court or fingerprint dates.

Officer in charge undertaking/promise to appear (PTA): For many types of offenses. When you are arrested and taken into custody, you will be taken to a police division and held in a police cell. The police officer in charge of the cells uses his/her authority to release you with two documents: A Promise to appear that contains your court date details and an officer in charge undertaking that contains certain conditions you must obey. Conditions could include not contacting the victim(s), not to attend certain place(s), and to reside at a certain address and not move from that address without notifying the police. It is a criminal offence for you to not attend your court date or to disobey any of the conditions.

Bail

If the police determine that it is necessary to hold you for bail, they must bring you before a Justice of the Peace within 24 hours of your arrest. If you are already charged and held for bail during the work week you will be brought to the bail court at the Ontario Court of Justice. Your lawyer may consult with,

or refer you to a CMHA worker, a court team member who is familiar with the courts to connect you with local resources.

Bail Court –Released on Consent of the Crown

When you first appear in Bail Court, the Crown will review the allegations contained in the Crown brief (also known as a Crown synopsis) and decide whether to release you on bail or hold you in custody for a bail hearing. Factors that the crown will consider include:

- Type of charges and allegations;
- past criminal record and prior police occurrences;
- Safety of the victim and public at large;
- Likelihood that you will return to court if released;
- Likelihood that you will commit further criminal offenses if released;
- Supports available in the community.

Although the Crown may consent to your release and will propose conditions that you have to follow, the final decision about your release always remains with the Judicial Officer. The Crown can suggest you be released on 5 different types of releases;

1. Undertaking without Conditions: The only requirement is that you must attend Court as directed.
2. Undertaking with Conditions: Conditions depend on the charge (s) that you are facing, but can include a curfew, no contact with the victim/witnesses, not to at-

tend certain places, not to possess, purchase or consume alcohol or drugs, or/and no weapons.

3. Recognizance: Similar to an undertaking with conditions, but you have to pledge a monetary amount to the court that you will follow the court's conditions.
4. Recognizance with one or more Sureties: Similar to an undertaking with conditions, you have to pledge a monetary amount to the court that you will follow your conditions and a person responsible for you, called a surety, pledges a monetary amount that he/she will supervise you and ensure that you follow the conditions ordered by the court.
5. Cash Recognizance: Used if you reside more than 200 km away from the place in which you are charged. Similar to a recognizance, except the money is not pledged, it is actually deposited with the Court in order to secure that person's release.

It is a criminal offence for you to violate any terms of your bail release.

NOTE: If you want to support someone at bail court, arrive at the Court bail court duty counsel. Explain who you are there to help. Tell them about mental health issues and if medication is necessary. If you are willing to be a surety, you have photo identification (for a criminal record check), and consider who would assist you in supervising that person. Remember bail court is busy court for many hours.

Bail Hearing

If the Crown opposes your release, you can proceed with a bail hearing before a Judge or Justice of the Peace who will decide. The outcome of the bail hearing will result in you getting released or held in custody until your trial date. Your lawyer will advocate for your release from custody. The Crown Attorney will typically have to show cause:

1. Why you should not be released until your trial; or,
2. Why you should be released with conditions.

Reasonable bail is guaranteed by the Canadian Constitution as long as the Justice of the Peace is satisfied that that:

1. You will show up for your next court date;
2. You will not endanger the public, interfere with the justice process, or commit a further offence; or,
3. Releasing you will not cause the public to lose confidence in the justice system.

These three conditions are also known as primary, secondary, and tertiary grounds. In some cases, the onus may be on the defence to demonstrate that you should be released. These are called “reverse onus” bail hearings. Some charges are automatically reverse onus hearings, such as when you have been on bail for an indictable or hybrid offence or when you are arrested on a new charge(s). If the Judicial Officer releases you, he/she will determine the type of release and

what conditions to impose. Both you and the Crown have a right to appeal the bail decision, which is called a “Bail Review”, to the Superior Court of Justice.

NOTE: You can consent to your detention in custody at any time, without a bail hearing. This is usually only done without consulting defence counsel or a lawyer.

If the Judicial Officer decides that you cannot be released back into the community and you do not succeed with a bail review, then you will be detained pending the completion of your charges. The decision must be based on primary and/or secondary and/or tertiary grounds.

Bail Order

If you are released, the Judicial officer will issue a bail order to address issues of concern raised by the Crown.

There are three types of bail orders:

1. Undertaking: a signed promise that you will return to court;
2. Personal Recognizance: a signed promise that you will return to court on a certain day and follow the conditions of your release;
3. Recognizance with a Surety: a promise from one of your friends or family that he or she will make sure that you go to court and follow the conditions of your release. There are also situations where a cash deposit may be required.

Numbers 2 and 3 involve monetary pledges. In Canada, typically you do not have to actually pay the sum of money to be released, but if you do not show up for court, you may have to pay the amount set in the bail order.

Some Conditions on a bail order may be:

1. Staying away from certain places or people;
2. Staying close to home (no traveling);
3. Reporting to the police, probation office or bail supervisor;
4. Not having a weapon;
5. Living at a certain place;

6. Abiding by a curfew (may be 24 hours per day inside your residence); and/or
7. Abstaining from alcohol and non-medically prescribed drugs.

It is important that you let your lawyer know if any of the proposed bail conditions would pose a barrier to accessing treatment so that the Judicial Officer may modify that condition.

NOTE: Approaching the Bail Crown

While anyone is welcome to speak to the Bail Crown, it is best to speak to your duty counsel first. Duty counsel's/retained counsel's main obligation is to assist you, who is concerned about your well-being, but primarily focused on public safety and the interests of the Crown. The Bail Crown can use information you provide for any purpose they feel necessary, even if that is not the information you had intended. Furthermore, anything told to the Crown is disclosable to the accused individual. If you want to be a surety, expect that the Crown will contact you and they will either ask you outside of Court or during court on the record. When speaking to the Crown, whether under oath or not, be truthful as the Crown will use the information you provide.

SECTION 3: THE ROLE OF THE CROWN

The Crown represents the Public in the prosecution of criminal offenses. The Crown is a separate entity from the police. While they work closely together, the Crown and the police have different responsibilities and different standards of pro-

ceeding with criminal charges(s). While the police must have reasonable grounds to believe an offence has been committed in order to lay charge(s), the Crown must ensure that there is a reasonable prospect of conviction in order to proceed with the charge(s). If the Crown decides there is a reasonable prospect of conviction, the Crown must then be satisfied that it is in the public interest to proceed with the charges(s).

The Crown will treat you fairly and with respect; however, it is important to remember that the Crown represents all members of the public and must serve the public's interest in maintaining a safe, law-abiding and just society. This is different than the role of a defence counsel, who is only responsible for your legal interests.

Meetings with the Crown

If you have hired defence counsel, then he/she should discuss your case with the Crown. It would be improper for the Crown to talk to you when you have retained a defence counsel; instead the Crown and defence counsel will discuss your case.

If you are representing yourself then it is completely your decision whether to discuss your case with the Crown. If you

wish to, then you can contact the Crown's Office to set up a meeting, called a "resolution or pre-trial meeting".

Your family members and friends are also welcome to meet with the Crown; however, it may be beneficial for your family and friends to speak to the defence counsel/duty counsel first in order to prevent disclosing something that might upset or prejudice you. Finally, while the Crown will welcome any information provided, the Crown cannot discuss the details of your case with your family and friends in your absence. As a result, it should be expected that the meeting will involve the Crown accepting any information that your family and friends want to disclose and not a discussion of the facts of the case.

