

OLDER ADULTS AND THE JUSTICE SYSTEM

A navigational guidebook for
caregivers and service providers

February 2020



This guidebook was prepared by the Provincial Human Services and Justice Coordinating Committee (PHSJCC), with support from the Canadian Mental Health Association Ontario.



**Canadian Mental
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Ontario

**Association canadienne
pour la santé mentale**
Ontario

The information in this document is intended for information purposes only. It does not provide legal or medical advice. If you have a health question, you should consult a physician or other qualified health care provider. If you have a legal question, you should consult a lawyer.

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PREFACE

The Human Services and Justice Coordinating Committee (HSJCC) Network was established in 1997 in response to a recognized need in the province to coordinate resources and services, and plan more effectively for people who are in conflict with the law. Priority consideration is made for, but not limited to, people with a serious mental illness, developmental disability, acquired brain injury, substance use issue, and/or fetal alcohol spectrum disorder. The HSJCCs are a cooperative effort of the Ministries of the Attorney General, Children, Community and Social Services, Health, and the Solicitor General.¹

Each HSJCC is a voluntary collaboration between social service organizations, community mental health and addictions organizations and partners from the justice sector. There are 14 Regional HSJCCs who work to improve the issues that impact clients regionally who require human services as they navigate through the criminal justice system. Over 30 Local HSJCCs provide education and training for their members, coordinate care for justice-involved individuals in their communities and provide input to regional committees.

The Provincial HSJCC functions as a planning body, supporting the individual and collective efforts of the Local and Regional HSJCCs. The Provincial HSJCC also identifies and addresses provincial service and policy issues, makes recommendations, and identifies system level solutions. Composed of regional members, representatives from the four supporting provincial ministries, and partner stakeholders, the Provincial HSJCC is dedicated to education and training, provincial policy projects and system change initiatives. To learn more about the HSJCC Network and explore the work that HSJCCs do, visit www.hsjcc.on.ca.

Older adults and the justice system became a priority for the HSJCC Network in 2015, after Local and Regional HSJCCs across the province began observing older adults interacting more with police, being involved in more courtrooms and being detained more frequently in correctional facilities across Ontario.

Current demographic data shows that there are more Canadians aged 65 and older than Canadians below age 15.² All areas of the justice system have felt this demographic shift. Police officers are responding to incidents involving older adults, including domestic violence, wandering and incidents of financial fraud. When criminal charges are laid, courtrooms and correctional facilities struggle to meet the needs of this vulnerable population.³ Dementia, mental health issues and substance use can further impact an older adult's ability to successfully navigate the system. Many caregivers do not understand the criminal justice or mental health law systems and are not made aware of resources that could improve outcomes for their loved ones.

Older Adults and the Justice System: A navigational guidebook for caregivers and service providers was informed through a series of consultations with experts from the human services and justice sectors. The guidebook outlines a variety of age-related conditions and presents strategies for working with or caring for these populations. Best practices for engaging with the police and the courts are explored, with detailed summaries of the criminal and mental health law systems. Finally, challenges and available services in correctional facilities are described, including supportive housing options.

Resources are highlighted in boxes throughout this guidebook.



CHAPTER 1: DEMENTIA AND OTHER AGE-RELATED CONDITIONS

AGE-RELATED CONDITIONS

We can think of mental health as being on a spectrum.⁴ Other conditions such as dementia or physical mobility can also lie on a spectrum.⁵ Experiences of age-related conditions can vary significantly from person to person, and for the same person, conditions can vary from day to day.

Sometimes illnesses can interact to heighten symptoms. For example, mental health, diabetes, and a cold can make symptoms of dementia more severe.

Some age-related conditions and other health and social issues with which they may interact are described below.

Dementia

Dementia is a neurocognitive disorder and an umbrella term that describes a variety of neurological conditions. It is not a disease, although many diseases (such as Alzheimer's disease) can cause dementia.⁶ Dementia can impact a person's memory, language abilities, concentration, organizational skills, mood and behaviour. Dementia is progressive, which means the symptoms gradually get worse as more brain cells become damaged and eventually die.

Forms of dementia

TYPE	SYMPTOMS	DEMOGRAPHIC	SPECIAL CONSIDERATIONS
ALZHEIMER'S DISEASE	<ul style="list-style-type: none"> - difficulty making decisions or remembering - easily disoriented - losing interest in activities - repeating actions or words - anxiety or restlessness - difficulty performing daily tasks 	<ul style="list-style-type: none"> - usually over age 65 	<ul style="list-style-type: none"> - wandering, becoming lost or trespassing are common - may exhibit responsive behaviours such as hitting, yelling and hiding or collecting items - may lose capacity to make decisions about personal care or property - tip: register with the local police service
EARLY ONSET DEMENTIA	<ul style="list-style-type: none"> - difficulties with movement, walking, co-ordination or balance - vision or speech problems - difficulty planning or thinking things through - changes in personality and behaviour (e.g., apathy, irritability, loss of empathy) 	<ul style="list-style-type: none"> - under age 65, some as young as age 30 	<ul style="list-style-type: none"> - tend to be younger and more physically robust, placing them at greater risk of harm to themselves or others - police are less likely to recognize younger adults as having dementia and needing medical care - more likely to be working, raising young children, caring for older parents, or paying off debt when diagnosed - often misdiagnosed
FRONTO-TEMPORAL DEMENTIA	<ul style="list-style-type: none"> - changes in personality and behaviour, distractibility - disinhibition, impulsivity - speech problems - difficulty writing and reading - decreased energy - memory loss and difficulty moving may occur later 	<ul style="list-style-type: none"> - more likely onset under age 65 	<ul style="list-style-type: none"> - most likely to interact with justice system - tend to be younger and more physically robust, placing them at greater risk of harm to themselves or others - police are less likely to recognize younger adults as having dementia - communication problems may make it more difficult to interact with the system - tip: self-identify with local police service
ALCOHOL-RELATED DEMENTIA (e.g., WERNICKE-KORSAKOFF SYNDROME)	<ul style="list-style-type: none"> - memory loss, difficulty thinking, confusion - may see things that are not there (hallucinations) - imbalance, movement problems 	<ul style="list-style-type: none"> - severe alcohol use disorder - mostly men aged 45-65 - sometimes in women as young as age 35 	<ul style="list-style-type: none"> - tend to be younger and more physically robust, placing them at greater risk of harm to themselves or others - police are less likely to recognize younger adults as having dementia - symptoms can be reversed with treatment and a healthy diet, which may not be accessible to the individual
HIV ASSOCIATED DEMENTIA/AIDS DEMENTIA COMPLEX	<ul style="list-style-type: none"> - difficulty concentrating and remembering - irritability, depression - imbalance, poor co-ordination - weakness, slow movement - reversing numbers or words 	<ul style="list-style-type: none"> - individuals living with HIV, especially those who do not take anti-HIV drugs - may be younger in age 	<ul style="list-style-type: none"> - can be treated with anti-HIV medications, which may not be accessible to the individual

If you are concerned that someone you know may have dementia, you should speak to a physician.

First Link® is a program of the Alzheimer Society that connects people living with dementia and their care partners to the information, supports and services they need as early as possible and throughout the progression of the condition. First Link® helps to:

- improve quality of life
- reduce the stress of the condition
- minimize or prevent crisis situations
- enable people to live longer at home and in the community

For more information, contact the **Alzheimer Society of Ontario** at 1-800-879-4226 or visit <https://alzheimer.ca/en/on>. The Alzheimer Society provides services to all persons living with dementia and their care partners, not just those affected by Alzheimer's disease.

Delirium

Delirium is an abrupt change in the brain that causes mental confusion and emotional disruption.⁷ Symptoms include difficulty thinking, remembering, speaking, reading, writing, sleeping and concentrating.⁸ Behavioural changes such as hallucinations, restlessness, aggression, yelling, withdrawing, slow movement and reversal of the night-day sleep-wake cycle are also common.⁹ Individuals with delirium may feel anxiety, fear, paranoia, depression, anger, euphoria and apathy and experience unpredictable mood shifts and personality changes.¹⁰

Symptoms of delirium and dementia are similar, so making an accurate diagnosis can be difficult.¹¹ Delirium symptoms occur much more rapidly, in a few hours or days.¹² Individuals with delirium will have much more difficulty paying attention, while individuals in the early stages of dementia can remain generally alert. Delirium symptoms tend to fluctuate significantly and frequently throughout the day, while symptoms of dementia remain more constant.

Delirium is most common in men over age 65, and is frequently associated with dementia or cognitive impairment, physical or mental health conditions, vision or hearing impairment, loss of independence, dehydration and malnutrition, substance use and urinary tract infection.¹³ Delirium can occur after surgery or admission to an intensive care unit, or during use of sedatives and general anesthetics.¹⁴ Up to 60 per cent of those living in long-term care experience delirium.¹⁵

Delirium is a medical emergency. See a doctor right away.

Communication Tips

Dementia can affect how people express themselves and understand what is being communicated to them. Respectful, sensitive, ongoing communication is the key to positive relationships. Here are some tips to consider when communicating with someone living with dementia that may help in better understanding each other:

1. **Learn about dementia, its progression, and how it affects individuals.** As abilities change, you can learn to interpret the person's messages by paying attention to both verbal and non-verbal cues.
2. **Believe that communication is possible at all stages of dementia.** What a person says or does and how a person behaves has meaning. Never lose sight of the person and what this person is trying to tell you.
3. **Focus on the person's abilities and skills.** If the person's speech has become hard to understand, using what you know about this person can help you interpret what this person might be trying to say. Consider alternate ways of expression through art, music or other activities to maintain and enhance communication.
4. **Reassure and be positive.** Use familiar things to create a sense of comfort and reassurance and encourage the person to communicate in ways that work for them. Laughter and humour are positive ways to help you get through difficult times.
5. **Meet the person where they are and accept their new reality.** If the person's perception of reality becomes confused, try to find creative ways around the situation rather than reacting negatively. Avoid contradicting the person or saying that something is untrue or inaccurate.

Source: <http://alzheimer.ca/en/Home/Living-with-dementia/Ways-to-communicate>

Contact the Alzheimer Society of Ontario at 1-800-879-4226 or <https://alzheimer.ca/en/on> to see what caregiving supports are available in your community. Community programs can provide caregiving, meals and housework support. The Alzheimer Society of Ontario has resources for all older adults and adults with age-related conditions, not just people living with Alzheimer's disease.

Mental health

More than 1.8 million Canadians over the age of 60 lived with a mental health conditionⁱ in 2016.¹⁶ Depression is the most common mental health condition for this demographic, affecting 15 per cent of older adults living in community and up to 44 per cent of those living in long-term care homes.¹⁷ Anxiety affects at least five to 10 per cent of those aged 65 and over, making older adults the most likely age group to be hospitalized for anxiety disorders.¹⁸ Men aged 80 years and older have the highest suicide rate of any age group in Canada.¹⁹

Proper diagnosis and treatment of mental health conditions is the best way to minimize symptoms and improve an older adult's quality of life. However, the stigma surrounding many mental health conditions may prevent people from seeking the help they need.²⁰

People living with mental health conditions may experience stigma, discrimination and social exclusion that significantly impacts on their lives. Misperceptions about the relationship between mental health, mental illnesses and violence contribute significantly to these experiences. Studies have shown that people living with mental health conditions are no more likely to engage in violent behaviour than the general population.²¹ However, public perceptions, often influenced by the media, are contributing to attitudes that have a significant impact on the lives of people with mental health conditions. In fact, individuals with mental health conditions are more likely to be victims than perpetrators of violent acts.²² Social determinants of health such as homelessness, poverty and lack of adequate mental health care are the biggest reasons why people with mental health conditions interact with the justice system. In turn, the justice system is the first point of access to mental health care for many. This criminalization of mental health conditions contributes to the barriers people encounter when seeking the treatment and social supports they need.

Substance use

Substance use conditions,ⁱⁱ including complications from the use of prescribed medications, are common for older adults.²³ Aging causes cognitive changes that can make the brain more vulnerable to the effects of drugs and alcohol, and reduced liver and kidney performance can affect drug absorption, metabolism and excretion.²⁴ Harmful drug-drug interactions can occur when older adults are exposed to drug combinations. Older adults who consume alcohol are more likely than younger adults to do so daily or almost daily.²⁵ Mixing alcohol with medication causes the greatest risk and range of harms to older adults.²⁶

Older adults who smoke are more likely to be dependent and use more cigarettes per week than younger adults who smoke.²⁷ Among people who use opiates (e.g., codeine, morphine), older adults are more likely than younger adults to use daily or almost daily.²⁸ Older women are more likely to use sedatives (e.g., benzodiazepines, zopiclone, diazepam, lorazepam, clonazepam) than other demographics.

i “Mental health condition” and “mental health issue” are used interchangeably throughout this guidebook as the preferred, less-stigmatizing terminology. A person may experience a mental health condition without having a formal diagnosis of a particular mental illness or meeting the *Mental Health Act* or *Criminal Code* criteria for “mental disorder.”

ii “Substance use” and “addictions” are used interchangeably throughout this document. Substances may include drugs, alcohol, or activities that can result in problematic use or dependency, such as gambling or technology.

Older adults with problematic substance use may have higher rates of hospitalization and mortality as a result of falls and accidents.²⁹ They may also experience abuse, homelessness, social isolation and crime, increasing their likelihood of interacting with the justice system.³⁰ According to Correctional Service Canada statistics, older inmates were significantly more likely to consume alcohol regularly, combine alcohol and drugs, and binge drink (i.e., consume excessive amounts of alcohol in a short period of time).³¹ For many in need, the justice system provides an opportunity to access substance use treatment and support for the first time.

For more information about addictions, mental health and problem gambling treatment services in Ontario, and to access a 24-hour crisis line, please contact ConnexOntario at 1-866-531-2600 or visit: <https://www.connexontario.ca/>

Developmental disabilities

A developmental disability is an impairment in cognitive function that arises before adulthood and usually lasts throughout the lifespan.³² Examples include attention deficit hyperactivity disorder, autism spectrum disorder, fetal alcohol spectrum disorder, cerebral palsy, hearing loss, intellectual disability, learning disability, vision impairment and other developmental delays.³³ Recent estimates from the United States suggest one in six children aged three to 17 have at least one developmental disability.³⁴

Individuals with developmental disabilities experience higher rates of mental health conditions than the general population.³⁵ Multiple barriers prevent this population from accessing appropriate mental health services.³⁶

It may be difficult for health care practitioners to recognize symptoms of dementia in individuals with developmental disabilities.³⁷ This poses unique challenges for this population and their care partners.

For more information and to access developmental services in your area, please visit the **Developmental Services Ontario** website at <https://www.dsontario.ca/>.

Physical health conditions

Older adults are more likely to encounter physical health conditions, difficulty walking, and impaired vision and hearing as they age. In combination with conditions such as dementia, older adults may face barriers accessing public transportation, moving around buildings or finding a long-term care home with room for assistive devices. Police stations, courtrooms and correctional institutions may not be accessible to those with physical mobility, vision or hearing needs.

Individuals with physical and mental health conditions are entitled to **accommodation** in workplaces, housing, stores, schools and hospitals, and by public institutions.³⁸

To learn more about human rights and accommodation, contact the **Ontario Human Rights Commission** toll-free at 1-800-387-9080 or toll-free TTY at 1-800-308-5561. You can also email info@ohrc.on.ca or visit <http://www.ohrc.on.ca/>.

Legal Aid Ontario funds the **ARCH Disability Law Centre**, which provides disability rights services to financially-eligible persons. Call them toll-free at 1-866-482-2724.

SOCIAL DETERMINANTS OF HEALTH

Many factors influence our health, including genetics and lifestyle. The social determinants of health are a broad range of external factors that are influenced by our environment and socioeconomic status. The World Health Organization has long recognized that the social determinants of health are linked to health outcomes.³⁹ Social determinants of health include life experiences and economic conditions such as income, housing, employment and working conditions, food insecurity, race, education, (dis)ability, employment, gender and gender identity, access to health services, early life experiences, sexual orientation and social exclusion.⁴⁰ The social determinants of health affect both physical and mental health outcomes, such as depression, anxiety and suicide rates.⁴¹

Social determinants of health influence specific health outcomes for older adults.⁴² In particular, older adults with lower incomes are more likely to experience physical and mental health conditions than older adults with higher incomes.⁴³ Ensuring older adults have their basic needs met, such as food, housing and social interaction, can help promote their physical and mental health.

Legal Aid Ontario's community legal clinics can help financially-eligible individuals obtain sources of income, benefits and maintain housing. To find a clinic near you, please call 1-800-668-8258.

PRIORITY POPULATIONS

Health inequities are the differences in health outcomes that are avoidable, unfair and systematically related to social inequality.⁴⁴ Equitable access to mental health support remains a critical issue for many populations in Canada. Reasons for this include:

- Information is often only provided in English and French.
- Few culturally-specific outreach or service promotion initiatives are directed to racialized, immigrant or Indigenous communities.
- Referrals and relationships with community agencies are often poorly made and maintained.
- Mental health services may be located far from racialized, Indigenous and immigrant communities.
- Mainstream institutions often lack an awareness of racialized, Indigenous and immigrant communities and their needs.⁴⁵

Service providers can address health inequities by recognizing the unique circumstances of racialized, Indigenous, immigrant and non-English speaking clients. Seek to learn more about the communities your organization serves and obtain training from these communities. Where possible, referrals to culturally-specific services should be made.