If one of your family members or friends is the victim of your offence then the Crown will be able to discuss more details of the case as the Crown has an obligation to a victim of a crime to keep them informed. The Victim/Witness Assistance Program will assist your family members/friends if he/she is a victim of your offence. The Victim/Witness Assistance Program works closely with the Crown Attorney and Police to ensure victims and witnesses have information, assistance and support throughout the criminal court process in order to improve their understanding of, and participation in, the criminal court process. The Victim/Witness Assistance program will

assist your family members/friends in providing input to the Crown Attorney.

The Crown understands that it is often difficult for one of their family members/friends who have been victimized to participate in the criminal justice process and he/she will try to explain the process and respect the victim's input. It must be remembered; however, that while the Crown will consider the victim's input, it is only one of a number of considerations the crown must look at when deciding how to proceed with your case.

NOTE: Remember that Crowns are often busy. Your case could be called on to have to deal with in a week. As a result, if you wish to speak to a Crown Attorney, it is best whenever possible to call/ attend ahead to make a "pre-trial" appointment. When you contact the Crown's office, you need to provide your full name and neighbourhood to enable staff to find the file easily. You are entitled to all the relevant disclosure against you in the Crown's and police's possession. This is called "disclosure". If you have a lawyer represent you, it is in your best interest to have your lawyer review the disclosure. If you plan to represent yourself, you must sign a document stating that you understand the proper use and misuse of disclosure. While some disclosure is given to you at your first court appearance, the Crown may give more disclosure at a later date. There are restrictions apply to disclosure, e.g. you will not be given information that could reveal the identity of a confidential police informant. Disclosure is most often in written form and also be contained on CD or DVD.

SECTION 4: THE ROLE OF DEFENCE COUNSEL/DUTY COUNSEL

If you are arrested by the police, you must be informed of your right to contact defence counsel, or legal aid duty counsel. If you choose to exercise that right, you must be given an opportunity to contact either one as soon as possible. You also must be given privacy when speaking to that counsel, unless there is a reason why this cannot be done, such as when you are in hospital and there is no way to ensure privacy. If you contact the defence counsel upon your arrest, you are under no obligation to hire that specific counsel if charge (s) proceeds through the criminal justice system.

Defence Counsel

The defence counsel plays a crucial role in the criminal justice system. He/she represents your interests and ensures that you are treated fairly throughout the process. The criminal justice system is complex and a defence counsel will assist you in understanding the process.

The defence counsel's primary obligation is to help you. This is true even if someone else pays the defence counsel. For example, even if your family pays for the defence counsel, the defence counsel works for you and must follow your instruc-

tions, not those of your family. There may be situations in which you and your family do not agree, or situations in which you direct your defence counsel not to share information with your family.

Choosing a Defence Counsel (Lawyer)

If your mental health played a role in your offence (s) you should seek out defence counsel with experience with mental health law. Not all defence counsels have experience with the Mental Health Act or community mental health resources. If the symptoms of your mental health are severe enough, the Crown, court, defence counsel/duty counsel may want to declare you unfit to stand trial. An example of this would be if you were unable to understand the proceedings and/or cannot communicate with counsel. In this scenario, a defence counsel will be appointed to represent you and protect your interests while the court explores the issue.

Duty Counsel

Duty counsel is available in the courthouse to assist you on the day of each court appearance, whether you are in custody or out of custody. They can appear with you on adjournments, bail appearances, bail hearings and guilty pleas. Duty counsel cannot attend for a scheduled pre-trial with the Crown on your behalf or represent you at a trial.

Duty counsels have many people to assist. You should consider attending 30 minutes before court starts to maximize time with duty counsel. You should bring the disclosure and court orders and write down any questions you have in advance.

SECTION 5: THE PRE-TRIAL/PRE-PLEA STAGE

The length of the pre-trial/pre-plea stage will vary dramatically on whether you are in custody or out of custody. If you are out of custody, then you have more time to consider your options and decide how you want to proceed.

Out of Custody

Every case is unique, but the usual progression for your case when you are out of custody would be as follows:

- Release from custody by the police or at bail court
- Appear in first appearance/adjournment court approximately 2-4 weeks after release.
- If you have not retained counsel by your first appearance then you can request the assistance of duty counsel.
- At the first appearance you will be given disclosure (your copy of the crown's case) and your Crown Screening form, which outlines the Crown's position on sentence.
- The Crown will likely advise the court at your first appearance if they are electing to proceed by summary conviction (less serious) or by indictment(more serious)
- If the Crown is aware that mental health issues may have played a role in your offence(s), the screening form may suggest Mental Health Diversion with the

Canadian Mental Health Association in Oxford County.

- If the Crown is not aware of, or is unsure of, your mental health issues, and you want to apply for Mental Health Diversion, you may wish to advise the court, your defence counsel and/or duty counsel of your wishes.
- If you are offered a regular diversion program you may enter the program at first appearance, or adjourn the case to consider whether you want to participate in the program.
- If you are not being offered diversion then your case will likely be adjourned for 2-3 weeks for you to do the following:
 - Review the disclosure; and
 - Apply for Legal Aid, and, if granted, retain counsel; or
 - Retain a defence counsel with your own funds; or
 - Meet with the Mental Health Court Support staff if you are considering Mental Health Diversion; and
 - Discuss with the defence counsel or other supports what you want to do with your charges
- The case will likely be adjourned 2 to 3 more times for you to work through the above options. After that you will have to set a date for either a guilty plea or a trial.

In Custody

If you are in custody, then most of the above steps still occur, but at a faster rate. In this case, it is particularly important for you to consider applying for Legal Aid or retaining a defence counsel privately as soon as possible.

Crown Resolution

A Crown resolution pre-trial meeting is often held between the Crown and defence counsel, or the Crown and you if you are self-represented. If you are self-represented you can bring family or friends to the pre-trial if you want their support. Often a police officer will be present during the meeting, if you are self-represented. The meeting is held at the Crown's office and is not mandatory.

During a pre-trial, the Crown and defence counsel will discuss how each sees the case proceeding. A resolution meeting is held "without prejudice", which allows both sides to discuss the case freely.

If you have chosen to plead guilty, a plea resolution will be discussed at the pre-trial, including what charges you will be pleading to, what facts will be provided to the justice and the Crown's position on sentence.

If you have chosen a trial, the pre-trial will focus on how long the trial will take, what witnesses will be called and whether any issues can be agreed upon to simplify the trial.

If you are out of custody and are self-represented and want to arrange a pre-trial with the Crown, then you can call the Crown's office. The pre-trial will be held at the Crown's office. If you are in custody and are self-represented, then a pre-trial will be held in Court.

NOTE: It is best for you to wait to schedule a pre-trial until after your first appearance so you can receive disclosure and review the case against you prior to the pre-trial.

Judicial Pre-Trial

The Judicial pre-trial is similar to a Crown resolution meeting, except that a Justice participates in the pre-trial, assists both sides in resolving outstanding issues and provides an opinion as to a possible range of sentence if you enter a guilty plea or are found guilty after a trial.

Judicial pre-trials are usually held in more complex and lengthy cases. They are mandatory if any trial is expected to take a day or more. Judicial pre-trials are held outside of court, usually in the Justice's chambers. However, if you are self-represented the judicial pre-trial will be held in Court.