Racialized populations

As social determinants of health, race, ethnicity and immigration status intersect with other factors such as income, education and employment to influence an individual's mental health and well-being. In addition, racial discrimination may trigger stress that has been shown to negatively impact health.⁴⁶ As a result, racialized and immigrant populations in Canada may be at a greater risk of experiencing mental health conditions than the general population, and yet less likely to receive support.⁴⁷

Legal Aid Ontario funds several community legal clinics that provide free legal services for financially-eligible individuals from specific communities:

- Black Legal Action Centre: 1-877-736-9406
- Centre for Spanish-Speaking Peoples Legal Clinic: 416-533-0680
 - On-site languages: Spanish
- Chinese & Southeast Asian Legal Clinic: 1-844-971-9674
 - On-site languages: Mandarin, Cantonese, Vietnamese
- South Asian Legal Clinic of Ontario: 416-487-6371
 - On-site languages: English, Hindi, Urdu, Tamil, Bengali, Punjabi and Kannada and Kashmiri
 - Interpretation available: Gujarati, Malayalam and several other South Asian languages

Indigenous populations

Colonial policies and practices, such as residential schools and the child welfare system, as well as social exclusion and racial discrimination, are key determinants of health and wellness for Indigenous peoples in Ontario. Indigenous populations may be more at risk of experiencing mental health conditions like anxiety, depression and risk of suicide than non-Indigenous populations.⁴⁸ A history of colonialism may cause Indigenous individuals to distrust mainstream health care services.⁴⁹ Culturally-adaptive approaches and collaboration with Indigenous communities are needed to promote positive mental health.

The **Indigenous Cognition & Aging Awareness Research Exchange** has developed culturally-safe fact sheets in partnership with Indigenous individuals living with memory loss and their caregivers. The fact sheets can be viewed at <https://www.i-caare.ca/factsheets>.

Legal Aid Ontario funds **Aboriginal Legal Services**, a community legal clinic that provides free legal services for financially-eligible individuals from Indigenous communities. Call toll-free at 1-844-633-2886.

Non-English-speaking populations

If you speak French / Si vous parlez français

Everyone has the right to a criminal trial or administrative proceeding in French. This includes having a French-speaking judge, justice, adjudicator or board member. French documents must be used during the proceeding. French-speaking jurors must be provided, or the location of the trial must be moved to an area where there are enough French-speaking people to form a jury.

Tout le monde a le droit à un procès pénal ou à une procédure administrative en français. Cela inclut le droit d'avoir un juge, un arbitre ou un membre du conseil d'administration francophone. Les documents en français doivent être utilisés lors de la procédure. Il y a le droit de faire appel à des jurés francophones ou de modifier le lieu du procès pour qu'il y ait suffisamment de francophones afin de former un jury.

Legal Aid Ontario offers four toll-free Francophone Legal Advice Lines across the province:

Northern Ontario: 1-877-687-2847

Eastern Ontario: 1-877-500-4508

Southwestern Ontario: 1-855-650-9716

Greater Toronto Area: 1-877-966-7345

If you speak another language

Everyone has the right to an interpreter in any language for criminal trials. The Ontario Ministry of the Attorney General provides court interpretation in over 80 spoken languages, American Sign Language and *Langue des signes du Québec*. Speak to a lawyer or court staff member to request an interpreter.

Not all administrative tribunals provide interpreters or translation of documents. Contact the tribunal to see if it provides interpretation or translation.

Call **Legal Aid Ontario** toll-free for help in over 300 languages at 1-800-668-8258.

2SLGBTQ+

Two-spirit, lesbian, gay, bisexual, trans, queer and other (2SLGBTQ+) identified people experience higher rates of some mental health and substance use conditions than the general population due to the effects of discrimination and the social determinants of health.⁵⁰ For example, studies show that trans people may experience higher rates of depression and attempt suicide more than cis people.⁵¹

Accessing mental health and addictions services that are inclusive is a challenge for this population, and many face discrimination based on both their mental health and their sexual orientation. Barriers include a lack of knowledgeable health care practitioners, refusal to approve hormone therapy, violence and harassment and denial of health care altogether.⁵²

Service providers working with 2SLGBTQ+ populations can promote positive mental health by:

- learning about the social and legal context in which 2SLGBTQ+ clients live
- using preferred pronouns, names and gender-neutral language
- keeping personal information confidential
- training all staff on 2SLGBTQ+ competency⁵³

For more information, consultation, education, training and other resources, please contact **Rainbow Health Ontario** at info@rainbowhealthontario.ca or visit www.rainbowhealthontario.ca.

HOUSING AND SUPPORTS

Personal care

Home care workers can help with eating, dressing, bathing and household tasks. To see if there is a free or low-cost home care program available in your area, please contact your local Alzheimer Society. Please note, the Alzheimer Society of Ontario has resources for all older adults and adults with age-related conditions, not just people with Alzheimer's disease.

Reach your local **Alzheimer Society** at 1-800-879-4226 or visit <https://alzheimer.ca/en/on/postal-code>.

Long-term care homes

Long-term care homes, which are sometimes called nursing homes, are licensed by the provincial government. Residents of long-term care homes must be 18 years of age or older and meet health-care need eligibility requirements. Residents receive nursing and personal care support. Accommodation costs are paid for by the resident, while the provincial government funds the nursing and personal care costs. Individuals with a low income can apply for a rate reduction.

The Ministry of Long-Term Care maintains a list of all currently-licensed, long-term care homes (plus any inspections) at <http://publicreporting.ltchomes.net/en-ca/default.aspx>.

Applying to a long-term care home

The application process for a long-term care home can be challenging. Wait lists for most long-term care homes are very long (several months to many years). It may be necessary for an older adult to make other housing arrangements while waiting for a bed to become available. An older adult can be on five long-term care home waiting lists at one time, and more if the individual is on the designated "crisis" wait list.⁵⁴

To apply for long-term care accommodations, please call 310-2222 (no area code required) or visit <http://healthcareathome.ca/> to find your local home and community care office.

A long-term care home can refuse to accept someone for one of the following specific reasons:

1. The home lacks the physical facilities necessary to meet the person's needs.
2. The staff at the home lack the nursing expertise to meet the person's needs.⁵⁵

Long-term care homes are required by law to write to applicants who are not accepted and to provide clear, detailed reasons.⁵⁶ However, this does not always happen.

Contact the Ministry of Long-Term Care's **action line** if the older adult did not receive reasons for not being admitted to a long-term care home at 1-866-876-7658.

Residents of long-term care homes

All long-term care homes must screen, assess and identify responsive behavioural triggers for each resident.⁵⁷ They must also create interventions to prevent, minimize and respond to each resident's responsive behaviours where present.

Anyone (except another resident) who suspects someone living in a long-term care home is being abused or neglected must report it to the director of long-term care homes. The long-term care home must inform the abused resident's substitute decision-maker, where the resident is incapable, of any suspected abuse or neglect.⁵⁸

To file a complaint about a long-term care home, please call the Long-Term Care Homes **ACTION line** toll-free at 1-866-434-0144.

Discharges from long-term care are only allowed in certain circumstances outlined in the regulations under the *Long-Term Care Homes Act*.⁵⁹ For example:

- The resident's care needs have changed and the home can no longer ensure the safety of the resident or others.
- The resident exceeds their vacation absence days (if applicable).
- The resident is on a medical absence more than 30 days or a psychiatric absence more than 60 days (with exceptions).
- The home or bed is being closed (with exceptions).

If a resident of a long-term care home is charged with a crime and the home seeks to discharge them, the resident should seek legal advice.

The **Advocacy Centre for the Elderly** may be able to assist financially eligible older adults. Please call 416-598-2656 for more information.

The **Lawyer Referral Service** provides 30 minutes of free consultation and connects callers to an appropriate lawyer. Please call 1-855-947-5255.

Retirement homes

Retirement homes are privately-owned, usually for-profit businesses that rent units to older adults who pay rent and can purchase care services. Unlike long-term care homes, retirement homes do not receive government funding. Retirement homes are licensed and regulated under the *Retirement Homes Act* and its regulations.⁶⁰

The **Retirement Homes Regulatory Authority** keeps a list of all currently licensed retirement homes and any inspection reports at <https://www.rhra.ca/en/search-the-public-register/>.

Tenants of retirement homes

A person who lives in a retirement home is called a tenant and has legal rights under the *Residential Tenancies Act*.⁶¹ A retirement home is a landlord and must provide all tenants with a care home information package and a written tenancy agreement.

Retirement home tenants pay the costs of accommodation, nursing and personal care, which can be quite high. Rent can only be raised once every 12 months by a fixed amount and the tenant must be given 90 days' written notice of the increase. Care services and meal fees can be increased as often as the landlord chooses and by any amount, provided that the tenant is provided with at least 90 days' written notice.

Retirement homes must meet provincial care and safety standards and have a complaints process for their tenants. **Anyone** (except another tenant) who suspects someone living in a retirement home is being abused **must** report it to the Retirement Homes Regulatory Authority.

Leaving a retirement home

A tenant can leave a retirement home and stop paying rent at any time by giving 30 days' written notice to the landlord. The tenant only needs to give 10 days' notice to stop paying for the care services and meals.

Retirement homes can only evict a tenant for one of the reasons in the *Residential Tenancies Act*.⁶² A retirement home landlord cannot evict a tenant because the tenant's care needs have increased or because the tenant was in the hospital. A tenant cannot be transferred to another room or home against their will.

If you think a retirement home is not following the rules, there may be grounds to bring an application to the **Landlord and Tenant Board** at 1-888-332-3234. It is a good idea to talk to a lawyer first. Low-income tenants may be eligible to receive free legal advice from their local **Legal Aid Ontario** community legal clinic, which can be reached at 1-800-668-8258 or 1-866-641-8867 (TTY).

Care homes

Other types of housing are neither long-term care homes nor retirement homes. These include supportive housing, assisted living and group homes. These care homes are usually governed by the *Residential Tenancies Act* and may hold a municipal licence or be part of a government program.

A person who lives in a care home is called a tenant and has legal rights under the *Residential Tenancies Act*.⁶³ A tenant cannot be evicted without a reason or transferred to another room or home without consent.

Some care homes may have shorter wait times and lower monthly fees than other types of housing for older adults. However, it is important to consider the risks of living in unlicensed care homes. Some of these homes do not provide adequate care and may take advantage of vulnerable older adults. Reported complaints about these homes include uncleanliness, mismanaged medications, unsafe food preparation, pests, confinement, overcrowding and abuse.

Tenants of unlicensed care homes cannot complain to a general oversight body about many care, staff or safety concerns. Some concerns about rent and maintenance can be brought to the Landlord and Tenant Board; serious criminal acts can be brought to the police; and fire and health code concerns can be brought to health officials. Unfortunately, each of these options can only address a narrow set of issues.

If you think a care home is not following the rules, contact the **Landlord and Tenant Board** at 1-888-332-3234. Low-income tenants may be eligible to receive free legal advice from their local **Legal Aid Ontario** community legal clinic, which can be reached at 1-800-668-8258 or TTY 1-866-641-8867.

Mental health and substance use supportive housing

Mental health and substance use supportive housing provides many Ontarians with long-term, permanent housing that is both affordable and supported. Within mental health and substance use supportive housing there are specialized programs including programs for seniors and for people who are involved with the criminal justice system.

There is a wide range of housing types, from shared bedroom congregate living to self-contained units. Typical supports provided include tenancy support, life skills training, social supports, health and wellness, personal supports, community linkages, crisis intervention, eviction prevention, clinical supports, and peer support. Intensity of supports provided ranges from 24-hour staff support, daily or as needed.

ConnexOntario provides information and referrals for supportive housing, as well as other mental health and substance use services. They are available 24/7 and can be reached by phone at 1-866-531-2600 or online at www.connexontario.ca.

Wait times for mental health and substance use supportive housing vary by region, housing type and support intensity. In general, wait lists can range from one to seven years, with higher support programs having a longer wait time than lower support programs or shared units.

If you think a supportive housing provider is not following the law, call the **Landlord and Tenant Board** at 1-888-332-3234. Low-income tenants may be eligible to receive free legal advice from their local community legal clinic, which can be reached at 1-800-668-8258 or 1-866-641-8867 (TTY).

Dementia-friendly communities

The Alzheimer Society of Ontario has designated several dementia-friendly communities in the province. These communities have been recognized because numerous residents, organizations and businesses have taken steps to accommodate people living with dementia. Police services, hospitals, legal clinics, pharmacies, banks, emergency medical services, fire departments, transportation services, public libraries and dental offices have received training and learned strategies to make a difference.

For more information about dementia-friendly communities, please contact the **Alzheimer Society of Ontario** at 1-800-879-4226 or <https://alzheimer.ca/en/on/We-can-help/Dementia-Friendly-Communities-Ontario>.



CHAPTER 2: CRIMINAL JUSTICE SYSTEM

INTERACTING WITH THE POLICE

Planning before a crisis

It is helpful for older adults to have support from care providers, family members and the community. These supports can help make the older adult's experience following a crisis easier. Caregivers and service providers can help older adult identify and connect with supports in their community.

Caregivers and family members are encouraged to keep a recent photo (past six months) of the older adult. Put an emergency contact card in the older adult's wallet, including their name, address, any diagnoses, medications, caregiver's information and any tips for interacting with the person. A caregiver or family member can also introduce the older adult to the local police service, explain the older adult's symptoms and how best to approach them to avoid triggers. Some police services maintain a registry of vulnerable persons in the community, including older adults or adults living with age-related conditions.

Responsive behaviours

Sometimes people living with dementia, mental health, substance use and/or neurological conditions exhibit **responsive behaviours**. Responsive behaviours are a form of communication in response to stimuli in someone's environment or in response to unmet needs. Responsive behaviours include actions, words and gestures that are often a result of changes in the brain affecting memory, judgment, orientation and mood. Some examples of responsive behaviours include hitting, kicking, grabbing, walking without a known purpose, pushing, throwing objects, biting, scratching, eating or drinking inappropriate things, hiding, collecting things, repeating behaviours or words, self-harm or harming others, restlessness, screaming, swearing, destroying things, sexual behaviours and negativity.

If your personal safety is at risk, leave the room for a safer place, such as a hallway. Try to make sure the exit isn't blocked. Make sure you are safe before calling for help.

If you are no longer able to care for the person safely, consult a professional and adjust the plan of care.

It is important to note that not all people living with dementia or other complex mental health conditions exhibit responsive behaviours.

Responsive behaviours are normally "triggered" by stress in a person's environment. Examples of triggers include:

- ☐ physical discomfort (e.g., hunger, thirst, full bladder, pain)
- ☐ social situations (e.g., crowds, loud noises, being questioned, being ignored)
- ☐ verbal communication (e.g., inability to find words, speaking too loudly or too quickly)
- ☐ physical environment (e.g., temperature, lighting, lack of control, new environment)
- ☐ emotional needs (e.g., grief, boredom, neglect, loneliness)
- ☐ change of memory and ability (e.g., misplacing things, losing abilities, disorientation)
- ☐ other health conditions (e.g., diabetes)

To learn more about support available in your area for persons exhibiting responsive behaviours and their families, please contact **Behavioural Supports Ontario at 1-855-276-6313, provincialbso@nbrhc.on.ca or visit <http://behaviouralsupportsontario.ca/>.**

If someone goes missing

Older adults with cognitive impairment may walk away without a known purpose and in some cases, this may result in them going missing. This may happen more frequently in a busy or new environment or in instances where the person is especially tired or experiencing stress.

To reduce incidents of persons going missing, consider the following recommendations:

- Encourage the person to travel, whether near or far, with a friend, partner or family member.
- Plan ahead when using public transportation. Assist the person in writing down how to get to and from the destination.
- Encourage the person to travel during the daytime.
- Encourage the person to carry personal identification at all times, including emergency contact information, home address, health care and any important medical information.
- Encourage the person to leave a note to inform caregivers about any unplanned trips.
- Notice what your loved one is wearing before this person leaves the house.
- Encourage the person to carry a cell phone with pre-programmed numbers for the person's caregivers. Consider enabling GPS settings on the phone or download applications (e.g., Family Locator) which can send an alert to a caregiver.

The Alzheimer Society of Ontario has programs to help caregivers understand and prevent persons from going missing. For more information, call 1-800-879-4226 or visit <http://findingyourwayontario.ca/>.

Individuals living with dementia can register for MedicAlert Safely Home, which costs \$60 per year. This nationwide service helps identify a person who is lost and assists them return home. MedicAlert stores the person's photo, physical description, possible whereabouts and other vital information to assist police if the person goes missing. In addition, the older adult receives a wallet card and bracelet engraved with their name, medical condition(s), MedicAlert number and the emergency hotline number. If someone finds the person, they can call the 24/7 MedicAlert hotline and receive the person's address and emergency contacts. MedicAlert immediately notifies the person's contacts after the hotline is called. The police can call the MedicAlert 24/7 Emergency Hotline to receive a recent photo of the older adult, physical description, possible whereabouts and other vital information.