If your case is to be resolved by a guilty plea then the Justice who participated in the judicial pre-trial will only preside over the guilty plea if both the Crown and defence consent. If your case is to be tried, then the justice who participated in the judicial pre-trial will not be the Justice that hears the trial and the trial Justice will know nothing about what was said at the judicial pre-trial.

During the pre-trial stage the Crown will advise the court as to how the Crown will be proceeding on the Charges. There are two options: Summary Offences and Indictable Offences.

Summary Offence: Is a less serious offence than an indictable offence. These offences are tried in the Ontario Court of Justice without a jury. The maximum punishment for most summary offences is a fine of \$2000 and/or a jail sentence of six months. These are called “straight summary” offences. Examples of straight summary offences include:

- Causing a disturbance
- Harassing phone calls
- Trespass by night

Indictable Offence: Includes more serious crimes. The person being charged with an Indictable offence can, in most cases, choose to have a trial in either the Ontario Court of Justice or Superior Court of Justice. The person also has the choice to be tried by an Ontario Court of Justice Judge, a Superior Court of Justice Judge sitting alone or with a jury. These offences are called “straight indictable” offences. These are the more serious offences in the Criminal Code. Examples of straight indictable offences include:

- Murder
- Manslaughter
- Robbery
- Aggravated Assault
- Break and enter into a dwelling house

The Crown will consider a number of factors when deciding whether to proceed by indictment or by summary conviction. The most important factor to consider is what the expected sentence would be upon conviction. The Crown may also proceed with something known as Hybrid offence where the Crown can elect to have it tried as a summary or an indictable offence. While the maximum jail sentence for a summary conviction 6 months, a Hybrid offence elected as summary carries a maximum jail sentence of 18 months.

If the facts of the case and/or your criminal record are such that a more significant penalty is possible, then the Crown will likely elect to proceed by indictment.

The Guilty Plea

If you are not eligible for diversion and after careful consideration have decided to plead guilty then you can do so in the regular guilty plea court.

A guilty plea is considered a significant sign of remorse and will be considered as a mitigating factor. Therefore, the sentence on a plea is usually considerably less than the sentence you would receive after a trial. This is not because you are being punished for having a trial, as that is your right. Rather you are being given credit for pleading guilty, showing your

remorse and saving the victims and witnesses from having to testify.

If you have retained a defence counsel, he/she will assist you with the plea. In many cases, the defence counsel will have had a resolution meeting with the Crown before your plea to plan a resolution. A plea resolution will ensure that you will be aware of which charges you will plead to, what charges will be withdrawn, what facts you will admit and what the Crown's sentence position will be.

If you have not retained counsel then, you can do the plea on your own or have duty counsel assist you. It is unlikely, that the duty counsel will have time to have in-depth discussions with the Crown on your behalf on the day of the plea. Therefore, you may want to consider arranging a Crown pre-trial before the plea date in order to discuss a potential plea resolution and learn the Crown's sentence position.

While the Crown and your defence position may be presented, the final decision always rests with the Justice. The Justice may agree with your decision, or agree with the Crown's position, or he/she may sentence you to something different from either position. If the Crown and you both agree on a sentence position, which is called "joint submission", then it is unlikely that the Justice will change that position, unless

he/she feels that the joint submission will bring the administration of justice into disrepute.

Before you are arraigned on the charges and enter a guilty plea, the Justice will ask your defence counsel/duty counsel or you directly if:

- Your plea is voluntary;
- You accept the facts that will be the basis of the plea;
- You understand the consequences of a plea and;
- You understand that regardless of whether a plea resolution has been discussed, the final sentencing decision rests with the Justice.

After the plea inquiry, you will be arraigned on the charges and you will plead guilty. The Crown will then read in the facts of the case and the Justice will ask if you agree with what the Crown read. Your defence counsel or duty counsel will answer on your behalf and either agree to the facts as alleged or make some minor changes. The Crown must agree with these changes, or else the plea will be struck because the Crown and you have not agreed on the facts of the charges.

Once the facts are agreed upon, the Court will accept the plea and make a finding of guilt. The Justice then moves on to the sentencing phase.

The Justice may sentence you on the day of your plea, or may choose to adjourn the sentencing for a number of reasons. Common reasons to have the sentencing on a later date include allowing:

- A pre-sentence report to be prepared;
- A psychiatric assessment to be done;
- For you to go to a counselling or a rehabilitation program;
- For you to obtain restitution for the victims of the offences;
- The Crown to get a victim impact statement from the victim.

If your sentencing is adjourned, your bail terms remain in place until the sentencing is complete.

Section 6: Mental Health Diversion in Oxford County

People living with a serious mental illness or a developmental disability may access alternatives to criminal prosecution. This process is known as mental health diversion. If the Crown Attorney believes that symptoms of mental illness are related to the criminal activity he or she may determine that mental health diversion is an appropriate option.

The Crown Attorney decides whether mental health diversion is appropriate or if you should be prosecuted for the charge(s). If the Crown Attorney decides that mental health diversion is an option, the CMHA Court Support Worker can help you to develop a mental health treatment plan in the community to divert you from the criminal justice system and into the mental health system. Supports are put into place to reduce the possibility of recidivism/re-offense. If the Crown Attorney decides that mental health diversion is not appropriate, the Court Support Worker will continue to work with you to access supports and develop and implement a treatment plan as you navigate the criminal justice system to resolution of your court matters.

Once the Crown Attorney approves your application for the mental health diversion program, you will meet with a court worker from CMHA-Oxford to complete the assessment pro-

cess. The worker will interview you and may access your health records from other service providers with your consent. The worker will provide the Crown with relevant information and a proposed plan for diversion. If the Crown agrees to the proposed plan, you will be accepted into the program and must follow your plan. The court worker will report your progress to the Crown every few months. After the first progress report, the Crown may decide to stay your charges. You are obligated to continue with your diversion plan for up to one year.

Who is Eligible?

Any individual 16 years-of-age or older living with a “diagnosable mental disorder” (includes Mental illness, developmental/intellectual disability, and/or Acquired Brain Injury) who has been charged with an eligible criminal offence is eligible. You must volunteer for diversion to be considered and you do not have to enter a guilty plea. You must also be fit to stand trial and criminally responsible to be eligible for mental health diversion.

Possible Outcomes of Mental Health Diversion

If the Crown Attorney agrees to mental health diversion, there are three possible outcomes:

1. Stay of Proceedings:

Once a treatment plan has been approved, the charges may be stayed for a period of one year. If you continue to follow your treatment plan and are doing well in the community then the Crown Attorney will not proceed with the charge(s). If there are new charge(s), you may be brought back to court for the original charge(s) and for the new charge(s).

2. Peace Bond:

The court may be asked to impose a peace bond. This is a court order requiring you to keep the peace and be of good behaviour. Peace bonds are usually used in situations where there is a known victim of the crime (such as minor assaults, harassment or threatening). A peace bond order always tells the person accused of the crime to “keep the peace”, but it may also have other conditions. These may include not communicating with the victim for a maximum of one year. If the peace bond is broken the police can be called and legal action can be taken.

3. Withdrawal of Charges:

Once your charges have been diverted the Crown Attorney may withdraw them.

Eligible Offenses

There are three classes of offences. Only Class 1 and Class 2 are eligible to be considered for Mental Health Diversion. The classes are as follows;

Class: 1

1. Theft under \$5000
2. Possession under \$5000
3. Joyriding
4. Mischief under \$5000
5. Fraud and false pretenses under \$5000
6. Food, travel and accommodation frauds
7. Causing a disturbance

Class 2

1. Uttering threats
2. Public mischief
3. Resisting arrest
4. Fraud
5. False pretenses
6. Soliciting
7. Criminal breach of contract
8. Simple assault
9. Dangerous driving (no bodily harm or death)

10. Break and Enter
11. Theft
12. Forgery
13. Mischief to property
14. Obstruction of justice

Class 1 and 2 offences may be eligible depending on the discretion of the Crown counsel.