To register for MedicAlert, call 1-855-581-3794 or visit www.medicalert.ca/safelyhome.

If your loved one goes missing, **call the police immediately**. Have someone wait at home while you are searching in case the person returns home.

Project Lifesaver is a community-based, public safety, non-profit organization that provides law enforcement, fire/rescue services and caregivers with a program designed to protect, and when necessary, quickly locate individuals with cognitive disorders who may go missing. For more information, please visit <https://projectlifesaver.org/>.

Crisis centres and safe beds

Community-based **crisis centres** provide an alternative to hospitalization for people who are in crisis and dealing with a serious mental health or substance use concern. Crisis centres may provide services such as crisis support and counselling, provision of basic living needs, and referrals to services in the community including short-term crisis beds, treatment, housing and follow-up.

Safe bed programs offer short-term housing to individuals with mental health conditions who are experiencing a crisis and are unable to remain in their current living situation. Staff may help clients find permanent housing, apply for income support and manage their mental health or other symptoms. Some beds or services may be designated for individuals who are involved in the criminal justice system.

To find a crisis centre or safe bed near you, visit www.ConnexOntario.ca or call 1-866-531-2600, available 24/7.

Calling the police

The police service responsible for the city or town where the call is placed will respond. This may be a municipal police service, Ontario Provincial Police, or a First Nations police service. It is best if a family member, caregiver or care partner stays with the older adult and helps the responding officers.

Once police get involved it is helpful and important to work with them. Inform the police of the older adult's condition and give suggestions on how best to approach the person. Notify the police of any medications the person is taking and provide medication to the police if the person is taken into custody.

Behavioural Supports Ontario provides training to individuals, families, emergency medical services, police services and primary care practitioners on responsive behaviours associated with dementia, mental health, substance use and/or neurological conditions.

To contact your local Behavioural Supports Ontario program, call 1-855-276-6313, email provincialbso@nbrhc.on.ca or visit <http://behaviouralsupportsontario.ca/>.

Mobile crisis response teams

Many communities in Ontario have mobile crisis response teams, also known as crisis intervention teams, collaborative response teams or alternative response teams. The team is typically composed of a specially-trained police officer and mental health professional such as a nurse or social worker. In some cases, regular police officers respond and then contact the mental health partner if there is a mental health or substance use crisis. Some teams are specifically designated to respond to older adults, receive training on responsive behaviours or include an expert from Behavioural Supports Ontario. This expert will de-escalate the situation, assess the individual, develop a plan and bring the individual to a community crisis centre or hospital, if necessary.

When you call 911, ask if the mobile crisis team can respond.

Family members, care partners and caregivers will also need support to cope with the emotional impact of a loved one's crisis situation or involvement with the justice system. Make sure to visit your doctor regularly for check-ups for your own health, and ask for help from friends and family members when needed.

The *Canadian Mental Health Association, Ontario* offers Living Life to the Full for Caregivers 55+. This free, eight-week course is designed to promote positive well-being in caregivers by sharing new skills to cope with stress. For more information please call 1-800-875-6213 or visit <https://ontario.cmha.ca/provincial-programs/living-life-to-the-full/living-life-to-the-full-for-caregivers-55/>.

Apprehension under the *Mental Health Act*

If the police believe an individual is unable to care for themselves, is at risk of harming others, or has threatened or tried to hurt themselves due to a mental health condition, and the police think it is likely the individual will seriously harm themselves or someone else, the police are allowed to bring the individual to a hospital for assessment.⁶⁴ This is called being **apprehended**.

Sometimes the police may not be able to tell whether the individual has a mental health condition, a substance use issue, a neurological condition or dementia. This means an individual with an age-related condition may be apprehended, even if they do not have a mental health condition.

For more information, see Chapter 4: Civil mental health law system.

Order for examination under the *Mental Health Act*

Anyone who has contact with an individual who has threatened or attempted self harm or harm to others, or is unable to care for themselves, can apply for an **order for examination**. To do this, go to your nearest courthouse and ask for the justice of the peace.

Most courthouses are open Monday to Friday, 8:30 a.m. to 4 p.m. You should bring:

- your photo ID
- information about your loved one's mental health condition

You must swear the information is true, and you may bring oral or written evidence.

The justice of the peace will ask for information about the individual's condition. If the justice of peace agrees the person is at risk of self harm or of harming others, or is unable to care for themselves, the justice of the peace will issue a **Form 2**, which allows the police to bring the person to a hospital for a psychiatric assessment. This does not, on its own, involve or require the laying of criminal charges.

For more information, see Chapter 4: Civil mental health law system.

Laying a charge

If the police have reasonable grounds to believe an individual has committed a criminal offence, they may charge the individual and/or bring the individual to a hospital (see **Apprehension under the Mental Health Act**, above). The police will decide whether to charge the individual by considering the seriousness of the offence, the severity of the individual's mental health condition and/or the risk of harm. Being charged with an offence does not always mean the individual will be arrested, and being arrested by the police does not necessarily mean the individual will be charged.

Pre-charge diversion

Diversion is a process that either avoids charges altogether or avoids a finding of guilt. Please note these options are not always available in every community.

Pre-charge diversion may be an option if the police decide not to charge a person with a criminal offence. Normally this is because the offence was minor or non-violent, the person does not have a criminal record, there is no danger to the public and no weapon was involved. Instead of charging the person, the police may issue a warning or refer the person to a formal pre-charge diversion or alternative measures program. If the program is completed, charges will not be laid.

Police discretion may also be used not to lay a charge if the offence is minor and it is the person's first offence.

If a lawyer is contacted before an individual is arrested, the lawyer can raise pre-charge diversion with the police before they lay charges. Once a charge is laid, only the Crown attorney can withdraw it.

Domestic violence: Mandatory charge policy

Police officers in Ontario have a duty to lay a charge in any domestic violence occurrence where there are reasonable grounds to believe a criminal offence has been committed. Domestic violence is any physical or sexual force, actual or threatened, in an intimate relationship, including emotional/psychological abuse or harassing behaviour.⁶⁵ Intimate relationships include opposite sex and same sex partners, and current and former dating, common-law and married couples.⁶⁶ Domestic violence may include a single act of abuse, or a number of acts that may appear to be minor or trivial in isolation, but collectively form a pattern of abuse.⁶⁷

Information for spouses and partners

If you call the police because your partner (or spouse) has physically harmed you or your property, the police **must** charge your partner if they believe your partner has committed an offence, even if your partner has dementia or another age-related condition. It does not matter if you ask the police not to charge your partner or if you deny there has been an offence. The police must lay a charge if they have reasonable grounds to believe assault, criminal harassment, mischief or any other offence has taken place. Only a Crown attorney can withdraw the charge.

Legal Aid Ontario offers two hours of free legal advice to individuals experiencing intimate partner violence. You do not need to qualify for legal aid. You can ask about this service at a shelter, community agency or community legal clinic, or call 416-979-1446 or toll-free 1-800-668-8258.

Arrest

The police may decide to arrest an individual if the individual is charged with a serious criminal offence and there is a risk to public safety. This can happen even if the individual has dementia or any other age-related condition. **Arrest** means the individual is now under the control of the police. The individual may be handcuffed. If the police take the individual into the police car or to the police station, the individual is being **apprehended** or taken into **police custody**. If the individual resists arrest, they could be charged with more offences.

If you are with the older adult during the arrest, offer any medication(s) and instructions for care to the police. Record the officers' names and badge numbers. Ask the police officers exactly what is happening and how you can help. Take notes of what is said and what happens for future reference.

If the older adult is arrested but not taken anywhere by police, the older adult may be given a summons or appearance notice.

A **summons** is a piece of paper given to the older adult at a later date. The summons includes the charges against the individual, as well as the court date and time, courthouse address and courtroom number.

An **appearance notice** is given to the older adult that same day, like a traffic ticket. An appearance notice is a piece of paper with the charges against the person, as well as the court date and time, courthouse address and courtroom number.

The summons and appearance notice may also include a separate date and time for the older adult to go to the police station and have a photograph and fingerprints taken. **It is very important that the older adult attend the court date and fingerprint date.** It is a criminal offence not to attend these dates, which means the older adult could be charged with another offence.

It is a good idea for a support person to be made aware of the court date and fingerprint date and to accompany the older adult to these appointments.

Police custody

After being arrested, the older adult may be brought to a police station and held in custody before the first court appearance. This may last for a few hours or even a few days depending on where the older adult was arrested and the hours of operation of the nearest courthouse.⁶⁸

The older adult may be strip-searched or questioned by police and any valuables or dangerous items will be removed. This can include ties, belts, sweaters, jackets and shoes.⁶⁹

Medications will not be allowed in a holding cell and may not always be administered by police as required.⁷⁰ Police may be less likely to administer medications that are not in a prescription bottle.⁷¹ In addition, the older adult may not have immediate access to food, water, blankets or a bed.⁷²

Charter rights

Everyone has human rights guaranteed under the *Canadian Charter of Rights and Freedoms*.⁷³ These rights must be protected while being arrested and while in police custody. These include:

- the right to know why you are being arrested
- the right to contact a lawyer of your choice without delay and to be informed of this right by police
- the right to speak to your lawyer before being questioned by police
- the right to only be searched in a reasonable manner
- the right to remain silent. This is important because:
 - Anything you say to the police can be used as evidence against you.
 - If you lie to the police you can be charged with obstructing justice.

Anyone in police custody can contact Legal Aid Ontario duty counsel 24 hours a day, seven days a week. Ask a police officer to call the **Legal Aid Ontario Brydges duty counsel hotline**. This is a free service for people under arrest who do not have their own lawyer.

RELEASE FROM POLICE CUSTODY

Individuals released from police custody will be given two documents: a promise to appear and an officer in charge undertaking.

The **promise to appear** will include a court date and time, courthouse address and courtroom number. The older adult may also be given a different date to have photographs and fingerprints taken.

The **officer in charge undertaking** will include certain conditions (or rules) the individual must obey. The older adult may have to live at a certain address and tell the police before moving to a new address. In domestic violence cases, the older adult may not be allowed to live in the same residence as the victim, who may be a primary caregiver, loved one or co-resident in a long-term care home.

It is a good idea for a support person to be made aware of the court date and fingerprint date and to accompany the older adult to these appointments. A support person can also help the older adult obey any conditions in the officer in charge undertaking. Failure to attend a court date or fingerprint date or obey conditions can result in more charges being laid.

If you are listed as a victim, the older adult is not allowed to contact you. If you try to initiate contact, the older adult may be charged with breaching the condition. Talk to a lawyer to see if your name can be removed from the conditions. In the meantime, ask someone else to support the older adult.

Peace bonds

A peace bond is a court order that requires an individual to keep the peace and be on good behaviour for a period of time. There may be rules or conditions such as not to have a weapon or to stay away from a certain person or place. The older adult may also have to pledge a certain amount of money to the court.

Once an individual signs a peace bond, the charges are withdrawn. The older adult is not convicted or found guilty.

However, if the older adult breaks one of the conditions of the peace bond, the older adult may be charged with breach of recognizance or disobeying a court order. The older adult will also have to pay any money pledged to the court.

THE COURTROOM

There are many people who participate in the criminal courtroom. Many of these participants can help the older adult navigate the courtroom and make referrals to services.

An older adult who is charged with an offence is called the **accused**, or the alleged offender.

Judicial officers

Judges have the authority to hear all criminal law matters, and preside over all criminal trials, sentencing hearings and preliminary hearings. Other criminal matters are usually dealt with by justices of the peace.

Justices of the peace preside over most bail hearings, first appearances and provincial offence matters in Ontario. They receive informations (documents from the Crown), issue summonses and warrants, hear peace bond applications and conduct weapons disposition hearings. A justice of the peace can also conduct hearings and make orders under the *Mental Health Act*.

Jurors

For indictable offences (see **Summary conviction or indictment**, below), the accused has the right to choose to have a trial with a judge alone or with a judge and jury. The jury will be made up of 12 randomly selected members of the local community. These individuals have no formal training or knowledge of the legal system, and so the judge will explain things when necessary. The jury decides the **verdict** (whether the accused is guilty or innocent), while the judge gives the sentence.

Both the Crown and the defence can play an active role in selecting jury members. Both parties want the jury to be sympathetic to their side, although the jurors must promise to decide the case impartially.

The Crown

The Crown refers to the lawyers who represent the government and the public, also known as the prosecutor, Crown attorney or Crown counsel.

The police must have reasonable grounds to believe an offence has been committed in order to lay a charge. The Crown must meet the higher standard of a reasonable prospect of conviction (finding of guilt) in order to continue with the prosecution.⁷⁴ The Crown does not represent the police; the Crown represents the public. The Crown must be satisfied that it is in the public interest to proceed with the prosecution or the charge must be withdrawn.

The older adult should always be truthful when speaking to the Crown. The Crown will likely check to make sure the information given is correct. The Crown can also share this information with the court and the police.

It is a good idea for the older adult to speak to **duty counsel** or **defence counsel** before speaking to the Crown. The Crown represents the public's interest in maintaining a safe, law-abiding and just society, while the role of a defence counsel is to represent the accused person's interests. Defence counsel can speak to the Crown on the older adult's behalf.

Defence counsel and duty counsel

Anyone who is arrested has the right to contact defence counsel or Legal Aid Ontario duty counsel.⁷⁵

Duty counsel represent accused persons who do not have a lawyer at guilty pleas, bail hearings and setting court appearance dates. Duty counsel cannot represent the older adult in a trial. Duty counsel assist many people each day, so the older adult should try to attend court 30 minutes early and bring any legal documents (see **Crown disclosure and screening form**, below).

Defence counsel, also known as defence lawyers or the defence, are responsible for representing accused persons in criminal proceedings, and in all trials and sentencing hearings. A defence counsel's primary obligation is to the client (in this case, the older adult). This is true even if someone else pays for the defence counsel.

Defence counsel must follow the client's instructions, not those of family members or caregivers. There may be situations in which the client and the family do not agree, or the client directs defence counsel not to share information with the family. It is important to understand and respect that the defence must act in the best "legal" interests of the client, even if family members disagree.

The older adult does not have to use the same lawyer contacted when arrested to represent them at trial. It is important to find a lawyer with experience in criminal law and mental health law.

Legal Aid Ontario represents people in criminal matters who are financially eligible. Please call toll-free at 1-800-668-8258 or 416-979-1446 to apply for legal aid funding or for more information about legal aid services. Legal Aid Ontario accepts collect calls.

Victims and witnesses

Victims in a criminal proceeding include anyone who has suffered physical or emotional harm, property damage or economic loss due to a crime.⁷⁶ The Crown will update the victim, explain the court process and respect the victim's input. However, the Crown is not the victim's lawyer and will consider public safety and other factors when deciding how to proceed with the charge.⁷⁷

The Crown will inform the victim of the right to prepare a **victim impact statement**, which describes to the court how the crime has affected the victim.⁷⁸ The Crown will also ask if the victim is seeking restitution (financial compensation) for losses and damages, including the need for counselling.⁷⁹

The Crown will refer victims and witnesses of violent crimes, those with special needs including dementia, and families of victims of homicide to the **Victim/Witness Assistance Program**.⁸⁰ The program provides the following services:

- support to the victims and their families
- responding to safety concerns
- explaining the court process
- preparing witnesses for court
- providing copies of court documents
- contacting the Crown or police
- referrals to community agencies
- arranging language interpretation and accessibility requirements
- preparing the victim impact statement

Contact the **Victim Support Line** at 1-888-579-2888 or visit

<http://services.findhelp.ca/ovss/>.

Other people in the courtroom

Besides the Crown, defence counsel, duty counsel and judicial officers, there are many other players in the courtroom that can provide support.

- **Court liaison officer:**
 - helps clients communicate with lawyers, police, probation and parole officers and court staff
 - may refer clients to community programs
- **Mental health court support worker:**
 - mental health professional who assesses client's need for mental health, substance use and basic living services
 - helps clients access health and human services
 - may refer clients to a diversion program (if available and the client is eligible)
 - educates the court on mental health and substance use conditions
- **Gladue worker:**
 - helps Indigenous accused persons prepare a Gladue report (a special kind of background report for Indigenous persons used in bail and sentencing hearings)
 - interviews clients about their background, family and community
 - recommends alternative sentences such as restorative justice, healing circles or culturally-appropriate treatment options
- **Interpreter:**
 - helps clients and sureties who do not understand or speak the language spoken in court
 - available in any language for criminal court
 - ask a lawyer or the judge for an interpreter as soon as possible

BAIL

If the police decide to keep the older adult in custody until the next court date, the police must bring the older adult to bail court (also known as “show cause” court) within 24 hours of an arrest. In some parts of Ontario and on the weekends, bail court may be held over a video call. In bail court, the **judicial officer** will decide whether to release the individual until the court date.

Everyone has a right to reasonable bail and not to be denied bail without just cause. This is because everyone is innocent until proven guilty.

Bail court is not a trial. It is a hearing to determine whether the individual can be released until trial. However, bail court is still court, so the older adult should avoid saying anything incriminating.