The decision about eligibility will depend on Crown Counsel's assessment of;

1. The circumstances of the offence;
2. The Circumstances of the accused; and,
3. The needs of the community, including the victim.

The more an offence resembles an ineligible offence, the less likely it is to be acceptable for a program of treatment or supervision. The more it resembles a presumptively eligible offence, the more likely it is to be acceptable.

Offences that are Ineligible

Class 3:

1. Murder, manslaughter, infanticide
2. Criminal negligence causing death
3. Dangerous driving (with death or bodily harm)
4. Any offence causing serious bodily harm

5. Impaired driving
6. Offences involving firearms
7. Criminal organization offences
8. Kidnapping
9. Spouse/partner offences
10. Child Abuse
11. Offences involving child pornography
12. Sexual offences
13. Specific hate offences
14. Home invasions
15. Perjury

Class 3 offences are never eligible for Mental Health Diversion.

Section 7: COMMUNITY TREATMENT COURT

In the Criminal Code of Canada, section 672 describes how mental health issues are handled under the law. The Mental Health Court in Woodstock, Ontario is called Oxford County Community Treatment Court (CTC). CTC is dedicated to helping people who have come into conflict with the law and are experiencing a mental disorder or symptoms of mental illness. While the court bears similarities to a typical court, the focus is on adding a treatment component to court dispositions. All participants must plead guilty to enter the court. Your Court Support Worker will work with you to develop a recovery and treatment plan that will meet your unique needs. You will work through your treatment plan during the entire court process and your progress will be considered by the court at the time of sentencing.

Goals of the Court:

1. To provide a cost-effective approach to addressing the mental health needs of offenders; and,
2. To reduce recidivism, provide community protection, ease the caseload of the courts and help to alleviate the problem of increasing jail populations.

Who is Eligible?

CTC is available to individuals charged with certain offences in Oxford County who intend to plead guilty. If you reside in Oxford but your charges originate from another jurisdiction, you can ask about treatment court in that area. Participants are usually screened by Mental Health Workers and must be 18 years-of-age or older and living with a mental disorder. Those who are experiencing symptoms and have not been diagnosed are eligible for an assessment. The Crown must approve the application prior to your case being adjourned there. Eligible participants must plead guilty and agree to come to court regularly for progress updates.

The Role of the Canadian Mental Health Association (CMHA) in Oxford

CMHA Court Programs and Services

This section explains the role of CMHA in Oxford County's justice system. The term CMHA worker refers to a member of CMHA's court team: a regulated health professional who provides court support/diversion and case management. CMHA workers provide services to those who are 16 years or older, in conflict with the law and living with mental illness, and/or a developmental disability, and/or an Acquired Brain Injury. If you have not been diagnosed with any of these but

experience signs and symptoms, you are eligible for an assessment. In such cases involving developmental disability or Acquired Brain Injury, CMHA workers may make referrals to, or consult with the Dual Diagnosis and Justice Case Manager (Regional Support Associates), and/or the ABI Rehabilitation Outreach Worker (Dale Services). More details about these workers are described below.

CMHA workers support clients who voluntarily agree to access services during their criminal court process. CMHA workers will accept referrals from anyone and are responsible for screening eligibility for both Mental Health Diversion and Community Treatment Court prior to application to the Crown. You can be at any stage within the criminal justice process (i.e. pre-charge police contact, charged and in court process, discharge from a correctional facility, probation, etc.). The services provided vary depending on your needs.

Once referred, a CMHA worker will meet with you to determine which programs and services best fit your situation and can help make an application to the appropriate court program such as Mental Health Diversion or Community Treatment Court.

The CMHA worker will determine needs and provide the following where appropriate:

- Helping to develop bail release plans
- Connecting with other service providers

- Communicating information to the detention centre
- Links and referrals to other mental health services/programs in the community
- Information to the Crown, defence counsel, and judge where consent is given in advance
- screening and assistance with applications for Mental Health Diversion and the CTC
- assistance to navigate the mental health and justice systems,
- support with goal setting and recovery planning as a working partnership,
- consultation to individuals, family members, and sureties
- addictions support and referral,

The Justice Dual Diagnosis Case Manager provides short-term case management to assist with navigating the criminal justice process. This includes referral to longer term supports for ongoing intervention, individualized assessment and referral to specialized supports. This program is available to people 18 years-of-age and older with a dual diagnosis (developmental disability and a mental health need, which does not have to be a serious mental illness). The individual can be at any stage within the justice system (i.e. pre-charge police contact, charged and in court process, discharge from a correctional facility, probation, etc.). The services provided vary

depending on the needs of the individual. Anyone can make a referral.

The ABI Rehabilitation Outreach Worker provides court support and case management services to individuals who have a confirmed brain injury which occurred after age 18. This service is available through Dale Brain Injury Services.

Section 8: What can be expected during a Trial?

Preparing for Trial

If you plan to go for trial, there are some legal procedural steps you must go through along the way.

Preliminary Inquiry

A preliminary inquiry is scheduled for indictable offences. It helps the Judge decide if there is enough evidence to prosecute the person. If there is enough evidence a full trial will be scheduled. If there is not enough evidence the case will be discharged.

Entering a Plea: Guilty

If you plead guilty there will be no trial. The Judge will listen to the facts about the crime, and sometimes witnesses from both sides, and will then make a decision about the sentence. In some situations, you may enter into a joint resolution with the Crown. A joint resolution may include:

1. Dropping some of the charges;
2. Reducing the charge to a lesser charge; or,
3. Asking for a lighter sentence.

If you plead guilty, the Judge may order that you arrange to meet with a Probation Officer at a set date and time to complete a Pre-Sentence Report. The purpose of the Pre-Sentence Report is to help the Judge to learn more about you in order to aid in your sentencing.

Not Guilty

If you plead not guilty there will be a trial and the Crown Attorney will have to prove you are guilty beyond a reasonable doubt.

The basic trial processes are as follows:

You are arraigned and plead not guilty;

The Crown calls witnesses against you. The Crown questions each of their witnesses and your defence counsel has an opportunity to cross-examine each witness. Depending upon

what is said in cross-examination, the Crown has a limited right to re-examine their witnesses;

The Crown closes its case against you and the defence counsel decides whether or not to call defence evidence;

If your defence counsel chooses not to call defence evidence then the Crown must proceed with their closing argument, followed by defence counsel's closing argument and then the Justice will render a verdict of guilty or not guilty;

If your defence counsel calls defence evidence, it may or may not include calling you to the stand. If you do testify on your own behalf, you will usually testify before any other defence witnesses, so that you cannot be accused of tailoring your evidence to match the witnesses' evidence;

Your defence counsel will question your defence witnesses and the Crown will have the right to cross-examine those defence witnesses, including yourself. Depending upon what is said in cross-examination the defence counsel has a limited right to re-examine your defence witnesses;

If the defence calls evidence, then the Crown may choose to call rebuttal evidence if necessary;

If the defence calls evidence, then the defence must give their closing submissions to the Court first and the Crown's closing submissions will follow;

The Justice may decide the case that same day, he/she may adjourn the case to consider the evidence and render a verdict on a later date;

If you are acquitted after trial, then the case is over and any bail terms end. If you are found guilty after trial then you will be sentenced. You could be sentenced on the same day as the verdict is decided or the sentencing may be adjourned for a number of reasons, including permitting:

A pre-sentence report to be prepared;

A psychiatric assessment to be done;

For you to do counselling or a rehabilitation program;

For you to obtain restitution for the victims of the offences;

and/or

For the Crown to obtain a Victim Impact Statement from the Victim.