While everyone has the right to seek bail within 24 hours of arrest, this may not always be in the best interests of the accused. It may be better to wait until the older adult has found a surety and lawyer. There will only be one bail hearing, so it may be better to wait for the best chance of getting bail. Seek legal advice before deciding whether to defer a bail hearing.

Release on consent of the Crown

The Crown attorney will review the charge(s) and decide whether to consent to the older adult’s release. The Crown may argue that the older adult should only be released with certain conditions.

The Crown is more likely to consent to the older adult’s release if:

- the charges aren’t serious
- the older adult doesn’t have a criminal record
- the victim(s) and public are not at risk of being harmed
- the older adult will likely return for the court date
- the older adult probably won’t commit more crimes if released
- the older adult has support people in the community

While the Crown can decide to consent to release or not, the final decision is made by the judicial officer. However, if the Crown has consented to the older adult’s release, the judicial officer will usually agree.

Bail hearing

If the Crown does not consent to the older adult’s release, a bail hearing will be held. The older adult will remain in custody in a correctional facility until the bail hearing is completed. If the older adult does not have a lawyer, duty counsel may be able to represent them.

At the hearing, the Crown must prove to the judicial officer that the older adult should be remanded (i.e., held in custody) until the trial is completed. This means the Crown has the **onus**.

The Crown can make three types of arguments:

1. The older adult will not return to court if released.
2. There is a risk to the public (including any victims), and/or the older adult will likely commit another offence or interfere with the justice process.
3. The older adult's release would undermine public confidence in the justice system.

For particularly serious crimes, including firearms offences or if someone has been rearrested after being released on bail, there is a **reverse onus hearing**. The older adult will have the onus of convincing the judicial officer they should be released, rather than the Crown having to prove that the older adult should be remanded.

The judicial officer makes the final decision. The judicial officer is more likely to decide the older adult should be released if the judicial officer believes:

- the charges aren't serious
- the older adult doesn't have a criminal record
- the victim(s) and public are not at risk of being harmed
- the older adult will likely return for the court date
- the older adult probably won't commit more crimes if released
- the older adult has support people in the community

The judicial officer may add conditions to the older adult's release, such as a curfew, not to contact the victim, and/or to have a surety (see **Sureties**, page 30).

Both the older adult and the Crown can appeal the judicial officer's decision through a process called bail review. The older adult should try to get a lawyer for this process.

Types of release

The judicial officer may order the older adult to follow certain conditions, or rules, which the Crown may have recommended.

It is very important that the older adult attend court dates and obey conditions. It is a criminal offence not to attend these dates or follow these rules, which means the older adult could be charged with another offence.

It is a good idea to tell a support person when the court date is, what rules the older adult must follow and to have the support person bring the older adult to court.

Undertaking without conditions

The older adult must attend court on a certain date but there are no additional rules.

Undertaking with conditions

The older adult must attend court on a certain date and obey conditions such as a curfew, no contact with the victim(s) or witness(es), not to go certain places, no alcohol or drugs and no weapons.

Recognizance (release order)

The older adult must attend court on a certain date and obey conditions. In addition, the older adult must pledge an amount of money to the court that must be paid if the conditions are broken.

Sureties

The judicial officer may only decide to release the older adult if someone else agrees to be the older adult's surety. A surety is the eyes and ears of the court. The surety agrees to make sure the older adult follows any conditions and attends court. The surety may have to pledge money to the court and may be liable if the older adult breaches the terms of release.

For sureties:

A surety is someone who agrees to take responsibility for a person accused of a crime. Being a surety is a serious commitment. Before you accept this responsibility, here are a few things you should think about:

- Consider getting independent legal advice to make sure you understand what this commitment means.
- Do not agree to be a surety if you are not sure that you can supervise the accused person in the community.
- If the accused person fails to obey the terms and/or conditions of the court order, you could lose the money you have pledged.
- Your responsibility as a surety continues until the case is completely over. In some cases, this may take a long time.
- Accepting a fee or being paid back in return for acting as a surety is against the law.

For more information, visit the **Ministry of the Attorney General's** webpage, "What Sureties Need to Know" at

<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/sureties.php>.

Bail verification and supervision programs

If there is no one to act as the older adult's surety, the older adult can apply to a bail verification and supervision program. Many courthouses across the province have bail programs run by The Salvation Army, John Howard Society, Canadian Mental Health Association and others.

Bail programs also provide referrals to community programs, including mental health and substance use services.

To apply for a bail program, the older adult should speak to a court support worker or duty counsel.

Detention after bail hearing

If the judicial officer decides the older adult should not be released, the older adult will be detained until the trial is completed.

Some provincial correctional facilities offer **institutional duty counsel** services with Legal Aid Ontario. Institutional duty counsel can help eligible clients prepare bail plans, guilty pleas, video hearings, and provide summary (basic) legal advice and referrals.

Legal Aid Ontario's dedicated phone line for inmates is toll-free, 1-866-883-9665. Legal Aid Ontario accepts collect calls.

PRE-TRIAL

Before the trial, the older adult will have a **first appearance** before the court. On average, there is a four to seven month wait from the first court appearance to the trial. More serious offences or trials in the Superior Court of Justice will take longer.

Disclosure and Crown screening form

An accused person and their lawyer are entitled to review all the police's evidence and the Crown's case against them, called **disclosure**. Usually disclosure is given to the accused at the first court appearance by the Crown. Sometimes only part of the disclosure is prepared at this stage and the rest will be provided later. If full disclosure is not available, the remainder will be given to the individual or the individual's lawyer as soon as possible.

The older adult can wait until all the disclosure is received before deciding whether to plead guilty or go to trial. The older adult should wait for defence counsel to review all the disclosure.

The Crown will also give the accused person a **Crown screening form** which states the Crown's position on sentencing. If the Crown believes that mental state, substance use or Indigenous history played a role in the older adult's actions, the Crown screening form may include an invitation to consider mental health court, drug treatment court or Indigenous/Gladue court if the older adult is eligible and there is availability in the community (see **Therapeutic courts**, page 43).

Summary conviction or indictment

At the older adult's first court appearance, the Crown will typically tell the court whether it is proceeding by summary conviction or indictment.

Less serious offences, such as causing a disturbance, harassing phone calls or trespassing, must be prosecuted by **summary conviction**. Summary conviction offences are tried in the Ontario Court of Justice and have a lower maximum prison sentence.

More serious offences, such as murder, robbery, aggravated assault, or breaking and entering a dwelling house, must proceed by **indictment**. Indictable offences have a longer maximum prison sentence. The older adult can, in most cases, decide whether to have a trial on indictment in the Ontario Court of Justice or in the Superior Court of Justice. In the Superior Court of Justice, the older adult can choose to have a trial with a judge alone or with a judge and jury.

Most offences are **hybrid offences** which can be prosecuted by either indictment or summary conviction, such as assault, theft under \$5,000 or mischief under \$5,000. The Crown will decide whether to prosecute hybrid offences by summary conviction or indictment based on the facts of the case and the individual's criminal record.

Post-charge diversion

The Crown can choose to divert the older adult out of the court system into an informal or formal diversion program. There are many opportunities for diversion, depending on the offence and availability of programs in the area. Ask defence counsel to discuss these options with the Crown.

If the older adult is diverted, there will be no criminal conviction. The charge will still be on the older adult's police record, but the record may reflect that the charge was withdrawn.

Crown resolution/pre-trial meeting

This is a meeting held between the Crown and the defence counsel or the older adult if they are unrepresented. The older adult can bring a support person.

During the meeting, both sides will discuss the case freely. Nothing said at the pre-trial meeting can be repeated in court.

If the older adult has decided to plead guilty (see **The guilty plea**, page 34) the meeting will cover the agreed charges and facts, and the Crown's position on sentencing.

If the older adult has decided to go to trial, the pre-trial meeting will discuss the length of the trial, witnesses to be called, and any agreed upon facts or issues.

It is best to schedule a pre-trial meeting after the first court appearance so there is time to review the Crown disclosure.

Judicial pre-trial

This meeting is similar to a Crown pre-trial, but a judge attends to help each side agree on certain issues. The judge will also share an idea of a possible sentence if the older adult is found guilty.

Judicial pre-trials are only required for more complex cases or in therapeutic courts.

Staying and withdrawing charges

Stayed charges

The Crown decides whether to stay the charge(s). A stay means the Crown has decided not to prosecute the accused at this time. This may happen if a key witness becomes hostile and will no longer testify against the accused, or if evidence is lost or damaged.

The stayed charged will usually remain on the person's criminal record. Any recognizance, detention order or other condition related to the charge ends.

However, stayed charges can be brought "back to life" within one year of being stayed. This means the Crown can decide to prosecute the accused again. For example, this may happen if a hostile witness finally agrees to testify against the accused.

Withdrawn charges

The Crown may decide to withdraw the charge(s). This means the Crown will not prosecute the accused. Any recognizances, conditions or detention orders related to the charge are removed. The withdrawn charge will usually remain on the person's criminal record.

However, a new charge can be laid based on the same incident that led to the charge that was withdrawn.

THE GUILTY PLEA

Pleading guilty means the accused agrees to one or more of the charges against them and may result in a less harsh or long sentence. Defence counsel will negotiate a guilty plea with the Crown at the pre-trial hearing. If the older adult does not have a lawyer, duty counsel may be able to assist.

In order to plead guilty, the older adult and the Crown must agree to the facts of the case. The older adult does not have to agree with the sentence the Crown is seeking. The judge has the final say in sentencing. If the older adult and the Crown agree on a sentence, called a **joint submission**, then the judge will probably agree, though this is not required.

Plea inquiry

Before entering a guilty plea, the judge must ask the accused or defence counsel if the accused is entering the plea voluntarily. The judge must make sure no one is forcing the older adult to plead guilty. The judge will also ask if the older adult understands the consequences of pleading guilty and that the judge makes the final decision on sentencing (see **Sentencing**, page 36).

A guilty plea will result in a criminal record. This may prevent the older adult from finding housing or employment.

THE TRIAL

The accused is presumed innocent until proven guilty.⁸¹ This means the Crown must prove every charge against the accused **beyond a reasonable doubt**. The Crown must bring enough evidence to erase any reasonable doubt in the juror's or judge's minds that the accused committed the offence(s).

The accused does not have to prove anything or bring any evidence in their defence. However, if the defence can raise a reasonable doubt about any of the elements of the offence, the accused must be acquitted. In other words, if there is any reasonable uncertainty that the older adult committed the crime, the older adult cannot be found guilty.

Preliminary inquiry

At the preliminary inquiry, the Crown must call witnesses to prove there is enough evidence to hold a trial. The Crown cannot call the accused as a witness. The defence can also call witnesses. The accused can testify as a witness in their own defence if desired, but this decision should be discussed with the defence lawyer.

Trial process

The trial will usually proceed in the following sequence:

Crown's witnesses

The Crown is the first party to call witnesses. The Crown will question a witness in direct examination, and then defence counsel or the accused may choose to question the Crown's witness in cross-examination.

Defence's witnesses

The defence does not need to call any witnesses but can do so if it wishes. The accused can also testify as a witness in their own defence. Defence counsel will question a defence witness first and then the Crown will cross-examine the witness. The Crown has a limited opportunity to call additional witnesses as rebuttal evidence.

Exhibits

Exhibits are documents, photos, or other physical items that can be submitted by either party to the court. Exhibits are evidence, just like witness testimony. The judge or jury considers all the evidence in deciding whether the accused is guilty beyond a reasonable doubt.

Closing submissions and verdict

The defence and Crown will both give closing arguments that summarize the key facts of the case. If there is a jury, the court will adjourn while the jury makes a decision. If there is no jury, the judge may make a decision that day or adjourn to consider the evidence.

If the judge or jury find that the accused is not guilty of committing the offence(s), the accused is **acquitted**. Any bail conditions end immediately.

If the accused is found guilty, the accused will be sentenced.

SENTENCING

Sentencing can occur the day the older adult is convicted or adjourned if time is needed to prepare a pre-sentence report or other exhibits. If sentencing is adjourned, any bail conditions usually remain in place until sentencing.

Duty counsel may be able to represent the older adult at sentencing.

Exhibits

The following exhibits, or documents, may be submitted by either party during sentencing:

- **Pre-sentence report (PSR):** usually prepared by a probation officer after interviewing the individual being sentenced and family members, employers and other support people. The report also includes information about the individual's treatment needs, rehabilitation and risk of re-offending. This report can help the court see the individual as a human being and appreciate the individual's willingness to change.

- **Victim impact statement:** written by the victim(s), if any, explaining the harms caused by the offence, including physical, emotional or financial
- **Psychiatric/mental health assessment** (Form 6 or 8 under the Mental Health Act)
- **Counselling letter**
- **Reference letter**
- **Cultural assessment report:** for individuals who identify as being racialized. This report includes information about the individual's background, personal history, experiences of racism and how this person has been impacted.
- **Gladue report:** for Indigenous people. This report outlines the individual's history, education or employment, family and other relationships, and community support.

For assistance preparing a Gladue report, contact the local First Nation's justice department or Aboriginal Legal Services, a Legal Aid Ontario community legal clinic, at 1-844-633-2886 or info@aboriginallegal.ca. If Aboriginal Legal Services does not serve your courthouse, they can help you connect with a Gladue report writer in your area.

Crown and defence submissions

Both the Crown and the defence have an opportunity to make arguments, or **submissions**, to the court during sentencing.

The Crown will usually submit the individual's criminal record, existing probation orders, victim impact statements, pre-sentence reports and/or psychiatric assessments.

The Crown may highlight any **aggravating factors** (facts which lean toward a longer sentence):

- lack of remorse
- the individual was on parole, probation or had conditions when the offence was committed
- history of similar offences or offences against the same victim
- previous community sentences did not rehabilitate the individual
- weapons were used (a "weapon" is anything other than the person's hand)
- the crime was planned, and the individual knew the result was likely
- the offence occurred in a residential area where children could be present

- the victim was a stranger
- the offence was domestic (took place in the home or the victim was a spouse)
- the victim had physical and psychological injuries
- excessive violence
- monetary loss or property damage
- the individual resisted arrest or did not co-operate with police
- no efforts have been made to address the problems that led to the offence (e.g., the individual has not received counselling or treatment)

The defence will usually submit the individual's medical or psychiatric reports, reference letters, counselling reports, a written apology from the individual, proof of restitution (compensation) paid to the victim and/or a Gladue report (if the individual is Indigenous).

The defence will highlight any **mitigating factors** (facts which lean toward a community sentence or a shorter jail sentence):

- guilty plea
- some or all of the facts were admitted
- pre-trial custody (remand)
- followed bail conditions and did not commit any more offences
- loss of employment, licence, ability to travel and/or access to children
- absence of existing criminal record or related offence(s)
- time gap since last offence
- responded well to community supervision in the past
- offence was a spontaneous, isolated event
- no property was lost/damaged
- no one was injured, or the victim(s) fully recovered from the injuries
- motive
- positive relationship with the victim

- state of mind: mental health, substance use, cognitive abilities, emotional instability
- co-operation with the police
- full restitution has been made to the victim or will be made soon
- property was recovered
- volunteer work
- counselling, support groups, treatment or rehabilitation, and potential for reform
- health, education, employment history, family and community support
- remorse

The individual may also speak to the court during sentencing. Ask the older adult's lawyer whether this is a good legal choice for this particular case.

Possible sentences

There is a range of sentences for many offences. In some cases, the judge cannot order a lighter sentence than the **minimum sentence**. The different types of sentences are listed below:

Absolute discharge

The older adult is found guilty, but not convicted. The older adult will be discharged (free to live in the community) upon sentencing.

Fine

The older adult is found guilty, convicted and ordered to pay a monetary penalty. A fine can be combined with probation or custody.

Probation order

The older adult is found guilty and must complete up to three years of probation. Probation is a period of supervision where part of the conditions may include reporting to a probation officer and following certain rules.

If the older adult breaks any of the conditions of the probation order, they can be charged with **breach of probation** under the *Criminal Code*. Breach of probation is a criminal charge that can result in up to two years of imprisonment.

A probation order is only made if an individual has been sentenced to a conditional discharge or suspended sentence, and can be combined with a fine, conditional sentence or custody.

Conditional discharge

The older adult is found guilty, but not convicted. The older adult must complete up to three years of probation in the community, which may include following certain conditions and/or reporting to a probation officer.

Suspended sentence

The older adult is found guilty and convicted. The older adult may be ordered to follow certain conditions including reporting to a probation officer. If the older adult completes probation without breaking any of the terms, the sentence is complete. If the older adult breaks any of the terms they can be charged with breach of probation.

Conditional sentence of imprisonment

The older adult is found guilty and convicted. The older adult is sentenced to a period of imprisonment but is allowed to stay in the community under stricter terms than a probation order. The terms can include house arrest and wearing an electronic monitoring anklet. A conditional sentence supervisor (or probation officer) will monitor the older adult during the conditional sentence. The sentence can last up to two years minus one day.

Custody (imprisonment)

The older adult is found guilty and convicted and is sentenced to a period of imprisonment. If the sentence is two years or more, the older adult will be held in a federal penitentiary. If the sentence is less than two years, the older adult will be held in a provincial jail. If the sentence is less than 90 days, depending on the circumstances, the judge may impose an intermittent sentence, to be served in a provincial jail on weekends.

Other orders

The following orders can be added to the sentences listed above:

- restitution (payment) to victim(s)
- DNA sample
- ban on owning weapons and firearms
- ban on attending parks, playgrounds and schools
- ban on owning animals
- ban on driving a motor vehicle
- entry into sex offender registry

Any person who is resident in Ontario and has been convicted of a sex offence in Canada or internationally, or was found not criminally responsible for a sex offence because of a mental disorder, is required to report for 10 years (if convicted of one offence and sentenced to less than 10 years) or for life (if convicted of more than one offence or sentenced to more than 10 years). A sex offence includes any sexual act involving a minor and any sexual assault. Reporting includes registering in person with the local police service once convicted and upon leaving prison, and re-registering every year, after any change of address or change of name, seven days before leaving Ontario, and after returning to Ontario.

If the older adult does not follow an order, they can be charged with **breach of court order**. The maximum sentence is two years' imprisonment. Any probation order could also be revoked, meaning the older adult could go to prison.

THE APPEAL

Both the Crown and the defence can appeal the decision and/or sentence.

The older adult is allowed to represent themselves on appeal, just like at trial. However, appeals are very technical and can be based on complex legal arguments. The older adult should consider using an experienced defence counsel on appeal.

Not every defence counsel is experienced with appeals. It is best to hire an expert appeal lawyer, who may be a different lawyer than the trial lawyer and may charge more.

Grounds for appeal

An appeal cannot be made just because one side is unhappy with the decision. It must be based on an error of law (the law was applied incorrectly) and/or a factual error (the judge or jury had the wrong facts or interpreted them incorrectly).

Where to file an appeal

Appeals of summary conviction offences are filed in the **Superior Court of Justice**.

Appeals of indictable offences are filed in the **Court of Appeal for Ontario**.

Time limit on filing appeal

Appeals must be filed within **30 days** of the sentence being made.

A court clerk at the appeal court will give the individual the form to apply for an appeal.

If the older adult is in a correctional facility, an institutional liaison officer will bring the individual a **Form E**, which is used for appeals by persons who are in custody.

The individual **must** file the appeal within 30 days of the sentence being made. Even if the individual does not have a lawyer, they should file the appeal form within 30 days and then find a lawyer.

Appeal decisions

The appeal court can make one of the following decisions:

- dismiss the appeal (the original decision remains in effect)
- allow the appeal and order a new trial
- allow the appeal and enter an acquittal (finding of not guilty)
- allow the appeal and enter a guilty verdict (where the appeal is brought by the Crown)
- allow the appeal and change the sentence

RECORD SUSPENSIONS

A record suspension removes a person's criminal record from the Canadian Police Information Centre (CPIC) database. This means a regular criminal record check will not show the individual has a criminal record. A vulnerable sector check, however, will reveal the individual's criminal record.

Eligibility

To be eligible for a record suspension, the individual must have been convicted as an adult in Canada, or in another country and transferred to Canada. The individual must also complete the **waiting period** (see below).

The older adult is **not** eligible for a record suspension if they were convicted of more than three indictable (more serious) offences, **and** each of these offences had a prison sentence of two years or more. In addition, a Schedule 1 offence involving a child is not eligible for a record suspension.

Waiting period

In order to apply for a record suspension, the older adult must have completed all sentences, including paying any fines or restitution orders, and completing any conditional sentences, parole and probation orders. Then, the older adult must wait **five years** for summary (less serious) offences, or **10 years** for indictable (more serious) offences.

Application

The record suspension application can be found on the Parole Board of Canada's website. The application must be submitted with a copy of the older adult's criminal record, court documents, fingerprints and a police check. The application fee is \$631, in addition to the costs of completing the application.

There is no need to hire a lawyer or anyone else to complete the record suspension application. There are many fraudulent organizations claiming to speed up the record suspension application, guarantee an approval or grant a special status. These claims are not true – the Parole Board of Canada reviews each application when it is received and makes a decision based on the legal criteria. This process is not made faster or more successful by paying for outside assistance. Beware: some of these organizations use graphics and marketing on their websites similar to the Government of Canada. The Parole Board of Canada has one official website: www.canada.ca/en/parole-board.

For more information, contact the **Parole Board of Canada** by phone at 1-800-874-2652 (toll-free) or by email at suspension@pbc-clcc.gc.ca.

THERAPEUTIC COURTS

There are many therapeutic courts in Ontario, known as mental health courts, wellness courts, community courts, alternative resolution courts, drug treatment courts, Gladue courts or Indigenous people's courts.

Therapeutic courts are also called alternative courts because they are less adversarial and more relaxed than traditional courts. Each court operates independently and has its own eligibility criteria. However, some common elements of each type of court are included below.

Therapeutic courts are voluntary, meaning the client must choose to attend instead of having the case heard in regular criminal court. Some of these courts require the accused to plead guilty to the offence(s) in order to enroll. If the individual successfully completes the therapeutic court and related programs and treatment, the charges may be withdrawn, or the individual's sentence will usually be a lot lighter than in traditional court. If the individual does not complete the program, they will return to the regular court system for trial or sentencing. However, participation in the therapeutic court may be a mitigating factor to reduce the sentence (see **Sentencing**, page 36). The individual will still have the charge, but not always a conviction, on a criminal record.

Designated staff

Most therapeutic courts have a dedicated judge, Crown, duty counsel and court support or treatment staff who are specifically assigned to the court. These staff may have received special training in mental health, substance use or Indigenous history, cultural practices and justice, depending on the court. Some mental health courts also have a designated psychiatrist.

The older adult may wish to be represented by a defence lawyer in therapeutic court. It is important to choose a lawyer familiar with mental health law or Indigenous law as appropriate.

Legal Aid Ontario (LAO) provides duty counsel in therapeutic courts across Ontario. Please contact LAO toll-free at 1-800-668-8258 or 416-979-1446 to apply for legal aid funding or for more information about legal aid services. LAO accepts collect calls.

Court procedure

Most therapeutic courts hold **pre-court meetings** with the Crown, defence counsel, duty counsel, court support workers, treatment staff and community workers. Sometimes the judge, client, and client's family, friend or surety will also attend. Pre-court meetings at Indigenous and Gladue courts will include Elders, knowledge-keepers and other community members as appropriate.

At the pre-court meeting, the progress and care of existing clients and the eligibility of new clients are discussed. Complex cases are discussed and managed as a team.

Types of therapeutic courts

Therapeutic courts tend to specialize in one of the following: clients with mental health conditions, clients with substance use conditions or Indigenous clients. Some therapeutic courts will hear from a combination of clients with mental health or substance use conditions, or both. The three main types of therapeutic courts in Ontario are highlighted below.

Mental health courts

Mental health courts may also be called community treatment courts or wellness courts. There are 18 mental health courts operating in Ontario as of 2019:⁸²

LOCATION	NAME OF COURT
Barrie	Barrie & Orillia Mental Health Courts
Belleville/Hastings	Belleville Community Treatment Court
Brampton (Peel Region)	Alternative Resolution Court (ARC)

Burlington	Burlington Community Treatment Court
Kawartha Lakes	City of Kawartha Lakes Community Court
Kenora	Kenora Mental Health Court
London	Adult Therapeutic Court
Newmarket	The Community Treatment Court
Ottawa	Ottawa Mental Health Court
Owen Sound	Owen Sound Courthouse
Oxford/Woodstock	Woodstock Community Treatment Court
Peterborough	Peterborough Community Support Court
Sault Ste. Marie	Sault Community Court
Sudbury	Sudbury Community Wellness Court
Toronto	102 Court, Old City Hall
Walkerton/Bruce County	The 672 Court
Waterloo	Region of Waterloo Courthouse
Windsor	672 Therapeutic Court

A detailed review of mental health courts in Ontario can be found in *Mental Health Courts in Ontario: A Review of the Initiation and Operation of Mental Health Courts Across the Province*: <http://ontario.cmha.ca/wp-content/uploads/2017/11/Mental-Health-Courts-in-Ontario-1.pdf>.

Objectives

Most of these courts aim to address clients' mental health conditions, provide the necessary medical and community supports, prevent re-offending and improve the well-being of each client and of society. Some mental health courts also hear matters such as criminal responsibility and fitness to stand trial (see **Forensic mental health system**, page 50).

Eligibility

Mental health court support workers usually process referrals to the court. Mental health screening tools are used to determine whether the client has a mental health condition. The Crown then reviews the referral and makes the final decision on eligibility.

The following eligibility criteria are common in many mental health courts:

- willingness to participate and be treated
- connection between the mental health condition and the offence

- mental health assessment confirming a mental health condition, including dementia
- past formal diagnosis of mental health condition
- non-violent and non-domestic charges (class 1 or 2 as described in Crown policy manual)
- no serious substance use concerns that would be better addressed in drug treatment court
- no past violent convictions⁸³

Court procedure

Clients attend court as often as necessary, usually once or twice a month, depending on the matter.

Mental health court support workers will develop an individualized diversion plan for each client. This may include treatment, medication, support groups and community programs. The Crown may review this plan.

Rewards and sanctions

Clients who attend court as required and follow their diversion plans receive rewards such as gift cards, certificates and praise from the judge and Crown.

Clients who do not attend court or follow their diversion plans may be expelled from the diversion program. These clients must return to regular court for sentencing.

Drug treatment courts

As of 2019, PHSJCC is aware of 14 drug treatment courts operating in Ontario⁸⁴:

LOCATION	NAME OF COURT
Barrie	Simcoe County Drug Treatment Court
Brampton (Peel Region)	Brampton Drug Treatment Court
Guelph	Wellington County Drug Treatment Court
Hamilton	Hamilton Drug Treatment Court
Kenora	Kenora Drug and Alcohol Treatment Court
Kingston	Kingston Drug Treatment Court (on hold)
Kitchener	Kitchener Drug Treatment Court
Lanark, Leeds and Grenville	Lanark and Leeds/Grenville Drug Treatment Court
London	London Drug Treatment Court (on hold)
Niagara	Niagara Treatment Court
Oshawa	Durham Drug Treatment and Mental Health Court

Ottawa	Drug Treatment Court of Ottawa
Peterborough	Peterborough Community Support Court
Toronto	Toronto Drug Treatment Court
Waterloo	Region of Waterloo Drug Treatment Court
Windsor	Windsor-Essex Drug Treatment Court
Woodstock	Oxford County Drug Treatment Court (implementation phase)

Objectives

Drug treatment courts integrate substance use treatment and rehabilitation into the justice system. These courts are non-adversarial and promote public safety by decreasing substance use, criminal activity and costs.

Eligibility

The client or lawyer must apply to the court. The PHSJCC understands that the Crown screens the application and a treatment provider assesses the client. The Crown usually makes the final decision on eligibility in consultation with the treatment provider, defence counsel, probation officer and community liaison.⁸⁵

Treatment program staff begin case planning by identifying the client's immediate (e.g., housing) and short-term (e.g., treatment) needs. The **case management plan** will also include any rules such as not to go to a certain place. The case plan is presented to the judge who makes the final decision on admission to the court.

The following eligibility criteria are common in many drug treatment courts:

- willingness to participate and be treated
- offence is connected to a long-term substance use problem
- non-violent charge (class 1 or 2 as described in the Crown policy manual)
- no criminal history that threatens community safety as determined by the judge

Court procedure

Clients attend court regularly, up to two times per week, in addition to attending treatment. The client must report any substance use and agree to frequent and random substance testing.

Treatment includes counselling, residential treatment, relapse prevention, job skills therapy and housing supports.

In order to “graduate” and successfully complete the program, clients must usually remain abstinent for a certain period of time (e.g., three months), obtain housing and become involved in employment, education or volunteering. This often takes 12-18 months.

Rewards and sanctions

The PHSJCC is aware that clients who attend court as required, follow their case plans and are honest about their substance use receive rewards such as gift cards, certificates and praise from the judge and Crown.⁸⁶

Clients who do not attend court, follow their case plans or lie about substance use may have to follow additional rules, receive an official reprimand, or have their bail revoked. They may also be expelled from the program and return to regular court for sentencing.

Indigenous people's courts

Indigenous people's courts, also known as **Gladue courts** or First Nations courts, are specific to Indigenous individuals.

The PHSJCC is aware of 14 Indigenous people's courts hearing adult criminal matters in Ontario in 2019⁸⁷:

LOCATION	NAME OF COURT	
Brantford	Brantford Indigenous People's Court	
Cayuga	Cayuga Indigenous People's Court	
London	London Gladue Court	
Manitoulin Island	Wiikwemikong Gladue Court	
Niagara	Niagara Indigenous People's Court	
Ottawa	Ottawa Indigenous Peoples' Court/Cour des Peuples Autochtones	
Sarnia	Sarnia Indigenous Persons Court	
Thunder Bay	Thunder Bay Indigenous People's Court	
Toronto	Old City Hall Gladue Court	2201 Finch Gladue Court
	College Park Gladue Court	1911 Eglinton Gladue Court
	Metro North (1000 Finch) Gladue Court	
Walpole Island	Bkejwanong (Walpole Island) First Nation Court	

Some of these courts also hear youth and child protection matters.⁸⁸

Objectives

Section 718.2(e) of the Criminal Code directs criminal courts to consider alternative sanctions to imprisonment for everyone, but especially for Indigenous individuals.⁸⁹ The Gladue case (a Supreme Court of Canada decision) clarified that this is to address the over-representation of Indigenous persons in the justice system.⁹⁰ It requires all criminal courts to consider an Indigenous individual's history, family, substance use, community supports

and other factors during sentencing. These factors are now known as the **Gladue principles**.

Today, Gladue principles are usually provided to the court in **Gladue reports** at bail and sentencing hearings. **Gladue courts** go a step further by embedding Gladue principles into all court proceedings.

The objectives of these courts are to:

- Directly address section 718.2(e) of the *Criminal Code* and the Gladue principles identified by the Supreme Court of Canada
- Interpret bail provisions liberally so that pre-trial detention is not imposed unnecessarily and does not lead to custodial sanctions
- Encourage effective alternatives to incarceration for Indigenous individuals, developed through a culturally and individually appropriate process
- Encourage the development of resolution plans which will engage Indigenous individuals in their own rehabilitation
- Provide opportunities for Indigenous community agencies to engage in the rehabilitation of Indigenous persons⁹¹

Eligibility

Gladue court is available to all persons who self-identify as being First Nations (status or non-status), Métis or Inuit and live in an area with a Gladue court.

Some Gladue courts require the individual to plead guilty (like many other therapeutic courts).

Court procedure

Gladue courts are developed with Elders and incorporate Indigenous legal and spiritual practices, such as smudging, sentencing circles and using eagle feathers instead of religious texts to swear oaths.⁹²

Dedicated judges and Crowns collaborate with Elders, Indigenous knowledge helpers, Gladue report writers, Indigenous court workers, bail program workers, Friendship Centre staff and other organizations to support clients within their own communities.⁹³ Individuals are represented by defence counsel, ideally with expertise in Indigenous courts.

Some criminal Gladue courts are unique in holding bail and sentencing hearings, rather than returning these matters to the traditional criminal court.⁹⁴

Aboriginal Legal Services, a Legal Aid Ontario community legal clinic, represents clients in Toronto's Gladue courts and can assist in finding a lawyer in other communities across Ontario. Please call 1-844-633-2886 or email info@aboriginallegal.ca.

Diversion

Many Gladue courts offer diversion for less serious offences. Indigenous diversion programs are designed to engage Indigenous individuals with their communities and decrease the risk of reoffending. The program links clients to culturally relevant services suited to individual circumstances and needs, such as life skills, sweat lodges, anger management, substance use, employment assistance, education and volunteering. Upon successful completion of the diversion program, charges may be withdrawn.⁹⁵

Bail programs

Indigenous bail programs provide supervision to clients who wouldn't otherwise have a surety. Individualized release plans are created by the bail supervisor and the Indigenous court worker to meet the appropriate needs of each client. Clients will be engaged in programs which provide a connection to the community, and they may be required to attend mental health services. Bail conditions may include not to go certain places, not to have weapons and not to contact certain persons.⁹⁶

Sentencing

On the day of sentencing, a sentencing circle may be held. Defence counsel, the Crown, an Indigenous court worker, the client and family members address the needs of the client, including the factors that led to the offence. Victims may be assisted by the Crown or victim services. Elders, service providers and community members may also participate in creating a plan of care for the client. The plan of care may include returning to school, counselling, community service or preparing an essay, poem or piece of artwork.⁹⁷

FORENSIC MENTAL HEALTH SYSTEM

The **forensic mental health system** includes the assessment, treatment and detention of an accused person in a designated forensic psychiatric hospital. These orders may be made by a court or by the Ontario Review Board.

Forensic psychiatric hospitals in Ontario include:

- Centre for Addiction and Mental Health (Toronto)
- North Bay Regional Health Centre (North Bay)
- Ontario Shores Centre for Mental Health Sciences (Whitby)
- Providence Care Centre, Mental Health Services Site (Kingston)
- Royal Ottawa Health Care Group (Brockville and Ottawa sites)
- St. Joseph's Healthcare Hamilton, West 5th Campus (Hamilton)

Best Practice: Domestic Violence Community Treatment Court

Newmarket Courthouse operates a domestic violence community treatment court once a month. Older adults with dementia or other age-related conditions are eligible. This court does not offer diversion but addresses the underlying health condition and its interplay with the actions that bring the individual before the court. For example, the court may assist an individual find housing in a long-term care home with required supports, while ensuring the safety of the victim.