If your sentencing is adjourned, the bail terms remain in place until the sentencing.

NOTE: You have the right to represent yourself at trial and, if you do so, the Crown will make a concerted effort to assist you. However, trials can be complicated and without legal training or court room experience, you will be at a disadvantage. Whenever possible, hire a defence counsel, either with your own funds or with Legal Aid. If your mental health is an issue, in order to represent yourself, you may be granted legal aid based on your specific circumstances. You should also review the Guide to self-represented accused produced by the Ministry of the Attorney General. This can be found at the court house or online at <http://www.ontariocourt.ca/representated-parties/guide-for-accused-in-criminal-cases/guide/>

Judge and Jury Trials

If you are charged with an indictable offence and choose to have a judge and jury trial in the Superior Court of Justice you will be tried by a jury of 12 citizens from your region. The jury finds you guilty or not guilty, while the presiding Justice's role is to provide the jury with guidance on the law.

You and your defence counsel will play an active role in picking the Jury as will the Crown. Jury trials are often more complex than Judge-alone trials because the Jury has to be instructed on the law and it is normal for the Court to have to break more frequently to permit the Justice, defence counsel and the Crown to discuss legal issues in the absence of the Jury.

How Your Mental Health Issues May Affect your Trial

The two main ways in which your mental health issues may affect your trial are the fitness to stand trial and whether you are not criminally responsible for your charges.

Fitness to Stand Trial

At any time in the court process, either the Crown or the defence counsel/duty counsel can raise the issue of “fitness to stand trial.” When the issue is raised the trial must stop. It would be unfair to you to proceed when there is a risk that you may be unfit, so the Justice has an obligation to explore that issue. You may be unfit to stand trial if you have a mental disorder that prevents you from:

- Understanding the nature or object of what happens in court;
- Understanding possible consequences of what happens in court, or
- Communicating with and instructing your lawyer.

The court will typically require a psychiatric or fitness assessment. If you are found unfit, the judge may order for you to receive treatment for up to 60 days in order to return you into a “fit” state. This is called a treatment order (or “make fit” order) and involves you going to a designated forensic psychiatric hospital. If you are deemed “fit” after treatment, you return to court. If you are found unfit to stand trial and remain unfit even after treatment, a formal finding of Unfit to stand trial is made and the case is transferred to the Ontario Review Board (ORB).

Orders under the Mental Health Act

The court can order an assessment of the accused under the Mental Health Act (MHA) to help;

1. Determine the nature of a person's illness and recommend treatment options; and,
2. Assist the court in determining sentencing options.

Not Criminally Responsible (NCR)

The defence of “not criminally responsible on account of mental disorder” is contained in section 16 of the criminal code. If the Justice finds that you have committed the offence(s) of which you are accused but also finds that because of your mental disorder, you did not appreciate the nature and quality of your act or know that it was wrong then you will be found Not Criminally Responsible (NCR).

Psychiatric Patients Advocate office (PPAO)

The PPAO provides advocacy services and rights advice to people who are in psychiatric facilities and people in the community who are being considered for community treatment orders (CTO's). PPAO's role is to ensure that you are informed of your rights when your legal status changes. If you are not capable of making decisions about your treatment

then the rights adviser must provide rights advice to your substitute-decision maker (SDM).

If you are found guilty after a guilty plea or after a trial, the next step is sentencing.

Section 9: The Sentencing

Before you are sentenced, both the Crown and your defence counsel/duty counsel will make submissions to the Court as to what they feel is appropriate. They may refer to the facts of the case and may compare them to similar cases heard by other Courts. Traditionally your counsel/duty counsel will go first, followed by the Crown.

Both sides will also file any exhibits they feel are relevant. For the Crown, this can include your criminal record, any outstanding probation orders, victim impact statements, pre-sentence reports, psychiatric assessments, or anything else the Crown wants the Justice to consider. For the defence this can include items such as medical or psychiatric reports, reference letters, counselling reports, a written apology, or proof that restitution has been paid to the victim.

After hearing from the Crown and defence counsel/duty counsel, and reviewing all of the exhibits, the Justice will ask you if you have anything to say. You are not obligated to say anything, but if you do want to address the Court, this is the time to do so.

The Justice will then decide the appropriate sentence for you. Depending on the charges, there may be minimum sentences

that the Court cannot reduce. Examples of such charges include impaired driving offences, certain firearm offences and certain sexual offences.

Possible sentences include:

Absolute Discharge: You are found guilty, but not convicted. You are discharged from the moment you are sentenced.

Conditional Discharge: You are found guilty, but not convicted. You are discharged upon successful completion of a period of probation of up to three years.

Fine: You are found guilty, convicted and ordered to pay a monetary penalty. A fine can be on its own, or it can be combined with a probation or custody.

Probation Order: You are found guilty and convicted, unless the probation is attached to a conditional discharge. Probation is a period of supervision for up to three years. You will have to follow certain terms in the order, including that you must report to a probation officer. A probation order can be ordered with a conditional discharge, a suspended sentence, a fine, or a period of custody of two years or less.

Suspended Sentence and Probation: You are found guilty and convicted. The sentence that the Justice would have imposed

is suspended pending a period of probation for up to three years. If you finish the probation without breaching any of the terms, the sentence is complete. If you breach a term of your probation you can be charged with the offence of probation, and the Crown can also apply to have the Justice re-sentence you on the original charges as well.

Conditional Sentence: You are found guilty and convicted. You are sentenced to a period of imprisonment, but allowed to serve that custodial sentence in the community, under terms stricter than on a probation order. A conditional sentence can last up to 2 years less a day. Terms may include hour arrest and wearing an electronic monitoring anklet. Not all offences are eligible for a conditional sentence. During the conditional sentence, you will be monitored by a conditional sentence supervisor (a probation officer).

Custody/Imprisonment: If you are found guilty and convicted, you are sentenced to a term of imprisonment. If the sentence is under two years you will serve the sentence in a provincial reformatory. If the sentence is two years or more, you will serve it in a federal penitentiary. If the sentence is less than 90 days, the Justice may allow you to serve the sentence intermittently in which case you serve the sentence on only certain days of the week, usually on weekends.

If you are found guilty of more than one offence, your sentence can be different depending on the charge of which you are found guilty. These orders can include the following:

- Restitution to Victim (s);
- A DNA sample being taken;
- A ban on owning weapons and firearms;
- Entry onto the sex offender registry;
- A ban on attending parks, playgrounds and schools;
- A ban on owning animals;
- A ban on driving a motor vehicle.

The Types of sentences may be:

1. Concurrent sentences: More than one sentence served at the same time;
2. Consecutive sentences: Sentences run separately and begin one after the other;
3. Intermittent sentences: Custodial sentences of up to 90 days served on specific days only and not every day of the week; or,
4. Conditional sentences: A term of up to two years less a day that is served in the community under supervision rather than in a jail. This is also known as “house arrest.”

Probation/Parole

The court may order community supervision as part of your sentencing and may be after you have completed time in custody. A probation/parole officer will work with you to develop a plan that:

- Meets your Goals
- Reduces your risk of re-offending;
- Monitors compliance of your court ordered conditions.