Newmarket Courthouse, September 2018 (Source: Google Images)

- Southwest Centre for Forensic Mental Health Care (St. Thomas)
- Thunder Bay Regional Health Sciences Centre (Thunder Bay)
- Waypoint Centre for Mental Health Care (Penetanguishene, Regional and Oak Ridge Services)

Fitness

Presumption of fitness

Everyone is presumed by the law to be mentally fit to stand trial.⁹⁸ This means the older adult has the mental capacity to understand the trial process and to communicate with defence counsel.

If an accused person cannot, due to a “mental disorder”:

1. understand the nature of the offence
2. understand the trial process **or**
3. communicate with defence counsel,

the accused may be **unfit to stand trial**, meaning the accused may not have the mental capacity to go to trial.

Mental disorder includes any illness, disorder or abnormal condition that impairs the mind and its functioning. This may include dementia, delirium and developmental disabilities but excludes substance use, hysteria or concussion.⁹⁹

Raising the issue of fitness

The Crown, defence or judge can raise the issue of fitness.

The judge will adjourn the trial and appoint counsel for the accused if the accused is self-represented. The matter could also be transferred to a mental health court.

The judge may ask the older adult simple questions about the case, the role of the different parties, and what happens if the older adult is found guilty.

If the judge thinks it is possible that the older adult is unfit, the judge can order a **fitness assessment**.

Fitness assessment

The fitness assessment is a psychiatric examination by a forensic psychiatrist. It may take five to 30 days to complete, although resources in some communities may enable it to be done more quickly. For example, if the community has a forensic hospital, the older adult can be assessed there. Most courts also accept video assessments.

A few mental health courts have a designated psychiatrist who can perform fitness assessments at the courthouse. In this case, the assessment can usually be done in under an hour. Otherwise, the older adult can meet the forensic psychiatrist in the community. If the older adult is in prison, a psychiatrist can perform the fitness assessment there or at a forensic psychiatric hospital.

The psychiatrist can make one of the following recommendations:

1. The psychiatrist can recommend that the older adult is fit to stand trial.
 - i. If the defence and Crown agree, the judge will also likely agree. The trial will resume.
 - ii. If either party disagrees, there will be another assessment or a **fitness hearing**.
2. The psychiatrist can recommend that the older adult is unfit to stand trial.
 - i. If the defence and Crown agree, the judge will also likely agree. The trial pauses until the older adult becomes fit. The judge may make a **treatment order** or send the case to the **Ontario Review Board** (see below).
 - ii. If the parties disagree, there will be another assessment or a **fitness hearing**.

No matter what the psychiatrist recommends, the judge makes the final decision on fitness.

Note that an order for a fitness assessment does not relate to treatment. The accused can consent to treatment but cannot be ordered to receive treatment at this time.

Fitness hearing

The judge will determine fitness on a balance of probabilities. This is a lower standard than the standard of “beyond a reasonable doubt” used in a criminal trial.

If the judge finds the older adult is fit to stand trial, the trial continues. Either party can raise the issue again at any time.

If the judge finds the older adult is unfit to stand trial, the trial pauses until the older adult “becomes fit,” and can understand the court process and communicate with defence counsel.

The judge may also issue a **treatment order** or send the case to the **Ontario Review Board** (see page 56).

“Keep fit” order

If the older adult is in prison and found fit to stand trial, but there is a risk the older adult will become unfit by remaining in prison, the judge can order the older adult be transferred to a forensic psychiatric hospital in order to “keep fit.”

In such cases, the older adult cannot be ordered to receive treatment. However, the older adult or their substitute decision-maker can consent to treatment. No one can be forced to receive treatment unless a **treatment order** is made.

Treatment order

Under a treatment order, the older adult can be ordered to receive involuntary treatment. This is the only section of the *Criminal Code* that allows treatment against the accused's will.¹⁰⁰

If the judge issues a treatment order, also known as a “make fit” order, the older adult will most likely be held in a forensic psychiatric facility while receiving treatment for up to 60 days, unless the older adult “becomes fit” sooner.

The judge must follow strict criteria to issue a treatment order:

- The Crown must give the accused notice in writing.
- The accused or the defence counsel must have had a chance to be heard and to call evidence.
- The order cannot be for more than 60 days.
- A forensic psychiatrist must testify (say) that:
 - the accused was assessed and is unfit to stand trial
 - there is a treatment that will likely make the accused fit to stand trial in 60 days
 - the potential harm from the recommended treatment is outweighed by the benefit of making the accused fit **and**
 - the recommended treatment is the least serious method of making the accused fit in 60 days.
- A forensic psychiatric hospital has agreed to take the accused and administer the treatment.
- The hospital must not use psycho-surgery or electro-convulsive therapy.

If the accused becomes fit within 60 days, the trial will continue.

If the accused is still not fit after 60 days, the case will be sent to the **Ontario Review Board**.

Not criminally responsible (NCR)

Presumption of criminal responsibility

An individual is presumed by the law to be criminally responsible for the crimes the court has found the individual to have committed.¹⁰¹

However, if the individual could not, due to a “mental disorder,” understand their own actions or know their actions were wrong, the court will not hold the individual criminally responsible.

Only some mental health conditions are considered **mental disorders** for the purposes of NCR. The mental disorder must have made the older adult incapable of understanding the nature and physical consequences of their own actions or of knowing that those actions were wrong. Some examples of mental disorders that may qualify include schizophrenia, bipolar disorder, delusional disorders, delirium or developmental delay. Substance use, hysteria, concussions and personality disorders usually do not qualify.

Raising the issue

The accused or defence counsel can raise the issue of criminal responsibility at any time. The accused should speak to defence counsel as a finding of NCR can result in a longer period of detention than a traditional prison sentence.

The Crown can only raise the NCR issue after the accused has raised it first, or after the court has issued a guilty verdict but before sentencing. A finding of guilt or a guilty plea must be made before the individual can be found NCR.

The judge may order an NCR assessment if the judge feels there are reasonable grounds to do so. The case may also be transferred to mental health court, if available.

Not criminally responsible assessment

NCR assessments are more complex than fitness assessments and usually take between 30 and 60 days to complete.

A forensic psychiatrist may conduct the NCR assessment by meeting the older adult in the community. If the older adult is in prison, they may be transferred to a forensic hospital for assessment (inpatient or outpatient).

The forensic psychiatrist will provide a written assessment to the court, including any diagnosis and opinion as to criminal responsibility.

If the defence or the Crown disagree with the forensic psychiatrist's assessment, they can ask for another assessment. The judge makes the final decision on the NCR issue.

Judge's finding

If the judge finds the individual is criminally responsible, the individual will be sentenced.

If the judge finds the individual is not criminally responsible, no criminal conviction will be entered. The judge can either issue an order or refer the case to the **Ontario Review Board**. For example, if the judge finds the accused is not a significant threat to public safety, then the judge can grant an absolute discharge. If this happens, the individual is free to live in the community without supervision.

Ontario Review Board

The Ontario Review Board (ORB) is an independent tribunal (panel) that is equivalent to a court in authority and specializes in cases involving persons found not criminally responsible or unfit to stand trial. The ORB makes decisions about where to place individuals found unfit to stand trial or NCR, and levels of security and privilege.

The ORB is composed of five panel members: a chairperson (judge or lawyer with 10 years' experience), a lawyer, a psychiatrist, a psychologist and a member of the public.

Legal Aid Ontario (LAO) represents individuals before the Ontario Review Board. Please contact LAO toll-free at 1-800-668-8258 or 416-979-1446 to apply for legal aid funding or for more information about legal aid services. LAO accepts collect calls.

Fitness

The ORB can make two types of decisions for fitness cases:

1. Conditional discharge: the older adult is free to live in the community but must follow conditions (e.g., report to hospital, abstain from substances)
 - The older adult must attend annual ORB hearings until the ORB decides the individual is fit to stand trial (at which point the trial continues).
 - If the older adult breaks the conditions, they can be arrested.
2. Detention order: the older adult may need to stay in a forensic psychiatric hospital with restrictions on liberty
 - The older adult may be allowed passes from the hospital with conditions.
 - The older adult must attend annual ORB hearings until the ORB decides the individual can safely live in the community (conditional discharge) or finds the individual is fit to stand trial (at which point the trial continues).
 - The older adult cannot be forced to receive treatment by the ORB.

As long as the older adult remains unfit, the Crown must show the court it has a provable case against the individual every two years. If the Crown can no longer prove its case (for example, because key witnesses have died), the charges must be dropped, and the individual is free to live in the community without supervision or conditions.

If the Crown is able to show it has a provable case and the ORB decides the older adult is still unfit to stand trial, the ORB can continue to supervise the individual for many years. **This means an individual who is found unfit can be supervised and detained longer than an individual who is found guilty and incarcerated.**

The ORB can recommend the court stay the charges if the ORB finds the individual is not a threat to public safety and is unlikely to ever become fit to stand trial.

If the ORB finds the older adult is fit to stand trial, and a judge agrees, the trial will resume. If a judge disagrees and finds the older adult is still unfit, the case returns to the ORB.

Not criminally responsible

The Ontario Review Board can make three types of decisions for NCR cases:

1. Absolute discharge: the older adult is free to live in the community without restrictions
2. Conditional discharge: the older adult is free to live in the community but must follow conditions (e.g., report to hospital, abstain from substances)
 - The older adult must attend annual ORB hearings until the ORB decides the older adult can safely live in the community without restrictions (i.e., grants an absolute discharge).
3. Detention order: the older adult may need to stay in a forensic psychiatric hospital and follow any conditions set by the ORB
 - The older adult must attend annual ORB hearings until the ORB decides the individual can safely live in the community (i.e., grants a conditional or absolute discharge).
 - The older adult cannot be forced to receive treatment by the ORB.

If the ORB finds the older adult is a threat to public safety, the ORB can continue to supervise the individual or keep the individual in a forensic psychiatric hospital for many years. **This means that in some cases being found not criminally responsible can be more onerous than going to trial and being found guilty.**

For more information about support for forensic clients, as well as addictions, mental health and problem gambling treatment services in Ontario, and to access a 24-hour crisis line, please contact ConnexOntario at 1-866-531-2600 or visit:
<https://www.connexontario.ca/>



CHAPTER 3: CORRECTIONAL SYSTEM

CUSTODY

If the judge issues a sentence of less than two years, the older adult will be held in a provincial jail or local detention centre. Once in custody, depending on the length of stay or individual needs, the older adult may be classified and transferred to a different provincial facility (e.g., treatment centre, correctional centre).

If the judge issues a sentence of two years or more, the older adult will be held in a federal institution, also known as a penitentiary.

The correctional service decides where the individual will be sent, not the judge.

Provincial institutions

As of 2019, Ontario has 25 provincial institutions (for people sentenced to less than two years or awaiting trial) and two intermittent centres¹⁰²:

1. Algoma Treatment and Remand Centre, Sault Ste. Marie (special criteria for admission)
 - French language services
 - Substance use treatment
 2. Brockville Jail, Brockville
 - Males only
 3. Central East Correctional Centre, Lindsay
 4. Central North Correctional Centre, Penetanguishene
 5. Elgin-Middlesex Detention Centre, London
 6. Fort Frances Jail, Fort Frances
 7. Hamilton-Wentworth Detention Centre, Hamilton
 - French language service
 8. Kenora Jail, Kenora
 9. Maplehurst Correctional Complex, Milton
 10. Monteith Correctional Complex, Monteith
 - French language service
 11. Niagara Detention Centre, Thorold
 - Males only
 12. North Bay Jail, North Bay
 - French language services
 13. Ontario Correctional Institute – Brampton (special criteria for admission)
 - Males only
 - Sexual offence programmes
 - Substance use treatment
 14. Ottawa-Carleton Detention Centre, Ottawa
 - French language services
 15. Quinte Detention Centre, Napanee
 16. Sarnia Jail, Sarnia
 17. South West Detention Centre, Windsor
 - French language services
 18. St. Lawrence Valley Correctional and Treatment Centre, Brockville (special criteria for admission)
 - Schedule 1 facility
 - Sexual offence programmes
 - Mental health treatment
 19. Stratford Jail, Stratford
 - Males only
 20. Sudbury Jail, Sudbury
 - French language services
 21. Thunder Bay Correctional Centre, Thunder Bay
 22. Thunder Bay Jail, Thunder Bay
 - Males only
 23. Toronto South Detention Centre, Etobicoke
 - Males only
 24. Toronto East Detention Centre, Scarborough
 - Males only
 25. Vanier Centre for Women, Milton
 - Females only
 - French language services
- Intermittent centres:
1. Toronto Intermittent Centre, Toronto
 - Males only
 2. Regional Intermittent Centre, London
 - Males only
- All institutions house females and males unless otherwise indicated.

Federal institutions

Ontario residents sentenced to two years or more will serve their sentences at any federal institution in Canada. However, as of 2019 there are seven federal institutions located in Ontario¹⁰³:

- Bath Institution, Bath (25 kilometres west of Kingston)
- Beaver Creek Institution, Gravenhurst
- Collins Bay Institution, Kingston
- Grand Valley Institution for Women, Kitchener (females only)
- Joyceville Institution, Kingston
- Millhaven Institution, Bath (25 kilometres west of Kingston)
- Warkworth Institution, Campbellford

Supports and services

Prison populations have a higher rate of acute and chronic health conditions than the general population.¹⁰⁴ In addition, individuals in prisons experience higher rates of mental health and substance use issues.¹⁰⁵ Individuals with mobility needs face additional challenges as many institutions are not designed to be accessible to this population.

Most correctional facilities do not allow inmates to use cell phones. While inmates can make collect calls, cell phones will not accept collect calls. This means **most inmates cannot call a cell phone.**

There are many organizations that can help people with any health or legal problems they have in prison, starting with the prison's **institutional liaison officer (ILO) or parole officer**. Every institution has an ILO who can help the individual with any medical or mental health-related needs, human rights issues and parole eligibility. In the provincial system, the ILO is responsible for assisting individuals with the parole process and application. If the older adult will be serving part of a sentence in the community, the ILO will help schedule appointments with a probation/parole officer.

John Howard Society offers programs and support to people in male prisons across the province such as:

- Indigenous healing circles and spiritual teachings
- inmate counselling
- release planning
- telephone support

Contact the **John Howard Society** of Toronto at 1-866-265-4434 or visit <https://johnhoward.on.ca/contact-us/> to find your local society. This number can be called from any provincial facility and accepts collect calls.

Elizabeth Fry Society provides transitional residence and community support to women who have been in conflict with the law.

Contact **Elizabeth Fry Toronto** toll-free at 1-855-924-3708 or visit <http://www.caefs.ca/feature/local-societies/> to find your local society.

Legal Aid Ontario (LAO) may assist financially-eligible persons with legal matters including:

- parole hearings
- internal transfer
- residency hearings
- disciplinary hearings
- detention or “gating” hearings
- post-suspension hearings

The availability of both duty counsel and certificate services will depend upon the nature of the legal need, the availability of local counsel and the financial eligibility of the client seeking legal aid assistance.

Some provincial correctional institutions offer **institutional duty counsel** services for inmates in remand custody. Institutional duty counsel assists in-custody clients with preparation of bail plans and preparation for guilty pleas, perform video bails and video remands, and provide clients with summary legal advice, primarily in relation to criminal law matters but also in other areas of law, as well as referrals.

LAO also offers the following services:

- **Legal aid workers** attend federal institutions to take certificate applications.
- LAO funds **Queen’s Prison Law Clinic**, an independently-governed and managed student legal aid clinic based at Queen’s University law school in Kingston, which assists with a wide range of prison law matters including grievances, parole hearings and disciplinary hearings. The clinic is involved in appeal and test case work and provides legal information and advice to prisoners.
- Through its **Test Case Program**, LAO will consider applications to fund litigation of significant prison law issues and support coroners’ inquests. The Test Case Program may also fund representation at prison-related inquests that raise important public interest issues.

The Salvation Army assists all persons affected by the justice system. This includes court support, institutional support and family support. The Salvation Army offers pre-release job-training programs, employment opportunities, material aid and spiritual guidance to those inside and their families. Staff are available to talk to individuals, explain how the system works and provide support.

Call The Salvation Army Canada toll-free at 1-800-725-2769 or visit <https://salvationarmy.ca/>.

Ombudsman Ontario accepts complaints about provincial correctional facilities. The individual can ask for a request form from within an institution to start the process.

Contact Ombudsman Ontario at 1-800-263-1830 or <https://www.ombudsman.on.ca/home>.

Visiting someone in prison

Visiting someone in prison can be confusing and intimidating. The information below can make this process easier for you and the person you are visiting.

For more detailed information, including information about a specific institution, please visit the John Howard Society of Ontario's website at <https://johnhoward.on.ca/>.

Planning your visit

All visitors must complete a **visitor request process** to be approved to visit. This takes about two weeks.

For federal institutions, you must **book a visit** at least 48 hours ahead.

Some provincial facilities ask you to book ahead, and others allow approved visitors to show up during visiting hours.

It is a good idea to also call the institution the day you plan to visit to make sure the prison is not “locked down” that day.

Arrive early, as there may be a limit to the number of visitors allowed each day. Visitors may enter on a first-come, first-served basis.

The length of the visit depends on the correctional facility, from 20 minutes to a day. Be prepared to wait a long time before you are allowed into the visiting area.

Ask what the rules are before you visit. If you break a rule, the visit will be cut short and you may not be allowed to return.

Open or closed visits

Open visits mean you can sit at a table with your friend or family member. Sometimes you are allowed brief physical contact (like a hug or kiss).

Federal prisons offer private family visits in a separate building like a house that can last up to three days. Only some people are eligible for private family visits. Staff will interview you ahead of the visit.

Closed visits usually mean your friend or family member will be sitting behind a glass and you talk through a telephone. You could be in a large room with many visitors or in a private booth. Closed visits may also be video visitation. The visitor must attend the nearest provincial facility to video conference with the friend or family member inside.

What to bring and not to bring

You must bring **government identification (ID)** such as a passport, driver's licence or Ontario health card. It is a good idea to bring two or three pieces of identification, and at least one with your current address on it.

Contraband or unauthorized items are not allowed to enter the institution at all: drugs or alcohol, cigarettes, medications, anything that could be used as a weapon or large amounts of money. If you are caught with any of these items, you may be **criminally charged**. If your friend or family member in prison is caught with contraband, this person may be charged or given an additional sentence.

Most institutions will not let you bring certain items into the visiting area: keys, cell phones, SIM cards, cameras or other electronics. Leave these items in the car, or in the prison's locker, if available.

All institutions are **scent free**, so you may be turned away for wearing perfume, cologne or body spray.

Normally you are not allowed to bring any items to your friend or family member. You can mail items, but they will be examined by staff first. You can show your loved one a photograph during the visit instead.

Some institutions will let you give cash or cheques, bank drafts or money orders to someone's **canteen**. Canteen is a system for people to store money in prison to buy snacks, toiletries, stationary or reading material. Ask the institution if you want to give money to the canteen.

Security check

Every time you visit an institution, you will have to go through a security check. You will be turned away if you have any contraband, do not bring identification or are under the influence of alcohol or drugs.

Most federal institutions have **ion scanners** which can detect even small traces of drugs. You will have to remove your glasses and/or jewelry to be scanned separately, so consider leaving your jewelry at home. Always wear clean clothes and wash or sanitize your hands, as most cash has trace amounts of drugs which can transfer to your hands. Some people wash their eyeglasses and plastic ID with soap and water before a visit to avoid a false reading on the scanner.

You will probably have to walk through a metal detector and any bags will go through a machine. You may also be wanded with a hand-held metal detector.

Passive dogs may walk by the visitors and sniff for drugs.

You may also have a **frisk search** or pat down over your clothes. In a federal institution you may also be asked to have a strip search. You do not have to agree, but you will not be allowed in otherwise.

At any time, staff may call the police if they think you are carrying illegal items.

Travelling to prison

It can be very expensive to visit a friend or family member who may be in a correctional facility far from you.

John Howard Society of Hamilton, Burlington & Area provides low-cost transportation for visitors to federal institutions in the Warkworth and Kingston areas twice a month. For more information, contact 905-522-4446.

Fostering, Empowering, and Advocating Together (FEAT) for Children of Incarcerated Parents offers a Family Visitation Program which provides weekend transportation from Toronto to correctional facilities in southern Ontario. Transportation is free for anyone 18 years old and younger. During the trip, FEAT provides free snacks and refreshments, games and activities for children, and plays movies. The bus is a place for children and families to share experiences of having a loved one inside and to connect with mentors. FEAT provides support after visits or when visits are cancelled.

For more information or to book a seat on the **FEAT** bus, please call 416-505-5333 or email info@featforchildren.org.

DEATHS IN CORRECTIONS

When someone dies in provincial custody, the police are supposed to notify the next of kin through co-ordination with the superintendent.¹⁰⁶ The next of kin is usually expected to travel to the institution to collect the deceased's property.¹⁰⁷ Canada Pension Plan benefits may be able to cover the costs of the funeral.

In federal correctional facilities, correctional staff will notify the next of kin and a family liaison co-ordinator will share additional information.¹⁰⁸ Correctional Service Canada will also arrange and pay for delivery of the deceased person's belongings to the next of kin.¹⁰⁹

Federal institutions will cover the cost for the body to be transported to a funeral home in the deceased person's or next of kin's hometown. If the body is not claimed, the institution will arrange a burial or cremation.

Coroner's inquests

The Office of the Chief Coroner for Ontario is required to investigate the circumstances of every death that occurs when an individual is in the custody of a correctional officer. If the investigating coroner is of the opinion the person may not have died of natural causes, a full coroner's inquest must be held.¹¹⁰

It can take up to two years or longer after a death for an inquest to be held. The inquest may last a month or more. Instead of a judge, a coroner who is usually a medical doctor presides. The coroner is assisted by counsel who will introduce and question witnesses. The parties, including the correctional facility and the deceased's family, may also call and question witnesses, and may have their own counsel. The Office of the Chief Coroner will compensate witnesses, and family members may apply for costs and legal fees.

For more information, please visit <https://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/Inquests/AidToInquests.html>.

The inquest is not a trial and does not decide guilt. It is designed to determine what happened in order to prevent future deaths in similar circumstances. A jury made up of five people will determine the cause of death and make any number of recommendations, usually directed to the institution and government. Although the recommendations are not binding, recipients are asked to respond to the Office of the Chief Coroner and indicate if any recommendations were implemented, and if not, the rationale for the position.

PAROLE

For provincial institutions, the Ontario Parole Board will hold a parole hearing or consider someone for parole after one-third of the sentence is complete. For federal institutions, the National Parole Board can consider parole after one-sixth of the sentence has been served. The parole boards will only grant parole if they decide the individual is at a very low risk to re-offend and does not present a risk to society.

Legal Aid Ontario may assist financially-eligible persons at parole hearings. Please call toll-free at 1-800-668-8258 or 416-979-1446 to apply for legal aid funding or for more information about legal aid services. Individuals who are currently in a correctional institution can call LAO's dedicated inmate line toll-free at 1-866-883-9665. Legal Aid Ontario accepts collect calls.

The institutional parole officer can also help the individual prepare for a parole hearing. A probation and parole officer will work with the individual and the institutional parole officer to create a release plan.

Parole means the older adult is released from custody in order to serve the remainder of the sentence in the community with conditions (rules that must be followed). A probation and parole officer will supervise the individual in the community for the remainder of the sentence. If the individual breaks any of the conditions, the rest of the sentence will be served in custody.

RELEASE FROM CUSTODY

It can be a difficult transition from life inside prison to the outside world. Finding housing can be extremely difficult for someone with a criminal record. Conditions may include no contact with the victim, who may be the older adult's primary care giver or care partner.

Some **John Howard Societies** across Ontario provide post-release services including housing, counselling, skills development and reintegration supports. The federal system may also have transitional housing options, such as half-way houses.

Contact the **John Howard Society** of Toronto toll-free at 1-866-265-4434 or visit <https://johnhoward.on.ca/contact-us/> to find your local society. This number can be called from any provincial facility and accepts collect calls.

Elizabeth Fry Societies provide transitional residences and community support for women who have been in conflict with the law. Programs offered include release planning, reintegration counselling, parenting skills, employment services and entrepreneurship training, pardon applications, and transitional housing for women on parole.

Contact **Elizabeth Fry Toronto** toll-free at 1-855-924-3708 or visit <http://www.caefs.ca/feature/local-societies/> to find your local society.

The Prisoner's HIV/AIDS Support Action Network (**PASAN**) is a community-based health and harm reduction organization that provides support, education and advocacy to individuals in custody or who have been released across Canada. Services focus on HIV and HCV prevention, education and support including counselling, case management, pre and post-release planning, advocacy for medical services, housing supports and emergency financial assistance.

PASAN accepts collect calls from prisons across Canada. Call toll-free at 1-866-224-9978.

Many mental health and substance use organizations across Ontario provide services and supports to people leaving custody, including supportive housing, counselling and case management.

For more information, please contact ConnexOntario at 1-866-531-2600 or visit: <https://www.connexontario.ca/>

The **Salvation Army** offers practical support, outreach and assistance to help individuals re-establish their lives and enable positive re-integration after incarceration. This includes client and family counselling, providing tools and knowledge for independent living, finding solutions to life situations and setting realistic goals. Specific programs focus on substance use, compulsive shoplifting, anger management and positive lifestyles.

The Salvation Army provides residential facilities for older adults at risk of homelessness. Residential services include nursing, medical, pharmacy, recreation, advocacy, respite, hair and foot care. The Salvation Army also runs social service programs including hunger relief, rehabilitation, long-term and palliative care, and life-skills classes.

Call **The Salvation Army Canada** toll-free at 1-800-725-2769 or visit <https://salvationarmy.ca/>.

Best Practice: Haley House

Located in Peterborough, Haley House is a supportive home for older federal inmates released on parole with physical or mental health needs. Residents have access to mobility supports, on-site case management, personal support workers, physicians and psychiatrists, as well as a personal chef/counsellor. The casework manager develops a re-integration plan for each resident and helps find long-term supportive housing while meeting parole conditions. Haley House seeks to provide a warm and welcoming atmosphere, as residents eat meals together and staff accommodate every resident's needs.



View of backyard of Haley House, November 2018 (Source: Tasha Rennie, HSJCC Secretariat)

For more information, call 705-741-4172 or visit
<http://ptboreintegration.org/program/haley-house/>.



CHAPTER 4: CIVIL MENTAL HEALTH LAW SYSTEM

THE CIVIL MENTAL HEALTH SYSTEM

The civil mental health system refers to the legal processes for individuals who may have been found incapable to make certain decisions for themselves due to mental incapacity or a civil detention in a designated psychiatric facility. This is in contrast to the criminal justice system, where a person has been criminally charged and must go through criminal law proceedings.

Involuntary admission to a psychiatric hospital

The *Mental Health Act* provides psychiatric facilities with the authority to detain people who have been found by a physician to be at risk of harm to themselves or others due to mental disorder.

Under the *Mental Health Act*, **mental disorder** is defined as “any disease or disability of the mind.”¹¹¹ This can include dementia, delirium and other conditions that are not technically mental illnesses.

Involuntary patients can only be detained at a Schedule 1 designated psychiatric facility. The Ministry of Health's list of these hospitals is found at <http://www.health.gov.on.ca/en/common/system/services/psych/designated.aspx>

Form 1: Application for psychiatric assessment

If a doctor examines someone and believes that person is at risk of self harm or of harming others due to a mental disorder, or the person cannot care for themselves, the doctor may complete an application for psychiatric assessment, or **Form 1**.¹¹² This allows the doctor to keep the patient in a psychiatric facility for up to 72 hours for a psychiatric assessment.

To complete a Form 1, the doctor must examine the individual and decide whether certain criteria under section 15 of the Mental Health Act are met.¹¹³ The Form calls these the Box A or Box B criteria.¹¹⁴ Either Box A or Box B - Form 1 criteria must be met for the doctor to sign a Form 1.

Box A - Form 1 criteria includes a Past/Present Test **and** a Future Test. The doctor must believe both Tests are met in order for the Box A - Form 1 criteria to be satisfied.

Box A - Section 15(1) of the Mental Health Act:

Serious Harm Test

The Past / Present Test

I have reasonable cause to believe that the person:

- ☐ has threatened or is threatening to cause bodily harm to himself or herself
- ☐ has attempted or is attempting to cause bodily harm to himself or herself
- ☐ has behaved or is behaving violently towards another person
- ☐ has caused or is causing another person to fear bodily harm from him or her; or
- ☐ has shown or is showing a lack of competence to care for himself or herself

AND

The Future Test

I am of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in:

- ☐ serious bodily harm to himself or herself,
- ☐ serious bodily harm to another person,
- ☐ serious physical impairment of himself or herself

All of the following criteria must be satisfied for Box B – Form 1 to be met:

Box B – Section 15 (1.1) of the Mental Health Act:

Patients who are Incapable of Consenting to Treatment and Meet the Specified Criteria

I have reasonable cause to believe that the person:

1. Has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in one or more of the following: *(please indicate one or more)*

- ☐ serious bodily harm to himself or herself,
- ☐ serious bodily harm to another person,
- ☐ substantial mental or physical deterioration of himself or herself, or
- ☐ serious physical impairment of himself or herself;

AND

2. Has shown clinical improvement as a result of the treatment.

AND

I am of the opinion that the person,

3. Is incapable, within the meaning of the *Health Care Consent Act, 1996*, of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained;

AND

4. Is apparently suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one;

AND

5. Given the person's history of mental disorder and current mental or physical condition, is likely to: *(choose one or more of the following)*

- ☐ cause serious bodily harm to himself or herself, or
- ☐ cause serious bodily harm to another person, or
- ☐ suffer substantial mental or physical deterioration, or
- ☐ suffer serious physical impairment

Again, only Box A or Box B - Form 1 criteria need to be met. For either box, the doctor will have to describe their own observations as well as facts communicated by others.

In some cases, it is not difficult to meet the criteria above. For example, running into traffic or not wearing shoes in winter could be found to be evidence of bodily harm.

Once the Form 1 is signed, the individual has the right to obtain legal counsel without delay. The psychiatric facility must provide a telephone to contact a lawyer.

For information and assistance, contact the **Psychiatric Patient Advocate Office** at 1-800-578-2343.

Form 2: Order for examination

Anyone can appear before a justice of the peace and provide sworn information that someone in Ontario meets either Box A or Box B - Form 1 criteria. To do this, go to your nearest courthouse and ask the clerk to see a justice of the peace.

Most courthouses are open Monday to Friday, 8:30 a.m. to 4 p.m. You should bring:

- your photo ID
- information about your loved one's psychiatric condition

You must swear the information is true, and you may bring oral or written evidence.

The justice of the peace may issue an order for examination of the person by a physician, or Form 2. The Form 2 gives police the authority to bring the person into custody to an appropriate place (e.g., hospital, doctor's office) for examination by a physician. The police have up to seven days to execute the order.

It is common for the Form 2 to result in a Form 1 order for psychiatric assessment if the physician believes a psychiatric assessment is necessary.

Form 3: Certificate of involuntary admission

After a psychiatric assessment, the older adult may be released, admitted as a voluntary or informal patient (if the older adult consents), or admitted as an **involuntary patient**.

To be admitted as an involuntary patient, a second doctor must examine the older adult and complete an application for a certificate of involuntary admission, or **Form 3**. The physician must believe that the individual cannot be managed as an informal or voluntary patient and must determine that the individual meets the criteria under section 20 of the *Mental Health Act*.¹¹⁵ On the Form 3, these criteria are called the Box A or Box B criteria (not to be confused with the Form 1 criteria).¹¹⁶ Either Box A or Box B must be met:

Box A – Section 20(5) of the Mental Health Act:

Risk of Serious Harm

Note: Check one or more boxes as appropriate.

The patient is suffering from mental disorder of a nature or quality that likely will result in:

- ☐ serious bodily harm to the patient
- ☐ serious bodily harm to another person
- ☐ serious physical impairment of the patient

unless he or she remains in the custody of a psychiatric facility.

All of the following criteria must be met for Box B – Form 3 to be satisfied:

Box B – Section 20 (1.1) of the Mental Health Act:

Patients who are Incapable of Consenting to Treatment and Meet the Specified Criteria

*Note: The patient must meet **all** of the following five criteria.*

1. The patient has been found incapable, within the meaning of the *Health Care Consent Act, 1996* of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained.
2. The patient has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in one or more of the following: *(please indicate one or more)*
 - ☐ serious bodily harm to the patient,
 - ☐ serious bodily harm to another person,
 - ☐ substantial mental or physical deterioration of the patient, **or**
 - ☐ serious physical impairment of the patient;
3. The patient has shown clinical improvement as a result of the treatment.
4. The patient is suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one.
5. Given the person's history of mental disorder and current mental or physical condition, is likely to: *(please indicate one or more)*
 - ☐ cause serious bodily harm to himself or herself, **or**
 - ☐ cause serious bodily harm to another person, **or**
 - ☐ suffer substantial mental or physical deterioration, **or**
 - ☐ suffer serious physical impairment

A certificate of involuntary admission gives the hospital the authority to keep someone for up to two weeks. The hospital's officer in charge must review the certificate. A rights advisor will also help the individual apply to the **Consent and Capacity Board** (see page 77).

For information and assistance, contact the **Psychiatric Patient Advocate Office** at 1-800-578-2343.

Form 4: Certificate of renewal

A certificate of renewal, or **Form 4**, will renew or extend the period of involuntary admission for up to one month. A second certificate of renewal extends the involuntary admission for up to two months, and a third certificate of renewal extends for up to three months. Only three certificates of renewal can be issued.