Section 10: Appeals

Anyone found guilty of breaking the law may ask a higher court to review what happened at the trial. You may file an appeal against the conviction and/or the sentence. The Crown may also appeal against an acquittal or a sentence but, generally speaking, the Crown's right to appeal is much more restricted than yours.

In which court will the appeal be heard?

The court will be different depending on the type of crime. Cases that usually have less serious penalties are called "summary conviction offences." These cases are appealed to the Superior Court of Justice and are heard before a Judge of that court in the community where the trial was conducted. Cases that usually have more serious maximum penalties, such as murder, are called "indictable offences" and are appealed to the Court of Appeal for Ontario, which sits in Toronto.

THE APPEAL PROCESS

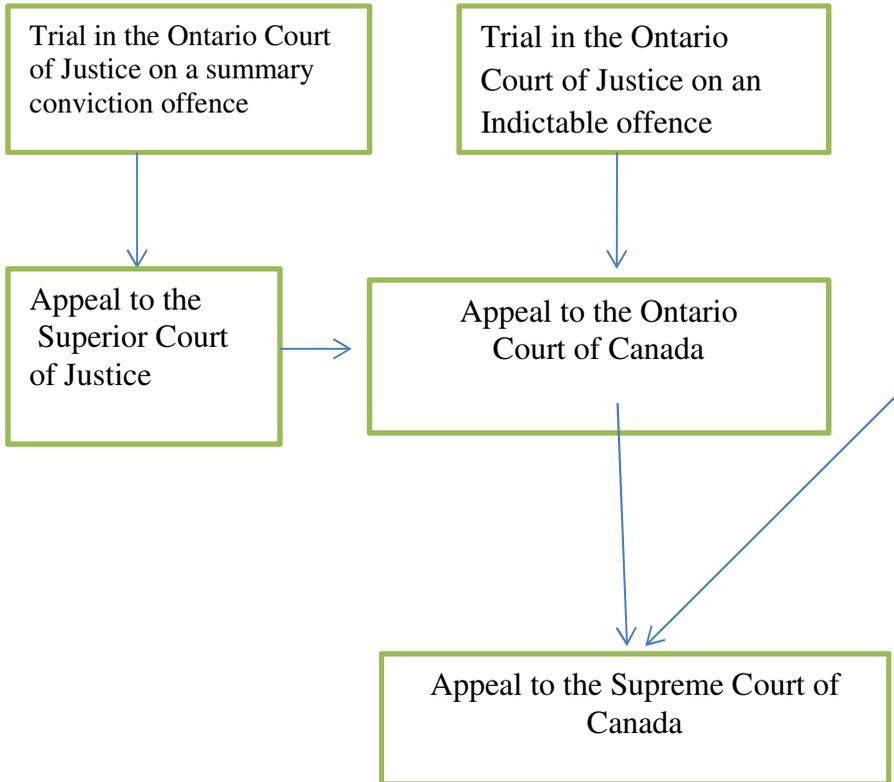


Figure 1: The Appeal Process

Section 11: The Ontario Review Board System (O.R.B.)

If you are found either unfit to stand trial or not criminally responsible on account of mental disorder, then the presiding Justice can either render a disposition which you must follow, or order that your case be sent to the Ontario Review Board (ORB) for them to make a disposition.

The Ontario Review Board has jurisdiction over all accused who have been found either unfit to stand trial or not criminally responsible on account of mental disorder.

In the majority of cases the Justice chooses to send the case to the ORB, who must hold a disposition hearing within 45 days.

If the Justice makes his/her own disposition, then absent the Justice giving you an absolute discharge for an NCR case, the ORB must still hold a disposition hearing within 90 days to review the Justice's disposition and make any changes they feel are necessary.

The Chair of the Ontario Review Board is appointed by the Provincial Cabinet. The Chair is usually a retired Justice. There are numerous other members of the Board.

At each disposition hearing the Board is made up of 5 members:

The Chair or Alternate Chair;

A legal member (a lawyer or retired Justice);

A psychiatrist;

Another psychiatrist or psychologist;

A lay-person

The disposition hearing is a relatively informal process. The parties to your disposition hearing are:

Yourself-represented by defence counsel

The forensic psychiatric hospital that is caring for you

The Crown

If you are found NCR and there is a victim (s) of your offence(s), then that victim has a right to attend the ORB hearing and/or provide a Victim Impact Statement(s). If you are found unfit to stand trial, then you have never been convicted of the offence(s).

NOTE: Not all defence counsel have experience with Ontario Review Board. These hearings are different than criminal court cases and you may want to gain some experience.

The Initial ORB Disposition Hearing

The Court that found you unfit to stand trial or NCR will send information to the ORB to assist them with their disposition

hearings. This will include a copy of the information or indictment, any assessments that were done, your criminal record (if any); any exhibits filed with the Court, a transcript of the proceedings and victim impact statements (if any).

If at the disposition hearing the ORB feels that they require a further psychiatric assessment, they can adjourn your hearings and order one.

The ORB will review all of the materials provided to them by the Court, consider any evidence called by the parties and render a disposition order as soon as possible. Written reasons for the disposition will follow a few weeks later.

If you are unfit to stand trial, the possible dispositions are:

A discharge with conditions: You are allowed to reside in the community and must follow terms outlined in the disposition and may have to attend appointments at a forensic psychiatric hospital.

A detention order: You are ordered detained in one of the forensic psychiatric hospitals in the province and must follow certain terms. The hospital must develop a treatment plan for you. The hospital may be given discretion to allow you certain

access to the community, including residing in the community, depending on your level of risk.

If you are found not criminally responsible by reason of mental disorder, the possible disposition is:

An Absolute discharge: Unless you are found to be a significant threat to public safety you will be given an absolute discharge and will no longer be supervised by the ORB.

A discharge with conditions: You are allowed to reside in the community and must follow terms outlined in the disposition and may have to attend appointments at a forensic psychiatric hospital.

Your disposition will include terms that you must follow. The terms could require that you abstain from drinking alcohol or taking non-prescription drugs, that you submit to drug-testing or that you do not have contact with certain people. The disposition will also outline what the forensic psychiatric hospital's obligations are to you and will include that they must work with you to develop a treatment plan and what access to the community they are allowed to give you.

Annual ORB Disposition Hearing

After your first disposition hearing, you are entitled to annual hearings for as long as you remain under the jurisdiction of the ORB. If there is a reason to hold an earlier hearing, the ORB has the discretion to order a hearing at any time.

The goal of the Ontario Review Board system is for your mental disorder to improve so that you can move down the possible dispositions with the idea that at some point you will be found to no longer be a significant threat to public safety. For example: If after your first disposition hearing you are ordered detained in a medium security forensic psychiatric hospital, then the goal would likely be to move down to detention in a minimum-security forensic hospital, then to detention in a minimum security forensic psychiatric hospital and given community living privileges and then to a discharge with conditions. If you do very well under ORB supervision, you may skip stages, while if you relapse you may move back up to stricter terms.

If you are an NCR accused, then the ultimate goal is for the ORB to find that you are no longer a significant threat to public safety and so eligible for an absolute discharge. Once that happens, you will no longer be under ORB supervision.

If you are unfit to stand trial and the Ontario Review Board finds you are no longer significant threat to public safety, you

are not entitled to an absolute discharge. Instead if the ORB feels you are no longer a significant threat to public safety and that you are also likely to never become fit then the ORB can send you back to the Court where you were found unfit which will consider staying the charge(s).

If you were originally found unfit to stand trial and later become fit, then the ORB will send you back to the Court for your case to resume. If you become unfit again, you may end up back in the ORB system. Unfortunately, if your mental disorder is such that your mental state fluctuates despite the best efforts of psychiatric staff, you may end up going back and forth between the two systems a number of times.

Every accused under the supervision of the Ontario Review Board is unique and the ORB will consider your case on its own facts. Your mental disorder, prognosis and risk to public safety will all be taken into account. When making your disposition, the ORB must make the least onerous, least restrictive disposition and terms possible.

When deciding your disposition, the Ontario Review Board must consider the following factors:

- The need to protect society from dangerous persons;
- Your mental condition; and,
- Your reintegration into society and other needs.

The Ontario Review Board cannot force you to take medication as a term of the disposition. However, the majority of ORB patients do accept treatment, including medication if prescribed. If you are speaking, the more you cooperate with your psychiatrist and other supports, the more likely your disposition terms will be relaxed.

Right to Appeal: You have the right to appeal any disposition made by the Ontario Review Board to the Ontario Court of Appeal. You must have a legal basis to do so; you may not appeal simply because you are unhappy with the disposition, you must do so within 15 days of the disposition.

Appendix A: Legal Terms

Absolute Discharge:

A court decision made when, in the best interests of the accused and not contrary to the public interest, a person who has been found guilty of, or pleads guilty to, an offence under the Criminal Code or other federal legislation, is relieved from sentencing by that court, without conditions. The offender has no record of a criminal conviction for employment purposes. The offender does have a record of a finding of guilt.

Accused:

A person who is charged with a criminal offence; the defendant in a criminal case.

Acquittal

A finding of not guilty in a criminal case.

Adjournment:

The postponement of a hearing or court sitting, usually because the scheduled proceedings were not completed or ready to commence.

Adult Detention:

The temporary care of adults in physically restricted facilities usually referred to as jails, detention centres or lockups, pend-

ing court disposition or transfer to another jurisdiction or agency.

Alias:

An assumed name.

Appearance Notice:

A document that requires a person to appear in court to answer to charges against them in a criminal case.

Arrest:

The act of restraining, seizing or physically detaining a person by legal authority.

Arrest Warrant:

The document signed by a Judge or a Justice of the Peace, authorizing those to whom it is addressed to apprehend a person and bring that person before a Justice of the Peace.

Bail:

The term refers to the form of release in which an amount of contingent debt is pledged by the accused as a condition of release pending trial (his or her “own bail”), or by his or her “surety” (a “surety bail”) or, in some limited circumstances, the accused must make a cash deposit) “cash bail”).

Bail Hearing:

An appearance before a judicial officer, typically a Justice of the Peace to determine if conditions exist for an accused's conditional release pending trial, and, if so, what those conditions are.

Bail Order:

An order of the court that tells you what to do while your charges are outstanding.

Bail Review/Bail DE Novo:

An appeal over an alleged error in the decision at the bail hearing; taken to a Superior Court regarding bail granted or refused by a lower Court.

Bail Verification:

Investigation and confirmation of factual information about an accused person's community status, in preparation for a bail hearing.

Bail Supervision Program:

The bail supervision program provides an alternative to incarceration while awaiting a court disposition. The program provides community supervision to eligible individuals who do not have the financial or social supports to meet bail requirements.

Bail Violation:

A violation of a term of bail that may include the neglect of an undertaking, recognizance, summons, appearance notice or a promise to appear.

Bench Warrant:

A warrant ordered by the court concerning the non-appearance of an accused person or witness in court, which authorizes the subject's immediate arrest. (See also Discretionary Bench Warrant)

Case Management:

Model of service delivery for individuals with a mental illness. Case management is community based and focuses on the client's needs, strengths and assets based on a recovery model.

Charge – Count:

The formal accusation against a person that alleges that he or she has committed a specific offence.

Community Service Order:

An alternative to imprisonment whereby an offender is required to perform a prescribed number of hours of community

work within a prescribed time, as a condition of a probation order.

Concurrent Sentence:

A sentence that allows the convicted prisoner the privilege of simultaneously serving two or more sentences; the length of sentence being determined by the latest expiry date of the various sentences that are imposed.

Conditional Discharge:

A court decision that, in the best interest of the accused and not contrary to public interest, a person who is found guilty or pleads guilty under the Criminal Code may be discharged by the court on certain terms and conditions as set forth in a probation order, rather than having a conviction registered against them. Upon successful completion of the probation the offender has the same status as someone absolutely discharged (see above).

Conditional Sentence:

The offender serves his sentence of imprisonment in the community. Typically the person is to remain at home and is only allowed to leave his or her home for limited specified purposes.

Conditions of Probation:

The terms imposed on an individual by a probation order, requiring the performance of or abstention from specified actions.

Conviction

The formal recording of guilt and liability to sentencing after trial by a properly constituted court. A Convicted person has a criminal record.

Court, Ontario Superior Court of Justice:

A court of criminal and civil jurisdiction presided over by a Superior Court Judge appointed by the Governor in Council (i.e., the Federal Cabinet). It has the authority to try an indictable offence other than those enumerated in the Criminal Code of Canada as being solely within the jurisdiction of another court. Trials can be with or without a Jury in accordance with the Criminal Code.

Court, Ontario Court of Justice:

The lower, provincially appointed court, which hears criminal proceedings, proceedings under the Youth Criminal Justice Act and certain matters under the Family Law Reform Act and other provincial statutes.

CPIC:

The Canadian Police Information Centre is a computerized police information and records system designed and operated for the police community. It keeps records of, among other things, convictions, discharges and acquittals.

Criminal Code:

Federal legislation; passed by the Parliament of Canada, with respect to most of the criminal law of Canada. This legislation sets out the duties and responsibilities of the courts and their officers, stipulated offences and penalties, sets appeal procedures and legal jurisdictions.

Criminal Prosecution:

A proceeding in which an accused person is tried.

Criminal Record:

A judicial record of conviction. A register of crimes maintained by the R.C.M.P. in Ottawa on persons convicted of offences.

Crown Attorney:

A member of the Ontario Bar appointed by the Attorney General to aid in the administration of justice of the county or judicial district for which the attorney is named. Specifically examining allegations of wrongdoing, conducting preliminary hearings and prosecutions for indictable and summary conviction

offences and attending to all duties of Crown Attorneys under the laws in force in Ontario.

Crown Brief:

The Crown brief contains all the information about an individual's particular charge(s). In the brief will be a copy of the police synopsis, criminal record, a copy of the police notes, and any evidence such as videotapes.

Custody:

A state of being kept in prison.

Defence Counsel:

A lawyer with experience in criminal law who provides legal advice and representation in criminal court.

Discharge:

The court order by which a person held to answer a criminal charge is set free. In the Ministry of Correctional Services the act of releasing an inmate from custody upon satisfying the terms of imprisonment.

Discharge Possible Date:

An inmate will be discharged if he or she serves all time in custody without parole, but minus his or her remissions at this date.

Discretionary Bench Warrant (or Bench Warrant with Discretion):

This is a bench warrant that will not be executed unless the accused person fails to attend on the next court date, or if it's extended, on a later one. Commonly used in cases where mental health is of concern. A warrant is necessary to avoid the court losing jurisdiction over the accused, however it is understood that the arrest should not actually take place if the accused shows up on the next date.

Disposition:

Court outcome of charge.