A doctor must examine the older adult before signing each renewal. Either Box A or Box B - Form 3 criteria need to be met each time. The hospital's officer in charge must also review each renewal. The older adult can apply to have each renewal reviewed by the **Consent and Capacity Board** (see page 77).

Form 4A: Certificate of continuation

A certificate of continuation, or **Form 4A**, can be issued after three certificates of renewal (Form 4) have been issued. The certificate of continuation extends involuntary admission for up to three months. Any subsequent certificates of continuation are also valid for up to three months.

A doctor must examine the older adult before signing each renewal. Either Box A or Box B - Form 3 criteria need to be met each time. The hospital's officer in charge must also review each renewal.

An automatic application is sent to the **Consent and Capacity Board** to review the first certificate of continuation, and again every fourth certificate of continuation. The older adult can also apply to have any certificate of continuation reviewed by the Consent and Capacity Board.

The older adult can also bring a **Form 51** application to the Consent and Capacity Board, requesting rehabilitative services, community access or privileges, or to be held at a different level of security. A Form 51 can be brought once every 12 months.

Capacity for treatment and personal care decisions

Everyone is presumed to be capable to make decisions about their own body and health, including treatment, admission to care facilities, and personal assistive services.¹¹⁷

A person is capable if they are able to understand information that is relevant to making a decision and able to appreciate the reasonably-foreseeable consequences of making or not making a decision.¹¹⁸

Capacity is temporal and situational. This means a person may be capable of making one type of decision one day, but not on another day.

Capacity is specific to the type of treatment. A person can be incapable of making decisions for one type of treatment but capable of making decisions for another type of treatment.

Allow the older adult to make all the decisions they are capable of making. For example, ask what the older adult would like to wear each day, eat each meal and whether the individual wishes to participate in an activity.

Assessing capacity for health and personal care decisions

Health care practitioners and persons who have been designated as capacity assessors or evaluators can assess an individual's capacity. These professionals may assess the person's capacity to make decisions about treatment, property, personal assistance, placement in long-term care, and the collection, use and disclosure of personal health information.

If the capacity assessor/evaluator finds the older adult is incapable of making a treatment decision and the older adult disagrees, the older adult can request a hearing with the **Consent and Capacity Board** (see below).

A rights advisor from the Psychiatric Patient Advocate Office can help the older adult apply to the Consent and Capacity Board and contact a lawyer. Call toll-free 1-800-578-2343.

Consent

Important decisions related to the older adult's treatment, personal assistance, placement in long-term care, and the collection, use and disclosure of health care information require informed consent.

A health practitioner cannot treat anyone without informed consent from the individual. If the individual has been found incapable, these decisions will require a substitute decision-maker (see below) to give consent on the individual's behalf.

Consent must always be voluntary and informed.¹¹⁹ A health practitioner recommending treatment must describe the nature of the treatment, the benefits and risks, side effects, other options available, and the likely consequences of not having the treatment to help the older adult or the substitute decision-maker make an informed decision.¹²⁰

Substitute decision-making

If the older adult is found incapable by a capacity assessor/evaluator or the Consent and Capacity Board, someone else will need to make important decisions on the older adult's behalf. Substitute decision-making is when a person makes a decision on behalf of someone else who may lack the mental capacity to make a decision independently.

In the treatment context, there is a hierarchy the health care team will follow to find a substitute decision-maker (SDM).¹²¹ If no one on this list is available, the **Office of the Public Guardian and Trustee** will make the decisions for the individual.

All substitute decision-makers must follow any prior treatment wishes made while the older adult was capable. If the older adult did not make treatment wishes, the substitute decision-maker must make decisions based on the individual's best interests.¹²² Best interests are based on the older adult's values and beliefs, any wishes made, whether the treatment will improve the older adult's condition or prevent deterioration, whether the benefits outweigh the risks and whether there are less-intrusive alternatives.¹²³

If a health practitioner thinks the older adult's substitute decision-maker is not making decisions in the individual's best interest, the health practitioner can apply to the **Consent and Capacity Board (CCB)** with a **Form G**. If the CCB decides the substitute decision-maker is not making decisions in the older adult's best interest, the CCB will tell the substitute decision-maker how to make decisions in the individual's best interest.¹²⁴ If the substitute decision-maker does not follow these directions, the CCB may remove that person from being a substitute decision-maker.¹²⁵

Findings of incapacity to manage funds/property

If an older adult has been involuntarily admitted, a doctor will often assess the individual's capacity to manage property and finances.¹²⁶ Outside a hospital, a doctor or assessor may also test the older adult's capacity with the individual's consent or with a court order.¹²⁷ Whoever is making the assessment must keep detailed notes and ask questions to allow the older adult to explain things that may seem unclear or incomplete.¹²⁸

If a person in a hospital has been found incapable to manage property, the Office of the Public Guardian and Trustee will manage that person's funds unless there is a power of attorney for property or a person is appointed as guardian of property (see below).

Once the person is discharged from hospital, the finding of incapacity to manage property no longer applies unless the doctor files a notice of continuance, stating that the doctor is of the opinion that the patient will remain incapable of managing property on discharge.

Community treatment order

A community treatment order (CTO) is an order made by a doctor for the supervision and treatment or care of an individual in the community. The doctor must believe the older adult requires supervision in order not to harm themselves or others, or to experience substantial mental or physical deterioration or impairment.¹²⁹

The purpose of a CTO is to allow an individual living with a mental disorder to live in the community, rather than a psychiatric hospital.

Creating a CTO

A community treatment order can only be made if the individual has been a patient in a psychiatric facility two or more times in the past three years for a combined total of 30 or more days, or had a previous CTO in the last three years.¹³⁰

The older adult or substitute-decision maker **must consent** to the community treatment order.¹³¹ However, if the older adult does not consent, they may continue to be detained in a psychiatric hospital.

The CTO includes a community treatment plan which describes the medications, appointments and care the doctor believes is necessary for the individual to live in the community rather than in a hospital. The doctor will make the plan with the individual (or substitute decision-maker) and anyone else that will help that person in the community (e.g., social workers, support organizations, etc.).

Sometimes the community treatment plan will include arbitrary rules, such as bathing frequency. It is important to think about what the older adult is agreeing to before consenting to the community treatment plan, as failure to comply could lead to involuntary admission to a psychiatric hospital (see below).

When the community treatment order is issued, the older adult is entitled to prompt legal rights advice.

Removing and renewing a CTO

An older adult can apply to the **Consent and Capacity Board** (see below) to review whether a community treatment order is required.

The older adult or their substitute decision-maker can change their mind and remove consent to the CTO at any time.¹³² A doctor must reassess the older adult and decide whether the older adult can live in the community without the CTO or whether hospitalization is needed. So, an older adult who withdraws consent to a community treatment order may risk being detained in a hospital.

A community treatment order can be renewed every six months.¹³³ The Consent and Capacity Board must review the CTO every second time it is renewed.

Every time the community treatment order is issued, the older adult is entitled to prompt legal rights advice. The older adult also has the right to apply to the Consent and Capacity Board to review whether the criteria for a CTO are still met.

The CTO can be terminated at any time if the doctor believes it is no longer required.¹³⁴ The older adult or substitute decision-maker can also ask the doctor to review the individual's condition to determine whether the CTO is still required.¹³⁵

If the older adult does not comply with the CTO, the doctor may issue an **order for examination** (order 18, Form 47) to have the individual returned to the hospital by police or a community-based treatment team.¹³⁶ This may lead to involuntary admission.¹³⁷ The older adult can apply to the **Consent and Capacity Board** to review the legality of the doctor's order.

An older adult who is subject to a community treatment order, or their substitute decision-maker, has the right to retain and instruct counsel and to be informed of that right.

For information and assistance, contact the Psychiatric Patient Advocate Office at 1-800-578-2343.

Consent and Capacity Board

The Consent and Capacity Board (CCB) is an independent tribunal funded by the Ontario Ministry of Health and enacted under the *Health Care Consent Act, 1996*.¹³⁸

The Consent and Capacity Board is typically a three-person tribunal: a chairperson (a lawyer), a medical expert (a psychiatrist, physician or registered nurse) and a member of the public. The CCB sits in the hospital or another location that is convenient for all the parties.

The CCB adjudicates matters related to involuntary admission, capacity to manage property, personal assistance, treatment and personal health information.

Legal Aid Ontario (LAO) represents incapable people before the Consent and Capacity Board (CCB) who are financially eligible. The CCB may direct LAO to appoint counsel for the incapable party.

Please call toll-free at 1-800-668-8258 or 416-979-1446. LAO accepts collect calls.

POWERS OF ATTORNEY

A power of attorney is a legal document that an individual can use to appoint another person (called an attorney) to make decisions on the individual's behalf. The attorney does not have to be a lawyer. The attorney is usually a spouse, family member or friend. The power of attorney itself is a formal document that names the attorney and is signed with witnesses.

The individual creating the power of attorney must have capacity in order to sign it. The individual can revoke the power of attorney as long as the individual has capacity.

Continuing power of attorney for property

A continuing power of attorney for property is a legal document that gives the attorney the legal authority to make decisions about an individual's finances, home and possessions. The individual can name more than one person as an attorney. An attorney must be at least 18 years old and should be trustworthy and good at handling money.

An older adult's attorney can make any decision about the older adult's property that the older adult could make, except to make a new power of attorney, or make or change the older adult's will. A continuing power of attorney is different from a will. An attorney has no legal authority over the older adult's property after the older adult dies.

The attorney can do banking on the older adult's behalf, sign cheques in that person's name, and buy and sell property on the older adult's behalf.

This means the attorney has a lot of power, which can be risky. It is a good idea to talk to a lawyer before preparing a continuing power of attorney for property.

Find a lawyer in your area by contacting the **Law Society Referral Service** at 1-855-947-5255 or visit www.findlegalhelp.ca.

JusticeNet helps financially-eligible people find lawyers who offer reduced rates. Call toll-free 1-866-919-3219, email info@justicenet.ca or visit www.justicenet.ca.

Creating a continuing power of attorney for property

In order to make a continuing power of attorney for property, the older adult must have the mental capacity to:

- know what property the older adult owns and its approximate value
- be aware of obligations to those who depend on the older adult financially
- know what the older adult is giving the attorney the authority to do
- know the attorney must account for the decisions made about the older adult's property
- know the older adult can revoke this power of attorney as long as the older adult is mentally capable
- understand the value of the older adult's property may decrease if the attorney doesn't manage it well **and**
- understand there is a chance the attorney could misuse the authority

A continuing power of attorney for property typically comes into force **as soon as it is signed** and witnessed. However, the older adult can also state in the power of attorney that it will come into effect at a later date. For example, the power of attorney could come into effect if and when a designated capacity assessor makes a finding that the older adult is incapable of managing their own property.

Revoking a continuing power of attorney for property

The continuing power of attorney for property can be revoked as long as the older adult is mentally capable. The older adult must state in writing that the power of attorney is revoked and have two witnesses sign it. The older adult should give a copy of this document, called a **revocation**, to anyone who has a copy of the power of attorney and everyone concerned with the older adult's property, including the former attorney and current bank manager(s), health care provider(s) and pension plan administrator. The older adult's lawyer should register the revocation on the titles to any real estate properties owned. The lawyer should also destroy the original power of attorney if possible.

A continuing power of attorney for property will also be terminated if the older adult prepares a valid new continuing power of attorney for property appointing a new attorney, or if the attorney dies, becomes incapable of managing the property, or resigns, unless there is another named attorney willing and able to act.

Anyone can ask a court to review whether an attorney is mismanaging an incapable person's property.

Power of attorney for personal care

A power of attorney for personal care is a legal document that gives the attorney the legal authority to make personal care and treatment decisions for the individual **if the individual becomes mentally incapable** of making these decisions independently. Personal care decisions include decisions about the individual's health care, medical treatment, diet, housing, clothing, hygiene and safety. It is a good idea to talk to a lawyer before preparing a power of attorney for personal care.

The attorney can only make decisions that the older adult is not mentally capable of making independently. For example, if the older adult is capable of making decisions about diet but not about health care, then the attorney can only make decisions about health care, and not about diet.

Creating a power of attorney for personal care

The attorney must be over the age of 18 and be mentally capable. The individual cannot name someone who is paid to provide health care or residential, social, support or training services as the attorney (unless this person is also a spouse, partner or relative).

The older adult must be mentally capable when the power of attorney is signed. This means the older adult can understand:

1. whether the person named as the attorney is truly concerned with the older adult's well-being **and**
2. that the attorney may make decisions for the older adult

The power of attorney can include any treatment wishes, and the attorney must follow these wishes. If the older adult does not communicate any wishes, the attorney will make the decision that is in the older adult's best interests, while considering the older adult's values and beliefs.

A power of attorney for personal care only comes into effect when the individual is no longer capable of making some or all personal care decisions. Powers of attorney should be kept in a safe place until this time. Copies should be given to the attorney, doctor, and anyone else who is important in the older adult's life.

The older adult's health practitioner (e.g., doctor, nurse, dentist, physiotherapist, etc.) decides whether the older adult is mentally capable of consenting to **treatment decisions**. Typically, the attorney decides when the older adult is mentally incapable of making **personal care decisions** (not treatment decisions), unless the power of attorney names someone else to make this decision. The older adult can apply to the Consent and Capacity Board to review decisions where someone has determined the older adult is incapable.

Revoking a power of attorney for personal care

The older adult can revoke the power of attorney for personal care as long as the older adult has the capacity to do so. The older adult must state the revocation of power of attorney in writing and have two witnesses sign it. The older adult should give a copy of this document, called a **revocation**, to anyone who has a copy of the power of attorney and to the older adult's health care provider(s). The original power of attorney should be destroyed if possible.

A power of attorney for personal care will also be terminated if the older adult prepares a valid new power of attorney for personal care, or if the attorney dies, becomes incapable, or resigns, unless another named attorney is willing and able to act.

Anyone can ask a court to review whether an attorney is mismanaging an incapable person's personal care decisions.

GUARDIANSHIP

Guardianships can be "statutory" or "court-appointed." A guardian must follow the incapable person's wishes and must include the incapable person in decision-making as much as possible.

Legal Aid Ontario certificates are available for unrepresented incapable persons in Superior Court where the court directs the Office of the Public Guardian and Trustee to arrange for a lawyer. Coverage is subject to financial-eligibility testing. Please call toll-free at 1-800-668-8258 to apply for legal aid funding or for more information about legal aid services. Legal Aid Ontario accepts collect calls.

Court-appointed guardians

Any person can apply to the Ontario Superior Court of Justice to be appointed guardian of property and/or of the person for an individual who is incapable.¹³⁹

The court will only appoint a guardian when other, less-intrusive options are not available, such as a continuing power of attorney for property.¹⁴⁰ The court will also need to confirm that the person who is the subject of the guardianship application is incapable.¹⁴¹

Prospective applicants, who wish to become a guardian of the person or of property for an incapable person, are encouraged to speak to a lawyer about the duties and powers of being such a guardian.

Statutory guardians

The **Office of the Public Guardian and Trustee** can be appointed statutory guardian of property for an incapable person. This can happen if a doctor completes a certificate of incapacity for a patient that has just been admitted to a psychiatric facility.

Outside of a psychiatric facility, anyone can request a capacity assessor to assess someone's capacity, but the individual has the right to refuse to be assessed. If the person consents to an assessment and if the assessor issues a certificate of incapacity, the Public Guardian and Trustee becomes the person's statutory guardian of property.

Certain people can apply to the Office of the Public Guardian and Trustee to replace it as statutory guardian of property: the incapable person's spouse, partner, or relative; the incapable person's attorney named under a continuing power of attorney for property; or a trust corporation with the spouse or partner's written consent.

When applying for statutory guardianship, the applicant must include a management plan explaining how the applicant will manage the incapable person's property. The guardian must follow this plan if appointed. The guardian must also keep detailed records of the incapable person's accounts.¹⁴²

To apply to be a guardian of property for an incapable person, contact the Capacity Assessment Office toll-free at 1-800-366-0335 or 416-314-2687 (TTY).

Guardianship investigations

Individuals who are mentally incapable are at increased risk of abuse, neglect and financial exploitation. The Office of the Public Guardian and Trustee investigates circumstances involving mentally incapable adults at serious risk of harm. Serious risk of harm can include loss of a significant part of the person's property, failure to provide the necessities of life, serious illness or injury, or loss of liberty or security.

While this is not an immediate or crisis service, anyone can contact the Office of the Public Guardian and Trustee to request an investigation. Call toll-free at 1-800-366-0335, email jus.g.fjs.pgt.guardianshipinvestigation@ontario.ca or visit or mail the Guardianship Investigations Unit, Office of the Public Guardian and Trustee, 595 Bay St., Suite 800, Toronto, ON, M5G 2M5.

The investigator will decide whether to apply for guardianship of the person. This will only happen if there is:

- sufficient and reliable evidence of mental incapacity
- evidence of serious risk
- no alternative solutions **and**
- evidence that guardianship will meet the person's needs

The court may appoint the Office of the Public Guardian and Trustee to be temporary guardian of property, temporary guardian of the person, or both. Guardianship can be granted for up to 90 days. At this time, the Office of the Public Guardian and Trustee can ask for an extension of the guardianship or for permanent guardianship.

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