Dual Diagnosis:

Pre-existing developmental disability and a mental illness.

Duty Counsel:

A lawyer appointed by legal aid to represent individuals at the provincial court level in both criminal and family divisions. In the criminal courts, they can assist individuals (free of charge) with bail hearings, guilty pleas, set dates, and general legal advice.

Fingerprint Classification (FPS#):

A system of classifying fingerprints according to patterns in the friction edges on the fingers. NOTE: Any person charged with or convicted of an indictable offence may be fingerprinted and photographed in accordance with the Identification of a Criminals Act. Once on file, a person's fingerprints are assigned an FPS number that appears on subsequent police records.

Indictable Offence:

Those offences that are labeled as such by the Criminal Code or other federal statutes. These are subject to more serious penalties than summary conviction offences. The accused also has the right of election of how he will be tried – by Judge without a Jury, or a court composed of a Judge and Jury. However, for certain offences, the Ontario Court of Justice has absolute jurisdiction – i.e., the jurisdiction of the Ontario Court of Justice to try the accused does not depend upon the consent of the accused.

Information:

The written allegation or charging document, under oath, in which a person (usually, a police officer) alleges that another individual has committed one or more offences.

Jurisdiction:

The limits of authority of a criminal justice agency. For a law enforcement agency, the jurisdiction defines the legal boundaries of operation that generally coincide with political boundaries, such as the limits of a city, and the types of cases for which it assumes responsibility. The same basic description applies to courts.

Keep the Peace:

To maintain quiet and harmless behaviour toward the sovereign, her government and her people, and to prevent or dissuade others from breaking the peace.

Legal Aid:

A provincially funded service for those who need assistance from a lawyer. Legal Aid is available for those with low income and negligible assets. The service is free or contributory in nature, when financial eligibility is determined. Eligible accused get a Legal Aid Certificate from Legal Aid Ontario to take to a lawyer. If the lawyer accepts the certificate he or she is then paid directly by Legal Aid Ontario.

Mental Health Act (MHA):

This act applies to every psychiatric facility R.S.O. 1990, c.M.7, s.7. It describes conditions under which people are admitted to and treated in a mental health facility in Ontario.

Mental Health Court Support Worker (MHCSW):

A Mental Health Professional who is court based to offer assistance and support to mentally ill accused, their families & friends and lawyers.

Mental Health Diversion:

Alternatives to criminal prosecution due to mental disorder.

Not Criminally Responsible (NCR):

A verdict of not criminally responsible on account of mental disorder means a verdict that the accused committed the act or made the omission that formed the basis of the offence with which the accused is charged but is not criminally responsible on account of mental disorder.

Oath-Affirmation:

A religious or solemn affirmation to tell the truth or to take a certain action.

Occurrence:

An incident or event reported to the police and recorded by them; in the Ministry of Correctional Services, any significant but otherwise unclassified happening which requires its reporting to senior officials.

Offence:

A punishable breach of the law.

Officer-In-Charge (OIC): Most cases before the court have been assigned to an Officer-in-Charge. The OIC is usually a detective and will deal with the case in court and communicate with the victim and Crown Attorney. (This is to be distinguished from the Officer-in-charge as defined by the Mental Health Act, who is the most senior administrator of a psychiatric facility.)

Ontario Review Board (ORB):

The ORB is made up of Judges, Lawyers, Psychiatrists, Psychologists and public members appointed by the Lieutenant Governor in Council who annually reviews the status of every person who has been found to be not criminally responsible or unfit to stand trial for criminal offences on account of a mental disorder.

Outstanding Charges:

Accusations before a court that have not received a formal disposition and are thus pending.

Pardon:

The Crown's full or partial exemption of an offender from the punishment prescribed for an offence and from the disabilities consequent to conviction.

Parole:

Parole is a means of releasing an offender to serve the remaining portion of his or her sentence in the community under supervision.

Parolee:

An offender released from custody to serve the remainder of the sentence in the community, bound by the conditions of a parole certificate.

Peace Bond:

The Crown Attorney has the discretion to pursue a peace bond, which is a court order requiring the person to whom it is directed to keep the peace and be of good behaviour.

Peace Officer:

Any Police Officer, Mayor, Sheriff, Bailiff and others by virtue of their office.

Perjury:

A willful act of false testimony while under oath.

Plea:

The declaration made by a person accused of a crime as to whether he or she is guilty or not guilty of the charge.

Plea Bargain:

Negotiated agreement between a prosecutor and an accused, including his or her lawyer, to settle a criminal case that is presented to a Judge for their consideration.

Police Synopsis:

A description of an alleged offence authored usually by the arresting officer.

Preliminary Inquiry:

The proceeding at which the Crown must present its evidence against an accused in order to show that it has a tenable case that warrants proceeding to trial. It is presided over by a lower court.

Pre-Sentence Report:

Report prepared by the Probation Officer that provides information to the Court on an individual's personal history and criminal conduct in order to promote individualized sentencing.

Probation:

Court order that releases a convicted person under supervision and with direction to obey certain conditions.

Recognizance:

Either (A) An obligation of record that is entered into before a court, containing a condition to perform a particular act, such as making a court appearance, or (B) A sum of money pledged to assure the performance of such an act.

Registrar:

Clerk of the court or Court Administrator.

Remand (Adjournment):

Postponement of proceedings for various reasons including to allow for the gathering of evidence or retaining legal counsel. Remand refers to individual's in-custody and adjournment refers to individuals out of custody.

Search Warrant:

An order issued by a Justice of the Peace under statutory powers, authorizing a named person to enter a specified place to search for and seize specified property which will provide evidence of the actual or intended commission of an offence.

Serve:

To deliver notice.

Sheriff:

Representative of the court.

Special Duty Counsel:

Defence Lawyers appointed by Legal Aid Ontario to represent mentally ill accused/offenders.

Stay of Proceedings:

A suspension of the court proceedings. For up to one year, the Crown may lift the stay and re-institute the proceedings. After one year the matter is stayed permanently.

Summary Conviction Offence:

A less serious offence usually carrying a penalty of no more than six months imprisonment, or a maximum fine of \$2000 or both. Some legislation sets out other penalties.

Summons:

Legal document ordering the appearance in court of an accused person.

Subpoena:

A summons ordering a person to appear in court to testify or produce a document.

Surety

A person who has pledged to pay back money or perform a certain action if the principal to a contract fails, as collateral, and as part of the original contract. A family member or friend may agree to monitor the individual while they are on bail in the community prior to their final court date.

Suspended Sentence:

Judges order that the sentence given a guilty person needs not be imposed, provided that the accused meets certain conditions set by the court. If the accused does not meet the conditions the Judge can pass sentence on the initial charge. A new charge may be laid for breaking a probationary term of the suspended sentence as well.

Terms of Release:

Conditions under which an accused person is to abide after release. Non-compliance with the terms can result in additional and or re-arrest.

Testimony:

Any verbal evidence given. An assertion of fact, opinion, belief or knowledge, material or not, admissible or not, given in court for a hearing.

Unfit to Stand Trial:

Unable on account of a mental disorder to conduct a defence at any stage of the proceeding or to instruct counsel to do so, and, in particular, unable on account of mental disorder to;

1. Understand the nature or object of court proceedings;
2. Communicate with counsel.

Warrant:

Court order giving legal authority to execute a legal process.

Withdrawal:

When charges against an accused are withdrawn, typically no further legal action will be taken against the accused on that matter.

Witness:

A person having evidence that is relevant to a particular matter.